

## **CHAPTER 23A**

### **FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES**

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**CHAPTER 23A**  
**FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES**

**SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS**

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

(a) The purpose of these rules is to assure the financial accountability of boards of education through enhanced State monitoring, oversight and authority, and to ensure that each district board of education adopts an annual budget that provides adequate resources to meet the State Constitution's mandate for a thorough and efficient system of free public schools for all children. These rules set forth the roles of the Commissioner of Education and the Executive County Superintendent in overseeing board of education budgeting and expenditures. The rules also establish mechanisms to ensure the efficient expenditure of budgeted funds in a manner consistent with a district's approved annual budget.

(b) Pursuant to these rules, the Commissioner of Education delegates to the Executive County Superintendent those powers, tasks and duties that further support efficiency of district operation pursuant to N.J.S.A. 18A:7F-43 et seq. and that complement the powers, tasks and duties set forth in N.J.S.A. 18A:7-1 et seq.

(1) The rules effectuate the provisions of P.L. 2007, c. 260, P.L. 2007, c. 63, and P.L. 2008, c. 37.

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

**6A:23A-1.2 Definitions**

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

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

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

"Adjusted tax levy" means the property tax levy for current purposes, excluding any debt pursuant to N.J.S.A 18A:7F-37.

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

"Administrator" means as set forth in N.J.S.A. 18A:12-23.

"Annual audit" means the audit conducted pursuant to the provisions of N.J.S.A. 18A:23-1 et seq. and the Federal Single Audit Act of 1984, Public Law 98-502, amended by Public Law 104-156, of the district board of education's Comprehensive Annual Financial Report.

"Annual audit program" means the uniform program published and distributed by the Commissioner for preparation of the Comprehensive Annual Financial Report by a district board of education pursuant to N.J.S.A. 18A:4-14 and N.J.A.C. 6A:23-2.2(i).

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

“Authorized membership of the school board” means the full membership of the district board of education as established pursuant to Title 18A of the New Jersey Statutes.

"Base budget" means the district board of education's school budget that contains an adjusted tax levy calculated pursuant to the provisions of N.J.S.A. 18A:7F-38 and 39, State aid, other than preschool education aid, received pursuant to the provisions of N.J.S.A. 18A:7F-43 et seq, miscellaneous revenue estimated pursuant to GAAP, and designated general fund balance; but exclusive of additional spending proposals submitted to the voters or board of school estimate.

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

"Board of trustees" means the public agents authorized by the State Board of Education to supervise and control a charter school pursuant to the provisions of N.J.S.A. 18A:36A-1 et seq.

"Business" means any corporation, partnership, firm, enterprise, franchise, trust, association, sole proprietorship, union, political organization, or other legal entity but shall not include a local public school district or any other public entity.

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

"Capital outlay" means capital outlay as defined in GAAP.

"Capital project" means as defined in N.J.A.C. 6A:26-1.2.

"Capital projects fund" means the governmental fund that accounts for financial resources used to acquire or construct capital facilities (other than those of proprietary funds and fiduciary funds). The source of revenue in this fund includes the sale of bonds, grants received pursuant to N.J.S.A. 18A:7G-15, and other sources as defined in N.J.A.C. 6A:26-4.1. In the case of a charter school, the source of revenue may be a mortgage. Separate accounting is required for each capital project.

"Capital projects fund deficit" means the amount of the sum of expenditures and encumbrances for a capital project that exceeds the total amount of funds authorized for the capital project by the State, school district's voters by referendum, the board of school estimate or the capital projects control board as applicable.

"Capital reserve account" means the account established by a district board of education pursuant to N.J.S.A. 18A:7G-31 and 18A:7F-41 into which monies are deposited to help finance a school district's local share of its long-range facilities plan.

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

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

"Chief school administrator" means the superintendent pursuant to N.J.S.A. 18A:17-15, or the administrative principal pursuant to N.J.S.A. 18A:17-20.5, or the State district

superintendent pursuant to N.J.S.A. 18A:7A-35 or 18A:7A-49 in the case of a district under full or partial intervention, or the lead person of a charter school as defined at N.J.A.C. 6A:11-1.2.

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

"Commissioner" means the Commissioner of Education or his or her designee.

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

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

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

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

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

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

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

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

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

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

"Department" means the New Jersey Department of Education.

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

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

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

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

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

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

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

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

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

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

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

“Full-day preschool” means a preschool day consisting of a six-hour comprehensive educational program in accordance with the school district’s kindergarten through grade 12 school calendar pursuant to N.J.S.A. 18A:7F-45.

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

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

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

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

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

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

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

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

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

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

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

- (1) Effectiveness and efficiency of operations
- (2) Reliability of financial reporting
- (3) Compliance with applicable laws and regulations

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

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

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

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

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

"Long-range facilities plan" or “LRFP” means the plan required to be submitted to the Commissioner by a district board of education pursuant to N.J.S.A. 18A:7G-4 and N.J.A.C. 6A:26-2.1.

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

on the prior October 15; \$ 155,000 for any district or districts with a total enrollment of 3,000 or less but greater than 1,500 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; \$ 165,000 for any district or districts with a total enrollment of 6,500 or less but greater than 3,000 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; and \$ 175,000 for any district or districts with a total enrollment greater than 6,500 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15. The Commissioner, upon written application by the board(s) of education and on a case-by-case basis, may approve a waiver of the maximum salary amount for any district or districts with a total enrollment of 10,000 or more based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15.

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

"Mortgage" means, in the case of a charter school, a debt for a period greater than 12 months that is fully backed by the value of real property, so that the total value of all such debt does not exceed the total assessed value of the property by which the debt is backed.

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

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

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

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

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

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

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

"Permanent fund" means a fund used to report resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting district board of education's programs.

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

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

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

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

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

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

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

"Relative" means an individual's spouse, civil union partner pursuant to N.J.S.A. 37:1-33, domestic partner as defined in N.J.S.A. 26:8A-3, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, of the individual

or of the individual's spouse, civil union partner or domestic partner, whether the relative is related to the individual or the individual's spouse, civil union partner or domestic partner by blood, marriage or adoption.

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

"School Business Administrator" or "SBA" means the school business administrator appointed pursuant to N.J.S.A. 18A:17-14.1 or any other title used for the chief financial officer of the district, such as assistant superintendent for business or assistant superintendent for finance, and requiring the school business administrator endorsement pursuant to the provisions of N.J.A.C. 6A:9-12.3(d).

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

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

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

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

"Sending/receiving relationship" means an agreement between two district boards of education, one of which does not have the facilities to educate in-district an entire grade(s) or provide an entire program(s), and as an alternative sends such students to a

district board of education having such accommodations and pays tuition, pursuant to N.J.S.A. 18A:38-8 et seq.

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

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

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

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

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

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

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

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

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

“T&E” means the thorough and efficient system of free public schools for the instruction of all children in the State between the ages of 5 and 18 years as required by the State Constitution and defined by the Core Curriculum Content Standards and efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

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

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

- (1) "Training and seminars" means all regularly scheduled, formal residential or non-residential training functions, conducted at a hotel, motel, convention center, residential facility, or at any educational institution or facility;
- (2) "Conventions and conferences" means general programs, sponsored by professional associations on a regular basis, which address subjects of particular interest to a school district or are convened to conduct association business. The primary purpose of employee attendance at conferences and conventions is the development of new skills and knowledge or the reinforcement of those skills and knowledge in a particular field related to school district operations. These are distinct from formal staff training and seminars, although some training may take place at such events;
- (3) "School district sponsored events" means conferences, conventions, receptions, or special meetings, where the school district plans, develops, implements, and coordinates the event and is the event's primary financial backer. School district employees are actively involved in working the event and other employees may attend as participants;
- (4) "Regular school district business travel" means all regular official business travel, including attendance at meetings, conferences and any other gatherings which are not covered by the definitions included in 1, 2 and 3 above. Regular school district business travel also includes attendance at regularly scheduled in-state county meetings and Department sponsored or association sponsored events provided free of charge and regularly scheduled in-state professional development activities with a registration fee that does not exceed \$150.00 per

employee or board member. Beginning in 2009-2010 the \$150.00 limit per employee or board member may be adjusted by inflation; and

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

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

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

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

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

## **SUBCHAPTER 2. EXECUTIVE COUNTY SUPERINTENDENT OF SCHOOLS**

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

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

(b) Nothing in this section shall be construed or interpreted to contravene or modify the provisions of the New Jersey Employer-Employee Relations Act, P.L. 1941, c. 100, (N.J.S.A. 34:13A-1 et seq.), or to limit or restrict the scope of negotiations as provided pursuant to law, or to require an employer to enter into a subcontracting agreement which affects the employment of any employee in a collective bargaining unit represented by a majority representative during the time that an existing collective bargaining agreement with the majority representative is in effect.

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

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

superintendent roundtable as the Advisory Committee, if appropriate. If the roundtable is used, attendance by the above organizations shall include only the portion of the roundtable meeting dedicated to the issue of regionalization and consolidation of services.

(b) The Executive County Superintendent, in his or her discretion, may create one or more advisory subcommittees that address issues by subject matter, by region or by some other method. Members of the subcommittees may be local taxpayers or residents, school board members, school district employees, school district parents, local government officials, representatives of State or local education associations, or others, as deemed appropriate by the Executive County Superintendent. The membership shall reflect the diversity of the county to the extent possible.

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

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

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

(f) The Executive County Superintendent may, in his or her discretion where necessary, take appropriate action to engage consultants to perform the work and studies

required by these rules, including assisting districts in submission of applications for funds under the SHARE program pursuant to N.J.S.A. 40A:65-30.

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

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

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

1. Any local public school district with enrollment of 1,000 students or less;
2. Any local public school district with five school buildings or less;
3. Two or more contiguous local public school districts of the same county with a combined enrollment of 2,500 students or less;
4. Local public school districts that receive non-resident pupils pursuant to a formal send-receive agreement and their sending districts with a combined enrollment of 5,000 students or less;
5. Limited purpose regional school districts and their feeder school districts with a combined enrollment of 5,000 students or less; and
6. Any local public school district with an administrative cost per pupil in excess of 125 percent of the county median administrative cost per pupil.

(b) The study shall include consideration of the following models:

1. Shared leadership models where one or more local public school districts share the services and cost of one or more administrators pursuant to the provisions of N.J.S.A.18A:17-24.1 et seq.

2. Consortiums such as ESCs, CSSSDs, Jointure Commissions, Jointure agreements and Audio/Visual Aides Commissions;

3. Cooperative bidding or joint purchasing models;

4. Shared purchased services models for such services as accounting, graphic arts and printing, child study team services, transportation, food services, employee recruitment and screening services and substitute calling services;

5. Shared systems models such as computer networks, financial and human resource management software systems, electronic records storage, and information management systems;

6. Other consolidated administrative service and non-instructional services arrangements, including but not limited to, regional school districts or County Offices of Education pursuant to the provisions of N.J.S.A. 18A:7-12; or

7. The study may also consider the feasibility of “alternative approaches” for public school district sharing or consolidating administrative or management services between districts. If such an alternative approach is proposed that is not currently authorized by statute, such alternative approach shall not be implemented unless and until the statutory authorization for such an alternative approach is duly enacted.

(c) The Executive County Superintendent shall also study ways to promote cooperative purchasing of textbooks and other instructional materials with the

expectation that the local public school districts, ESCs, CSSSDs, and jointures shall be the primary entities for procuring such materials for the operation of public school districts.

(d) As part of the study, the Executive County Superintendent may conduct a survey of all local public school districts of the county, county vocational schools, CSSSDs and ESCs and other county or regional based entities to determine the scope of administrative services currently available within or outside the county and the capacity of administrative service providers to provide said services.

(e) As part of the study, the Executive County Superintendent may solicit proposals, as necessary, from local public school districts, ESCs, county vocational schools, CSSSDs or other county entities to expand the scope of available administrative services and/or provider capacity to provide said services.

(f) Based on the study conducted pursuant to (a) through (e) above, the Executive County Superintendent shall make one or more of the following recommendations to the Commissioner:

1. Where a cost/benefit analysis demonstrates that the consolidation of one or more administrative services is economically advantageous and the consolidation of said service or services will have no negative impact on a local public school district's educational program, the Executive County Superintendent shall recommend that the districts be required to enter arrangements to consolidate administrative services.

2. Where it is determined that designation of one or more lead administrative service providers for one or more specific available administrative services are most

effective and efficient and are in the best interests of the local public school districts of the county, the Executive County Superintendent shall recommend such designation(s).

3. Where the establishment of a new administrative service provider(s) or shared service administrative arrangement(s) or expansion of administrative services delivered by a current provider within the county is in the best interests of the local public school districts of the county, the Executive County Superintendent shall recommend the establishment or expansion of provider(s), for administrative services, such as:

i. An Educational Service Commission pursuant to N.J.S.A. 18A:6-52;

ii. A county department of child study to coordinate special education services and basic child study team services on a county-wide basis pursuant to N.J.S.A. 18A:46-3 and, when applicable, N.J.S.A. 18A:7-12;

iii. A County Special Services School District pursuant to N.J.S.A. 18A:46-29;

iv. A school board insurance group pursuant to N.J.S.A. 18A:18B-3 et seq;

v. A joint purchasing arrangement pursuant to N.J.S.A. 18A:18A-11 et seq;

vi. A joint transportation arrangement pursuant to N.J.S.A. 18A:39-11 et seq;

and/or

vii. A county educational audiovisual aids center for media and library services pursuant to N.J.S.A. 18A:51-1 et seq.

(g) The topic of consolidated administrative services shall be an item on the agendas of the Executive County Superintendents and County School Business Administrators for their respective countywide roundtable meetings at least once each quarter. Presentations may include school district success stories, service provider availability and capacity,

new or additional administrative service needs or suggestions to improve existing shared administrative services.

**6A:23A-2.4 Elimination of school districts that are not operating schools**

(a) The Executive County Superintendent shall submit to the Commissioner a plan to eliminate those local public school districts that are not operating schools. The plan shall address, but not be limited to, the following issues:

1. The Executive County Superintendent's recommendation as to the most appropriate local public school district within the county for the "school district not operating a school" with which to consolidate that results in the least disruption on educational delivery, district operations and local finances, including the allocation of tax levy and State aid. The current receiving district shall be considered the presumptive, most appropriate, local public school district that results in the least disruption. Factors to rebut this presumption include the receiving district's status under the No Child Left Behind Act, whether the district that is not operating a school is currently sending to two different districts, and the long term goal of creating regional local school districts (pre-K or K to grade 12);

2. A general description of the constituent communities, including the communities' population, housing trends, and ratables;

3. A general description of the constituent school districts, including, but not limited to, the board of education, school buildings, enrollment, grade levels by school district, and financial information. The financial information shall include, but not be

limited to, revenues and appropriations, ratables, borrowing margins, general fund and debt service fund tax levies and State aid;

4. Procedures, if needed, to transition current administrative duties of the “school district not operating a school” to the proposed new school district;

5. An estimate of additional costs, if any, of the proposed new school district assuming the current administrative duties of the “school district not operating a school”;

6. An estimate of efficiencies and cost savings, if any, resulting from the consolidation of school districts such as the elimination of the need to prepare annual tuition contracts and monthly tuition bills;

7. A comparison of the estimated State aid and property tax impact for the proposed new school district and the sum of State aid and property taxes for the constituent school districts as currently authorized by statute. The Executive County Superintendent may consider alternative approaches to the allocation of property taxes and State aid if such approach results in the least financial disruption to the constituent districts. If such an alternative approach is proposed that is not currently authorized by statute, such alternative approach shall not be implemented unless and until the statutory authorization for such an alternative approach is duly enacted;

8. A description of the new district board of education as currently authorized by statute, including a description of the constituent school districts boards. The Executive County Superintendent may consider an alternative approach to the new district board of education. If such an alternative approach is proposed that is not currently authorized by statute, such alternative approach shall not be implemented unless and until the statutory authorization for such an alternative approach is duly enacted;

9. District specific issues and concerns including, but not limited to, building ownership by the district that is currently not operating a school, potential loss of Federal impact aid or other special revenue sources, and new transportation concerns. If the district that is currently not operating a school owns a building(s), a description of the building(s) and plan for the building to be transferred to the municipality in which the district that is currently not operating a school is located, unless a deed restriction on said building indicates otherwise;

10. The process to liquidate all remaining assets and close the fiscal books of the district that is no longer operating a school, including arranging for the final audit. All remaining cash and fund balances after completion of this liquidation process shall be transferred to the municipal government of the district no longer operating a school; and

11. The transfer of files, records, equipment, and supplies.

#### **6A:23A-2.5 Plan for district consolidation to create regional school districts**

(a) The Executive County Superintendent, in consultation with the Advisory Committee, shall study the consolidation of local public school districts within the county, other than county school districts and other than preschool or kindergarten through grade 12 operating school districts in the county, into one or more all purpose regional school districts. The study shall to the greatest extent practicable focus on the consolidation of existing local public school districts that receive students from school districts on a tuition basis with those sending school districts, and the consolidation of limited purpose regional school districts that receive students from constituent municipalities to create enlarged all purpose regional school districts. The study may

also consider public school district models of “alterative approaches” for consolidating or sharing administrative or management services between districts where creation of an all purpose regional district is not feasible or is not the most cost-effective option. If such an alternative approach of consolidating or sharing administrative or management services between districts is proposed that is not currently authorized by statute, and the plan with the alternative approach is approved by the Commissioner pursuant to (b) below, the proposal shall not be submitted to the voters in a special election pursuant to N.J.S.A. 18A:7-8 unless and until statutory authorization for such alternative approach is duly enacted.

(b) Based on the study required in (a) above, the Executive County Superintendent shall submit to the Commissioner a plan to achieve this purpose no later than March 15, 2010 pursuant to N.J.S.A. 18A:7-8(h). The plan shall contain, but not be limited to, the following issues:

1. A general description of the proposed all purpose regional school district or school districts, including the names of the constituent local public school districts, school buildings and grade levels by school district, and the area of the total proposed regional school district;

2. The proposed structure of the new board of education of the proposed all purpose regional district, if applicable, that ensures representation from all constituent communities;

3. An analysis of administrative staffing, collective bargaining agreements and compensation guides of the constituent school districts and recommendations and guidance for the proposed regional school district, including, but not limited to:

- i. The existing administrative organization structures of each constituent local public school district;
- ii. A proposed administrative organization chart for the proposed regional school district;
- iii. Copies of each constituent school district's bargaining agreement(s) and the associated salary guides;
- iv. A summary report showing each constituent local public school district's first step and last step of the salary guides for the current and last year of each school district's current bargaining agreement(s), showing the lowest and highest starting salaries among the salary guides and the lowest and highest top salaries among the salary guides for the current and last year of each school district's current bargaining agreement(s), the length of the guide, each school district's current average teacher salary and average years of service, and any provisions for longevity pay;
- v. A recommended framework for negotiation of a new collective bargaining agreement in the proposed regional school district;
- vi. A recommended framework to assign, recruit, interview and employ administrative staff in accordance with the positions on the recommended administrative organization chart in accordance with N.J.S.A. 18A:6-31.3 through 31.7; and
- vii. A recommended framework to assign, recruit, interview and employ other teaching staff members and other staff in accordance with N.J.S.A. 18A:6-31.3 through 31.7;

4. An analysis of each proposed constituent public school district's educational program and recommendations and guidance for establishing the educational program of the proposed regional school district;

5. An analysis of potential opportunities for greater effectiveness and efficiency including but not limited to:

i. Consolidation of special education programs and services consistent with the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq., State statutes and regulations (examples: more efficient inclusive practices, returning out-of-district placements, staff consolidation and maximization of special education class sizes to legal limits);

ii. Maximization of pupil transportation cost savings and other efficiencies through coordinated bell schedules, tiered bus routes, and other efficiencies created by the consolidation of transportation management services;

iii. Consolidation of computer networks and administrative systems such as finance and human resource systems.

iv. Food service operations (example; centralizing meal preparation with satellite cafeterias); and

v. Other areas of consolidation and economies of scale such as staff development, curriculum development, health services, guidance services, media services, extra- and co-curricular activities and operation and maintenance of plant;

6. An analysis of socio-economic and demographic information including, but not limited to:

i. Current and projected enrollment data for the succeeding five school years by location, school and grade and for the proposed regional school district as a whole;

ii. Enrollment data by location, school and grade showing the current racial composition of the student population and the resulting racial composition for the proposed regional school district as a whole;

iii. Enrollment data showing the school food service eligibility status (free, reduced or paid) of the student population by location, school and grade and for the proposed regional school district as a whole; and

vi. Attendance areas by school building, grade and current and projected enrollment of the constituent school districts and recommended grade configurations and attendance areas for each existing and proposed school building, if applicable, of the proposed regional school district;

7. A summary of the advantages and disadvantages of forming an all purpose regional district for each constituent school district;

8. A recommendation by the Executive County Superintendent regarding the formation of the proposed regional school district;

9. If the recommendation of the Executive County Superintendent is to form a regional school district, the following additional information shall be included in the plan:

i. A comparison of the estimated State aid and property tax impact for the proposed regional school district and the sum of State aid and property taxes for the constituent school districts;

ii. An impact assessment of property tax apportionment among the constituent school districts using a minimum of three apportionment methods:

(1) The proportion of each constituent municipality's equalized valuation;

(2) A combination using 50 percent of the proportion of each constituent municipality's equalized valuation and 50 percent of the proportion of each constituent school district's pupil enrollments; and

(3) A combination of equalized valuation and pupil enrollments using a percentage split that most closely approximates each proposed constituent school district's current percentage share of the sum of all proposed constituent school districts' current property taxes to the percentage share that would result after a regional school district is newly created or enlarged;

iii. A comprehensive financial analysis of current and projected spending, local community wealth, debt limit and current debt burden, including, but not limited to:

(1) The projected current operating expenses of the proposed regional school district had it operated in the school year in which the plan is issued, and the current operating expenses of the constituent school districts for the school year in which the plan is issued, both individually and in the aggregate;

(2) The aggregate equalized valuation, average equalized valuation and equalized valuation per pupil of each constituent school district or, if a constituent school district is a regional school district, of each municipality of the regional school district;

(3) The aggregate income, average household income and aggregate income per pupil of each constituent local public school district or, if a constituent school district is a regional school district, of each municipality of the regional school district;

(4) The borrowing margin of each constituent local public school district or, if a regional school district, each municipality of the regional school district, and the projected borrowing margin of the proposed regional school district as determined in accordance with N.J.S.A. 18A:24-1 et seq.;

(5) A schedule showing for each constituent local public school district, or if a regional school district, its municipalities, the original and current debt principal balance(s) and remaining debt service schedule(s) by debt issuance, and percentage of each constituent school district's debt principal to the aggregate debt principal of all proposed constituent school districts;

(6) The individual and aggregate historical and replacement costs as of June 30 of the school year prior to the year in which the plan is issued of school buildings and additions, grounds, furnishings and equipment of each constituent school district and for the proposed regional school district, as a whole; and

(7) The individual and aggregate projected additional costs as of June 30 of the school year prior to the year in which the plan is issued contained in each constituent school district's approved Long-Range Facilities Plan of school buildings and additions, grounds, furnishings and equipment of each constituent school district and for the proposed regional school district, as a whole; and

iv. A Long-Range Facilities Plan for the regional school district, if new schools and/or additions are recommended that are not currently reflected in the existing plans of the constituent school districts; and

10. If the recommendation of the Executive County Superintendent also includes an alternative approach for consolidating or sharing administrative or management

services, the information in (b)1 through 8 above, as applicable, related to the alternative approach(es) shall be included in the plan.

**6A:23A-2.6 Transportation efficiency study**

(a) Each Executive County Superintendent shall complete a study of pupil transportation services in the county no later than July 12, 2009 pursuant to N.J.S.A. 18A:7F-57. The purpose of the study shall be to determine ways to provide pupil transportation services in a more cost-effective and efficient manner. The study shall be transmitted upon completion to the Commissioner and to the Legislature pursuant to N.J.S.A. 52:14-19.1.

(b) For the study of pupil transportation services pursuant to (a) above, the Executive County Superintendent will examine ways to promote coordination and regionalization of pupil transportation services of public school districts and nonpublic schools including, but not limited to:

1. The coordination of bus routes, bell schedules and school calendars within the county for both public and nonpublic schools;
2. Staggering bell schedules in order to implement a tiered system of busing within the school district and with adjoining school districts;
3. Centrally coordinating transportation for out-of-district special education placements, including practices and/or policies in place to more effectively provide for special education transportation services;
4. Consolidating transportation services in combinations of two or more school districts;

5. Establishing a consolidated countywide transportation system by jointure agreement or county-based service provider;

6. Analyzing district school bus routing and scheduling to encourage the use of efficient routing practices;

7. Improving cooperation between local boards of education and nonpublic school administrators leading to more efficient and effective student transportation services; and

8. Soliciting input from current public school district transportation employee representatives and school employee representatives regarding ways to institute efficiencies and savings.

**6A:23A-2.7 Shared special education services**

(a) The Executive County Superintendent shall promote and facilitate the sharing of special education services consistent with Individuals with Disabilities Education Act, P.L. 105-17, (IDEA) requirements as follows:

1. Coordinate with the Department to maintain a real time Statewide and district-wide database that tracks the types and capacity of special education programs being implemented by each local school district and the number of students enrolled in each program to identify program availability and needs;

2. Coordinate with the Department to maintain a Statewide and district-wide list of all special education students served in out-of-district programs and a list of all public and private entities approved to receive special education students that includes pertinent information such as audit results and tuition charges;

3. Serve as a referral source by maintaining information on placement options available in other local school districts and their tuition rates for school districts that do not have appropriate in-district programs for individual special education students;

i. When school personnel serving on a IEP team are considering that a student's IEP be implemented in a special class program that is not available in-district, they shall inform the Executive County Superintendent of the age of the student and the class type that they are considering.

ii. The Executive County Superintendent shall identify whether such special class programs are available in other local districts and if there are vacancies. The Executive County Superintendent shall inform the district of any available in-district programs for the consideration of the IEP team.

iii. Prior to making a determination regarding the student's placement, the school district shall convene a meeting of the IEP team to consider all placement options, including placements identified by the Executive County Superintendent, and shall identify the appropriate placement in the least restrictive environment according to the requirements of N.J.A.C. 6A:14.

iv. After an IEP team determines a placement other than one of the placement options identified by the Executive County Superintendent, the school district shall provide a written explanation as to why the placement option selected was the appropriate one for the purpose of identifying program gaps and needs within local public programs.

4. Conduct regional planning, identify the program needs of the county and work with school districts in the development of in-district special education program options;

5. Identify special class programs within school districts of the county serving students with like IEPs that may be appropriately consolidated within legally permissible class size limits within one school or school district;

6. Maintain a list of appropriately licensed and/or certified professionals or appropriate county entities, and their fees, available to provide related services such as speech, physical therapy or occupational therapy, on an as needed basis;

7. Maintain a list of appropriately licensed or certified professionals or appropriate county entities, and their fees, able to participate or provide appropriately licensed and/or certified professionals to participate on or supplement local school district child study teams;

8. With consideration of school districts' size, classification rates, types of classifications, caseloads, geographic proximity, staffing, budget constraints or other available information, investigate the feasibility of two or more school districts sharing of special education staff members, including a director, child study teams and related services providers, and make a formal written recommendation, as appropriate;

9. Prepare and circulate within the county an inventory by school district of surplus or idle equipment used by students with special needs; and

10. Provide assistance to school districts in budgetary planning for resource realignment and reallocation to direct special education resources into the classroom through shared service arrangements and other methods.

### **SUBCHAPTER 3. ADMINISTRATOR AND BOARD MEMBER ACCOUNTABILITY**

**6A:23A-3.1 Review of employment contracts for superintendents, assistant superintendents and school business administrators**

(a) The Executive County Superintendent shall review and approve, for all superintendents, superintendents reappointed pursuant to N.J.S.A. 18A:17-20.1, deputy superintendents, assistant superintendents and school business administrators, including any interim, acting or person otherwise serving in these positions, in school districts, county vocational school districts, county special services school districts and other districts, except charters, within the county under the supervision of the Executive County Superintendent:

1. New employment contracts, including contracts that replace expired contracts for existing tenured and non-tenured employees;
2. Renegotiations, extensions, amendments, or other alterations of the terms of existing employment contracts that have been previously approved by the Executive County Superintendent; and
3. Provisions for contract extensions where such terms were not included in the original employment contract or are different from the provisions contained in the original approved employment contract.

(b) In counties where there is no Executive County Superintendent, an Executive County Superintendent from another county shall be designated by the Commissioner to review and approve all above contracts.

(c) The contract review and approval shall take place prior to any required public notice and hearing pursuant to N.J.S.A. 18A:11-11 and prior to the board approval and

execution of those contracts to ensure compliance with all applicable laws, including, but not limited to, N.J.S.A. 18A:30-3.5, 18A:30-9, 18A:17-15.1 and 18A:11-12.

(1) The public notice and public hearing required pursuant to N.J.S.A. 18A:11-11 is applicable to a board of education that renegotiates, extends, amends, or otherwise alters the terms of an existing contract with a superintendent of schools, deputy superintendent, assistant superintendent, or school business administrator. It does not apply to new contracts, which includes contracts that replace expired contracts for existing employees in one of these positions, whether tenured or not tenured. Nothing precludes a board of education from issuing a public notice and/or holding a public hearing on new contracts, including new contracts that replace expired contracts for existing tenured and non-tenured employees.

(d) In connection with the Executive County Superintendent's review of the contract, the board of education shall provide the Executive County Superintendent with a detailed statement setting forth the total cost of the contract for each applicable year, including salary, longevity (if applicable), benefits and all other emoluments.

(e) The contract review and approval shall be consistent with the following additional standards:

1. Contracts for each class of administrative position shall be comparable with the salary, benefits and other emoluments contained in the contracts of similarly credentialed and experienced administrators in other districts in the region with similar enrollment, academic achievement levels and challenges, and grade span.

2. No contract for a superintendent or a superintendent reappointed pursuant to N.J.S.A. 18A:17-20.1, including any contract for an interim superintendent, acting

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

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

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

5. No contract shall contain a payment as a condition of separation from service that is deemed by the Executive County Superintendent to be prohibited or excessive in

nature. The payment cannot exceed the lesser of the calculation of three months pay for every year remaining on the contract with proration for partial years, not to exceed 12 months, or the remaining salary amount due under the contract.

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

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

8. Contractual provisions regarding accumulation of unused vacation leave and supplemental compensation for accumulated unused vacation leave shall be consistent with N.J.S.A. 18A:30-9. Contractual provisions for payments of accumulated vacation leave prior to separation can be included but only for leave accumulated prior to June 8, 2007 and remaining unused at the time of payment. Supplemental payments for unused vacation leave accrued consistent with the provisions of N.J.S.A. 18A:30-9 after June 8, 2007 as well as unused vacation leave accumulated prior to June 8, 2007 that has not

been paid, shall be payable at the time of separation and may be paid to the individual's estate or beneficiaries in the event of the individual's death prior to separation

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

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

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

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

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

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

11. No provision for a bonus shall be made except where payment is contingent upon achievement of measurable specific performance objectives expressly contained in

a contract approved pursuant to this section, where compensation is deemed reasonable relative to the established performance objectives and achievement of the performance objectives has been documented to the satisfaction of the district board of education.

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

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

14. All superintendent contracts shall include the required provision pursuant to N.J.S.A. 18A:17-15.1 which states that in the event the superintendent's certificate is revoked, the contract is null and void.

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

acquisition of a graduate degree conferred by a duly accredited institution of higher education as defined in N.J.A.C. 6A:9-2.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SUBCHAPTER 4 SCHOOL DISTRICT FISCAL ACCOUNTABILITY**

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

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

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

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

- iv. Weaknesses in the system of internal controls; and
  - v. Questionable or inefficient spending practices;
2. The cause of each finding;
  3. Specific corrective recommendations; and
  4. The school district response to each finding and recommendation.

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

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

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

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

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

driver or chauffeur. Incidental personal use, however, is permitted and shall be taxable pursuant to the IRS Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and each type of professional service, with appropriate notification to the board of education if it becomes necessary to exceed the maximum. Upon such notification, the board of education may adopt a dollar increase in the maximum amount through formal board action;

2. Establishment of procedures to ensure the prudent use of legal services by employees and board of education members and the tracking of the use of those services.

3. Districts with legal costs that exceed 130 percent of the Statewide average per pupil amount should establish the following procedures and, if not established, provide evidence that such procedures would not result in a reduction of costs:

i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;

ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in district materials such as policies, administrative regulations or guidance available through professional source materials;

iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the district offices and a process to determine whether the request warrants legal advice or if legal advice is necessary, and

iv. A provision to maintain a log of all legal counsel contact including name of legal counsel contacted, date of contact, issue discussed and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved;

4. A provision that requires that contracts for legal services comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:

(i) Advance payments shall be prohibited;

(ii) Services to be provided shall be described in detail in the contract;

(iii) Invoices for payment shall itemize the services provided for the billing period; and

(iv) Payment shall only be for services actually provided;

5. Professional services contracts are issued in a deliberative and efficient manner that ensures the district receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process; and

6. Professional services contracts are limited to non-recurring or specialized work for which the district does not possess adequate in-house resources or in-house expertise to conduct.

(b) School districts and county vocational school districts are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or cause of action on behalf of district administrators and/or any individual board members for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the district as a whole.

(c) School district and county vocational school district publications shall be produced and distributed in the most cost-efficient manner possible that will enable the district to inform and educate the target community. The use of expensive materials or production techniques where lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, is prohibited.

(d) School districts and county vocational school districts are prohibited from distributing, via mass mailings or other means to the district community at large, publications that include the picture(s) of any members of the district board of education within 90 days before any election in which any board member is seeking any elective office or any election relating to district operations held in the district. Moreover, any publication(s) distributed by the district board of education via mass mailings or other means to the district community at large within 60 days before any election in which any board member is seeking any elective office or any election relating to district operations held in the district must be submitted to the Executive County Superintendent for review prior to distribution to ensure that the public funds are being expended in a reasonable and cost-effective manner.

(e) Public relations activities, such as booths at Statewide conferences, marketing activities and celebrations for opening schools and community events, and TV productions that are not part of the instructional program or do not provide, in a cost-effective way, information about district or board operations to the public, that are excessive in nature are prohibited. All activities involving promotional efforts to advance a particular position on school elections or any referenda are prohibited.

(f) Nothing in this section shall preclude boards of education from accepting donations or volunteer services from community members, local private education foundations and local business owners to conduct or assist in public relations services. Examples include, but are not limited to:

1. Providing district flyers, newsletters or other materials containing district related information of public concern to local businesses, public meeting places or other local organizations to display or make available for dissemination;

2. Making district related information of public concern available to local newspapers to publish related articles; and

3. Utilizing volunteered services of local community members, district employees, members of parent organizations or local businesses with expertise in related areas such as printing, advertising, publishing or journalism.

**6A:23A-5.3 Failure to maximize Special Education Medicaid Initiative (SEMI)**

(a) Every school district and county vocational school district, with the exception of any district that obtains a waiver of the requirements of N.J.A.C. 6A:23A-5.3 pursuant to the procedures set forth at (b) below, shall take appropriate steps to maximize its revenue from the Special Education Medicaid Initiative (SEMI) Program by following the policies and procedures to maximize participation in the program as set forth in (d) below and to comply with all program requirements as set forth in (e) below.

(b) School districts and county vocational school districts may seek, in the prebudget year, a waiver of the requirements of N.J.A.C. 6A:23A-5.3 upon demonstration that for the subsequent school year: the district projects, based on reliable evidence, that it will have 40 or fewer Medicaid eligible classified students; or the district demonstrates that efforts to participate in SEMI would not provide a cost benefit to the district, based on the

projection of the district's available SEMI reimbursement for the budget year as set forth in (c) below.

1. For the 2008-09 school year, the waiver request must be submitted to the Executive County Superintendent by September 1, 2008. The Executive County Superintendent shall promptly review the request and render a decision no later than September 30, 2008.

2. Beginning with the 2009-2010 school year, the application for a waiver of the requirements of this section shall be made to the Executive County Superintendent no less than 45 days prior to the submission of the district's proposed budget for the school year to which the waiver request applies. The Executive County Superintendent shall notify the district of the decision on the waiver application within 20 days of receipt of the waiver request. If the waiver is not granted, the district shall submit a SEMI action plan to the Executive County Superintendent as required by (f) below as part of its annual district budget submission or demonstrate to the Executive County Superintendent that the district has achieved maximum participation in the SEMI program in the prebudget year.

(c) As part of the annual budget information, the Department shall provide each school district and county vocational school district with a projection of available SEMI reimbursement for the budget year, as determined by the State Department of Treasury's third party administrator for SEMI. The projection shall be based on the number of Medicaid eligible students; the assumption of 20 services per eligible student per year; one IEP meeting per eligible student per year; and applicable SEMI reimbursement rates.

1. Beginning with the 2009-2010 school year, the district shall recognize as revenue in its annual district budget no less than 90 percent of said projection.

2. A school district or county vocational school district may seek approval from the Executive County Superintendent to use its own projection of SEMI reimbursement upon demonstration that the numbers it used in calculating the projection are more accurate than the projection provided.

(d) Each school district or county vocational school district shall strive to achieve maximum participation in the SEMI program. For purposes of this section, “maximum participation” means obtaining a 90 percent return rate of parental consent forms for all SEMI eligible students. Districts shall enter all students following their evaluations into the third-party system to identify the district’s universe of eligible students. This can be done without parental consent.

(e) Districts participating in the SEMI reimbursement program shall comply with program requirements as follows:

1. Each school district or county vocational school district board shall implement a policy concerning the effective and efficient administration of the SEMI reimbursement program consistent with the requirements of this section. A complete listing of requirements and information are available at the SEMI/MAC website at <http://www.state.nj.us/treasury/administration/semi-mac/semi-mac.htm>.

2. Any service submitted to Medicaid for reimbursement shall be rendered by a Medicaid qualified practitioner, or rendered by a provider under the supervision of a Medicaid qualified practitioner. The following outlines the required documentation for each related service provider:

i. Nurses – copy of license (Department of Education (DOE) certification is not required for SEMI);

ii. Occupational Therapist – copy of license and DOE certification;

iii. Physical Therapist - copy of license and DOE certification;

iv. Psychologist – copy of DOE certification;

v. Social Worker - copy of DOE certification; and

vi. Speech Therapist:

(1) A copy of DOE certification and American Speech-Language-Hearing Association (ASHA) certification;

(2) A copy of DOE certification and past or present license (on or after January 1, 1993); or

(3) A copy of DOE certification and documentation that the equivalent educational requirements and work experience necessary for ASHA certification have been met.

3. Practitioners who are not Medicaid qualified can deliver services under the direction of Medicaid qualified practitioners. These include certified occupational therapist assistants (COTAs), physical therapist assistants (PTAs) and speech correctionists.

4. Any direct therapy or other related services shall be prescribed in the related services section of the student's Individualized Education Plan (IEP) prior to submitting a claim to Medicaid for reimbursement. Delivery of nursing services and dispensing of medication must be referenced in the IEP and supported by physicians' orders or prescriptions. These documents must be maintained on file. Supporting documentation

to be maintained by the district shall be the cover/signature page, related services section of the IEP, therapy logs, and the evaluations and assessments conducted by the Medicaid-qualified practitioners.

5. Entities where the district has placed SEMI eligible students shall take steps to enable districts to maximize participation, including either logging the eligible services provided directly through the vendor or the sending district, as mutually agreed upon with the district, and obtaining SEMI provider qualification certifications. Every out-of-district placement must provide copies of SEMI provider qualifications, certifications and licenses. This paragraph applies to the following out-of-district placement options:

- i. Approved private schools for students with disabilities;
- ii. Educational services commissions;
- iii. Jointure commissions;
- iv. Vocational half-time programs;
- v. Department of Education regional day schools; and
- vi. Special Service School Districts.

6. All supporting documentation for a Medicaid claim shall be maintained on file and available for audit or State review for at least seven years from the date of service. Supporting documentation shall include provider certification (current and historical for each provider), provider service logs, licenses and certifications, physician authorizations for nursing services, parental consent forms, attendance records, and copies of the student IEP.

(f) Each district that has less than 90 percent participation of SEMI eligible students in the 2007-2008 school year or has failed to comply with all program requirements set

forth in (e) above, shall demonstrate a good faith effort to achieve maximum participation and to maximize available SEMI revenue during the 2008-2009 school year by submitting a SEMI action plan to the Executive County Superintendent for review and approval by September 1, 2008. In subsequent years, each district that has less than 90 percent participation of SEMI eligible students in the prebudget year or that has failed to comply with all program requirements set forth in (e) above shall submit a SEMI action plan to the Executive County Superintendent for review and approval as part of the district's proposed budget submission.

(g) The SEMI action plan shall include the following components:

1. Procedures for obtaining parental consent forms including the Parental Consent Best Practices which are available from the Department.

2. Establishment of a benchmark for the 2008-2009 school year or for the first year that the district does not have an approved waiver pursuant to the provisions of (b) above, whichever is applicable, for obtaining maximum participation of all SEMI eligible students by the start of the subsequent school year.

(i) The benchmarks for the 2008-2009 school year or for the first year that the district does not have an approved waiver pursuant to (b) above, whichever is applicable, for achieving maximum participation shall at a minimum close the gap between current participation and maximum participation by 50 percent by the beginning of the subsequent school year; and

(ii) The benchmarks shall be based on the percentage of parental consent forms collected from eligible students. The number of parental consent forms shall

reflect one parental consent form for each eligible student. This should include documentation of parental refusal to give consent;

3. Procedures to ensure that all IEP meetings are documented in the third-party administrator's system. IEPs are only claimable if a Medicaid qualified practitioner is present;

4. Procedures to ensure that all SEMI eligible services, including services provided by entities where the district has placed SEMI eligible students, are documented in the third-party administrator's system;

5. Procedures to ensure that a valid IEP is on file and the IEP date is on file in the third-party administrator's system for each SEMI eligible student for whom parental consent has been obtained; and

6. Procedures to ensure that service providers used by the district and entities where the district has placed SEMI eligible students have valid licenses and certifications documenting SEMI provider qualifications on file in the third-party administrator's system.

(h) Districts that did not achieve 90 percent participation or achieve their approved benchmarks in the SEMI program for a given budget year and cannot demonstrate that they fully implemented their Department approved SEMI action plan required under (f) and (g) above shall be subject to review for the withholding of State aid by the Commissioner pursuant to N.J.S.A. 18A:55-3 in an amount equal to the SEMI revenue projection based on their approved benchmark for the budget year, if applicable, less actual SEMI reimbursements for the budget year. The State aid deduction shall be made in the second subsequent year after the budget year.

#### **6A:23A-5.4 Violation of public school contracts law**

(a) Pursuant to the authority granted the Commissioner under N.J.S.A. 18A:55-2 and 18A:7F-60, the Commissioner shall subject to review for the withholding of State funds any school district or county vocational school district which fails to obey the provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq.

(b) The amount of funds withheld shall equal the amount of the contract awarded in violation of the provisions of N.J.S.A. 18A:18A-1 et seq., except for violations related to the award of contracts under the extraordinary unspecifiable services (EUS) provision which shall be governed by the provisions of N.J.S.A. 18A:18A-46.1.

#### **6A:23A-5.5 Expenditure and internal control auditing**

(a) Pursuant to a phase-in schedule to be determined by the Commissioner, a school district or county vocational school district board that receives 50 percent or more of its general fund budget in State aid during the 2008-2009 school year shall engage an independent certified public accountant or independent certified public accounting firm, other than the accountant or firm that performs the annual audit pursuant to N.J.S.A. 18A:23-1 et seq., to conduct a valid sampling of expenditures made during the most recently completed school year that the district received 50 percent or more of its general fund budget in State aid. The purpose of the audit is to determine the educational value and/or reasonableness of said expenditures and to conduct a sampling of internal controls sufficient to determine the adequacy of the district's internal control structure. In establishing the phase-in schedule for the audits, the Commissioner shall take into

account the time period that has elapsed since any other expenditure and/or comprehensive internal control audit beyond the CAFR, has been conducted in the district, the district's performance on the fiscal management section of the most recent NJQSAC evaluation, and any other factors determined to be relevant by the Commissioner.

(b) A school district or county vocational school district board not subject to (a) above but that receives 50 percent or more of its general fund budget in State aid in a school year subsequent to 2008-2009 shall engage an independent certified public accountant or independent certified public accounting firm, other than the accountant or firm that performs the annual audit pursuant to N.J.S.A. 18A:23-1 et seq., to conduct a valid sampling of expenditures made during the school year in which it received 50 percent or more of its general fund budget in State aid to determine the educational value and/or reasonableness of said expenditures and to conduct a sampling of internal controls sufficient to determine the adequacy of the district's internal control structure.

(c) For districts receiving between 50 and 75 percent of its general fund budget in State aid in the seventh year following the audit required by (a) or (b) above, an audit shall be conducted once every seven years:

(d) For districts that receive greater than 75 percent of its general fund budget in State aid in the fourth year following the audit required by (a) or (b) above, an audit shall be conducted once every four years.

(e) The cost of the required audit under this section shall be considered to be outside the calculation of the per pupil administrative cost limit pursuant to N.J.S.A. 18A:7F-5.

**6A:23A-5.6 District response to Office of Fiscal Accountability and Compliance (OFAC) investigation report**

(a) Any school district or county vocational school district that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) shall discuss the findings of the audit or investigation at a public meeting of the district board of education no later than 30 days after receipt of the findings.

(b) Within 30 days of the public meeting required in (a) above, the district board of education shall adopt a resolution certifying that the findings were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings. This resolution shall be submitted to OFAC within 10 days of adoption by the board of education.

(c) The findings of the OFAC audit or investigation and the board of education's corrective action plan shall be posted on the district's web site, if one exists.

**6A:23A-5.7 Verification of payroll check distribution**

(a) Beginning with the 2008-2009 school year, at least once every three years, between the months of September through May, school districts and county vocational school districts shall require each district employee to report to a central location(s) and produce picture identification and sign for release of his or her paycheck or direct deposit voucher. The district may exclude per diem substitutes from the required verification.

(b) Picture identification shall be in the form of a district issued identification card, valid drivers' license, official passport or other picture identification issued by a state, county or other local government agency.

(c) The Chief School Administrator shall designate an appropriately qualified staff member to match the picture identification to the position control roster maintained by the office of personnel or human resources prior to release of the pay check or direct deposit voucher.

(1) If the district elects to conduct the payroll verification prior to the district's required implementation of the position control roster pursuant to N.J.A.C. 6A:23A-6.8, the district may use a similar and suitable office of personnel or human resource generated listing of employees.

(d) Where no appropriate identification can be produced, the school business administrator shall withhold paychecks or stop direct deposits until such time that the payee/district employee can produce appropriate identification or until an investigation and corrective action is concluded, as appropriate to the circumstances.

(e) Upon completion of the payroll check distribution verification procedures set forth in this section, the chief school administrator shall submit a certification of compliance, in a form prescribed by the Department, to the Executive County Superintendent. Verification of the district's compliance with the provisions of this section will be required as part of the annual audit.

**6A:23A-5.8 Board of education expenditures for non-employee activities, meals and refreshments**

(a) The words and terms used in this section shall have the following meanings, unless the context clearly indicates otherwise:

1. “Activities” means events or functions provided or held for the benefit of students, dignitaries, and other “non-district” employees (for example, parents) which are paid from public funds.

2. “Dignitary” means a notable or prominent public figure; a high level official; or one who holds a position of honor. A dignitary, for purposes of this section, is not a school district employee or board of education member.

(b) Allowable expenditures for non-employee school district or county vocational school district board of education activities shall include:

1. All reasonable costs, including light meals and refreshments, directly related to activities that benefit students and are part of the instructional program including expenditures for field trips and extracurricular programs that are not solely for entertainment. Nothing in this subsection shall preclude boards of education from using student activity funds or accepting donations to support student activities that are solely for student entertainment;

2. All reasonable costs directly related to activities of dignitaries and other “non-district” employees (for example, parents), including light meals and refreshments and any other directly related expense. It is expected that expenditures for this purpose will be minimal and infrequent;

3. All reasonable costs of commencement and convocation activities for students; and

4. Expenditures related to district employees to the extent such employees are essential to the conduct of the activity.

(c) A school district and county vocational school district board shall, at a minimum, take actions regarding student activities as follows:

1. Pre-approve field trip destinations;
2. Establish dollar thresholds for awards to recognize special accomplishments;

and

3. Establish a budget supported by general fund revenues for each category of activity in a non-discriminatory manner (for example, football, boys soccer, girls soccer, photography club). Student activity funds are excluded.

(d) Pursuant to N.J.S.A. 18A:11-12 and State of New Jersey Department of Treasury, Office of Management and Budget Circular 08-19-OMB and 06-14-OMB, the following costs shall not be permitted using public funding:

1. Receptions, dinners or other social functions held for or honoring any employee or group of employees of the district (for example, breakfast, luncheon, dinner, or reception for retirees or award recipients). This does not prohibit districts from honoring employees without a social function or using public funds to support reasonable costs of employee recognition awards (for example, teacher of the year awards, years of service awards). Use of public funds for reasonable costs of employee awards is a local discretionary expenditure;

2. Meals or refreshments served to guests at any athletic event or other games or contests; and

3. Expenses for alcoholic beverages.

(e) Documentation required to support activities, meals and refreshments at district events shall be:

1. A description of the activity;
2. The purpose/justification of the activity, expressed in terms of the goal(s) or objective(s) of the district;
3. The make-up of the group participating in the activity; and
4. The names and titles of board members or employees included in the group.

**6A:23A-5.9 Out-of-State and high cost travel events**

(a) Reimbursement for all in-State and out-of-State travel shall be made pursuant to N.J.S.A. 18A:11-12.

(b) Out-of-State travel events shall be limited to the fewest number of board members or affected employees needed to acquire and present the content offered to all board members or staff, as applicable, at the conclusion of the event. Where the event is sponsored by a New Jersey-based organization and targeted to employees and/or board members of New Jersey school districts, reimbursement for lodging may be permitted only where the sponsoring organization obtains a waiver pursuant to the provisions of N.J.A.C. 6A:23A-7.11. Where the event is national or regional in scope and targeted to school district employees and/or board members from multiple states, reimbursement for lodging may only be provided if the event occurs on two or more consecutive days and where home to event commute exceeds 50 miles.

(c) Where a travel event has a total cost that exceeds \$5,000, regardless of the number of attendees, or where more than five individuals from the district are to attend a

travel event out-of-state, the school district or county vocational school district shall obtain the prior written approval of the Executive County Superintendent. The executive county superintendent shall promptly review the request and render a written decision within 10 working days.

(d) For all employee and board member travel events out of the country, regardless of cost or number of attendees, the school district or county vocational school district shall obtain the prior written approval of the Executive County Superintendent. Such requests must be supported by detailed justification. The Executive County Superintendent shall promptly review the request and render a written decision within 10 working days. It is expected that approvals will be rare.

## **SUBCHAPTER 6 CONDITIONS FOR THE RECEIPT OF STATE AID**

### **6A:23A-6.1 Conditions precedent to disbursement of State aid**

(a) The Commissioner shall not disburse any State aid to a school district or county vocational school district that fails to comply with the standards set forth at N.J.S.A. 18A:55-3 and the requirements concerning nepotism, contributions to board members and contract awards, and internal controls set forth in this subchapter.

(b) Pursuant to N.J.S.A. 18A:55-3, as a condition of State aid, a district shall:

1. Examine, no less than once every three years, all available group options for every insurance policy held by the district, including self-insurance plan administered by the New Jersey School Boards Association (NJSBA) Insurance Group on behalf of districts, and shall participate in the most cost effective plan. This shall include review of annual claims data and other experience rating information, as applicable;

2. Take steps to maximize the district's participation in the Federal Universal Service Program (E-rate) and the ACT telecommunications program offered through the New Jersey Association of School Business Officials;

3. Participate in the Alliance for Competitive Energy Services (ACES) Program offered through the NJSBA, unless the school district is able to demonstrate to the commissioner that it receives goods or services at a cost less than or equal to the cost achieved by participants of the program based on an analysis of the prior two years;

4. Take appropriate steps to maximize the local public school district's participation in the Special Education Medicaid Initiative (SEMI) Program pursuant to N.J.A.C. 6A:23A-5.3; and

5. Refinance all outstanding debt in accordance with the provisions of N.J.S.A. 18A:24-61.1 et seq. for which a three percent net present value savings threshold is achievable. This provision shall also be monitored by the Executive County Superintendent or State Monitor, if applicable, pursuant to N.J.A.C. 6A:23A-9.11.

**6A:23A-6.2 Nepotism policy**

(a) As a condition of receiving State aid, the school district or county vocational school district board shall implement the nepotism policy established by this subsection by October 1, 2008, except that districts previously subject to N.J.A.C. 6A:10 and 6A:10A shall implement such policy on July 1, 2008. The nepotism policy shall include the following:

1. A definition of "relative" that is consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2 and a definition of "immediate family member" that is consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;

2. A provision prohibiting any relative of a school board member or chief school administrator from being employed in an office or position in that district except that: (i). A person employed by the district on the effective date of the policy or the date a relative becomes a school board member or chief school administrator shall not be prohibited from continuing to be employed or to be promoted in the district; and (ii). A district may employ a relative of a school board member or chief school administrator provided that the district has obtained the approval from the Executive County Superintendent of schools. Such approval shall be granted only upon demonstration by the school district that it conducted a thorough search for candidates and that the proposed candidate is the only qualified and available person for the position;

3. A provision prohibiting the chief school administrator from recommending to the school board pursuant to N.J.S.A. 18A:27-4.1 any relative of a school board member or chief school administrator, unless the person is subject to the exception in (a)2 above;

4. A provision prohibiting a district administrator from exercising direct or indirect authority, supervision or control over a relative of the administrator. Where it is not feasible to eliminate such a direct or indirect supervisory relationship, appropriate screens and/or alternative supervision and reporting mechanisms must be put in place;

5. A provision prohibiting a district administrator or board member who has a relative who is a member of the bargaining unit from discussing or voting on the proposed collective bargaining agreement with that unit or from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team; nor should that district administrator be present with the school board in closed session when negotiation strategies are being discussed; provided, however, that the administrator may

serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the district can provide such information; and

6. A provision prohibiting a district administrator or board member who has an immediate family member who is a member of the same Statewide union in another district from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team or being present with the school board in closed sessions when negotiation strategies are being discussed, prior to the school board attaining a tentative memorandum of agreement with the bargaining unit that includes a salary guide and total compensation package; once the tentative memorandum of agreement is established, a district administrator with an immediate family member who is a member of the same Statewide union in another district may fully participate in the process, absent other conflicts. Notwithstanding the above, a district administrator who has an immediate family member who is a member of the same Statewide union in another district may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the district can provide such information.

(b) A school district or county vocational school district may exclude per diem substitutes and student employees from its board nepotism policy.

### **6A:23A-6.3 Contributions to board members and contract awards**

(a) As a condition of receiving State aid, school districts and county vocational school district shall have policies that comply with the provisions of this section to ensure

that the district shall maintain honest and ethical relations with vendors and shall guard against favoritism, improvidence, extravagance and corruption in its contracting processes and practices. Such policies shall be adopted by the school district and implemented by October 1, 2008, except that districts previously subject to N.J.A.C. 6A:10 and 6A:10A shall adopt and implement such policies on July 1, 2008. The terms “business entity” and “interest” as used below are defined as set forth in P.L. 2004, c. 19.

1. No school board will vote upon or award any contract in the amount of \$17,500 or greater to any business entity which has made a contribution reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to a member of the district board of education during the preceding one-year period.

2. Contributions reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to any member of the school board from any business entity doing business with the district are prohibited during the term of a contract.

3. When a business entity referred to in (a)2 above is a natural person, a contribution by that person’s spouse or child that resides therewith shall be deemed to be a contribution by the business entity. Where a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

4. The disclosure requirement set forth in section 2 of P.L. 2005, c. 271 (N.J.S.A. 19:44A-20.26) also shall apply when the contract is required by law to be publicly advertised for bids.

5. This subsection shall not apply to a contract when a district emergency requires the immediate delivery of goods or services.

6. With the exception of districts previously subject to the requirements of N.J.A.C. 6A:10-2.1(e), this subsection shall not apply to contributions made prior to the effective date of these rules.

#### **6A:23A-6.4 Internal controls**

(a) As a condition of receiving State aid, each school district and county vocational school district shall establish specific policies and procedures on internal controls designed to provide management with reasonable assurance that the district's goals and objectives will be met and that meet the requirements of N.J.A.C. 6A:23A-6.5 through - 6.13. Internal controls shall promote operational efficiency and effectiveness, provide reliable financial information, safeguard assets and records, encourage adherence to prescribed policies and comply with law and regulation.

(b) The specific internal controls contained in this subchapter shall be established together with other internal controls contained in N.J.A.C. 6A and other law and regulations, required by professional standards and as deemed necessary and appropriate by district management. Any district may submit a written request to the Commissioner to approve an alternative system, approach or process for implementing the internal controls required in this subchapter. The application must include documented evidence that includes but is not limited to, an independent, third-party written assessment that the alternative system, approach or process will achieve the same safeguards, efficiency and other purposes as the specified internal control requirement(s).

#### **6A:23A-6.5 Segregation of duties; organization structure**

(a) All school districts and county vocational school districts shall evaluate business processes annually and allocate available resources appropriately in an effort to establish a strong control environment.

(b) The SBA shall identify processes that when performed by the same individuals are a violation of sound segregation of duties. The SBA shall segregate the duties of all such processes among business office staff based on available district resources, assessed vulnerability and the associated cost-benefit, except as required by (b)1 and 2 below.

1. The functions of human resources and payroll shall be segregated and completed by different employees in all districts.

2. The functions of purchasing and accounts payable shall be segregated and completed by different employees in all districts.

(c) Districts shall include in the Comprehensive Annual Financial Report (CAFR) detailed organizational charts for the central office that tie to the districts' position control logs, including but not limited to, the business, human resources and information management functions.

#### **6A:23A-6.6 Standard operating procedures for business functions**

(a) By December 31, 2009, each school district and county vocational school district shall establish SOPs for each task or function of the business operations of the district.

(b) An SOP manual shall include sections on each routine task or function of the following areas:

1. Accounting including general ledger, accounts payable, accounts receivable, payroll and fixed assets and year-end procedures for each;

2. Cash management;
3. Budget development and administration including tasks such as authorization of transfers and overtime;
4. Position control;
5. Purchasing including such tasks as preparation of requisitions, approval of purchase orders and encumbering of funds, bid and quote requirements; and verification of receipt of goods and services;
6. Facilities including administration of work and health and safety;
7. Security;
8. Emergency preparedness;
9. Risk management;
10. Transportation;
11. Food service;
12. Technology systems; and
13. Information management

(c) An SOP shall be established that ensures office supplies are ordered in appropriate quantities, maintained in appropriate storage facilities and monitored to keep track of inventory.

**6A:23A-6.7 Financial and human resource management systems; access controls**

(a) School districts and county vocational school districts with budgets in excess of \$25,000,000 or with more than 300 employees shall maintain an enterprise resource planning (ERP) system which integrates all data and processes of an organization into a unified system. An ERP system uses multiple components of computer software and

hardware and a unified database to store data for the various system modules to achieve the integration.

(b) Districts affected by (a) above that do not currently maintain an ERP system shall fully implement one by the 2010-2011 school year and maintain both the existing system(s) and run a beta test ERP system during the 2009-2010 school year.

(c) Whenever considering financial systems or the automation of other services or functions, the district shall notify the Executive County Superintendent in writing to see if opportunities for a shared service system exist.

(d) Access controls shall be established for key elements of financial systems to ensure that a single person does not have the ability to make system edits that would violate segregation of duties controls.

1. The process for creating, modifying, and deleting user accounts shall include the use of user access request forms.

2. All requests for financial applications shall be approved and specified by the SBA.

3. All requests for network access shall be granted by the head of the technology department, if one exists.

4. A review of user access shall be conducted yearly at a minimum by the relevant department managers and an audit trail should be maintained to verify the performance of this review.

5. Access to the network and key applications within a district shall be restricted to authorized users through the use of unique user names and passwords.

6. Proper protocols shall be implemented that appropriately address password expiration and complexity.

**6A:23A-6.8 Personnel tracking and accounting**

(a) A school district and county vocational school district shall maintain an accurate, complete, and up-to-date automated position control roster to track the actual number and category of employees and the detailed information for each. Districts that do not currently maintain a position control roster as defined, or were not previously required to maintain a position control roster, shall fully implement one by December 31, 2009. The position control roster shall:

1. Share a common database and be integrated with the district's payroll system;
2. Agree to the account codes in the budget software; and
3. Ensure that the data within the position control roster system includes, at a minimum, the following information:

- i. The employee name;
- ii. The date of hire;
- iii. A permanent position tracking number for each employee including:

(1) The expenditure account codes for the general fund consistent with the State prescribed budget, special revenue fund and enterprise funds;

(2) The building(s) the position is assigned;

(3) The certification title and endorsement held, as applicable;

(4) The assignment position title as follows:

(A) Superintendent or Chief School Administrator;

- (B) Assistant Superintendent;
- (C) School Business Administrator;
- (D) Board Secretary (when other than (a)3iii (4) (A), (B) or (C)

above)

- (E) Principal;
- (F) Vice Principal;
- (G) Director;
- (H) Supervisor;
- (I) Facilitator;
- (J) Instructional Coach by Subject Area;
- (K) Department Chairperson by Subject Area;
- (L) Certificated Administrator – Other;
- (M) Guidance;
- (N) Media Specialist/Librarian;
- (O) School Nurse;
- (P) Social Worker;
- (Q) Psychologist;
- (R) Therapist – OT;
- (S) Therapist – PT;
- (T) Therapist – Speech;
- (U) Certificated Support Staff – Other;
- (V) Teacher by Subject Area;
- (W) Instructional Assistants;

- (X) Certificated Instructional-Other;
- (Y) Aides supported by IEP;
- (Z) Other Aides;
- (AA) Maintenance Worker;
- (BB) Custodian;
- (CC) Bus Driver;
- (DD) Vehicle Mechanic;
- (EE) Food Service; and
- (FF) Other Non-certificated;

iv. A control number for substitute teachers;

v. A control number for overtime;

vi. A control number for extra pay;

vii The status of the position (filled, vacant, abolished, etc.);

viii. An indication, when available, of whether the employee is retiring in the budget year or not being renewed including associated costs such as contractual buyouts, severance pay, paid vacation or sick days, etc:

ix. Each of the following: base salary, step, longevity, guide, stipends by type, overtime and other extra compensation;

x. The benefits paid by the district, net of employee reimbursements or co-pays, by type of benefit and for FICA and Medicare;

xi. The position's full-time equivalent value by location;

xii. The date the position was filled; and

xiii. The date the position was originally created by the board. If the date the position was originally created is not available, this item shall represent the date the person currently filling that position was approved by the board.

#### **6A:23A-6.9 Facilities maintenance and repair scheduling and accounting**

(a) Any school district or county vocational school district with three or more district buildings shall have an automated work order system by July 1, 2010 for prioritizing, performing and recording all maintenance and repair requests for all district buildings and grounds.

1. The Superintendent or designee shall establish standard operating procedures (SOPs) for the approval and prioritization of work order requests which take into account the health and safety of building occupants, priorities and objectives established annually to carryout the district Strategic Plan, the need for the work requested, and other factors the district deems appropriate.

2. The work order system shall include the following information for a request for work before work begins, except in an emergency where the work is necessary to correct a situation that poses an imminent threat to the health or safety of students and/or staff :

- i. The name of the person making the request;
- ii. The date of the request;
- iii. The appropriate approval(s) as established by SOP;
- iv. The date of approval(s);
- v. The location of work requested;

- vi. The priority level (for example, urgent, high, average, low);
- vii. The scheduled date(s) of service;
- viii. The trade(s) needed such as general maintenance worker; custodian; carpenter; plumber; electrician; heating, ventilation and air conditioning (HVAC); grounds; roofer; masonry; glazer; other;
- ix. A description of the work requested;
- x. A projection of the materials and supplies needed for the work;
- xi. The estimated man hours needed to complete task;
- xii. The name of the work order assigner; and
- xiii. The name of the employee(s) working on the order.

3. The work order system shall include the following close-out information for each request for work:

- i. The actual hours worked by date for each assigned staff member;
- ii. The actual hourly rate paid, both regular and over-time, for each assigned staff member;
- iii. The aggregate cost of labor by regular, over-time and total;
- iv. The actual materials and supplies needed to complete the work order;
- v. Actual cost of materials and supplies; and
- vi. The name of the employee responsible for attesting that the job was completed satisfactorily.

4. Except where prohibited by collective bargaining agreement, the SOP shall require for any work, which cannot be completed during regular working hours by the

needed completion date, an assessment of the cost-benefit of outsourcing any such work in excess of the quote threshold as determined under N.J.S.A. 18A:18A-37.

5. Where, according to the assessment, the cost of outsourcing work is less than the in-house estimated cost of labor, at over-time rates, and materials for the same work, the work shall be outsourced provided the work can be contracted in accordance with N.J.S.A. 18A:18A-1 et seq., completed by the projected completion date contained in the prioritized work order system and does not violate the terms of the collective bargaining agreement for maintenance workers and/or custodians.

6. The SBA in consultation with the supervisor responsible for this work shall conduct an analysis of the information in the work order system no later than February 1 of the prebudget year for consideration during budget preparation. The analysis should include productivity of staff as a whole and individually, significant variations between estimated labor time and materials and actual labor time and materials, unusual trends for like projects and other factors that will improve productivity and efficiency.

**6A:23A-6.10 Approval of amounts paid in excess of approved purchase orders;  
board policy**

(a) A school district and county vocational school district board shall adopt a policy establishing the approval process for any remittance of payment for invoice amounts greater than the approved purchase order. The policy shall require the SBA to identify, and investigate if necessary, the reason for any increase to a purchase order. If it is found that such an increase is warranted, the SBA shall either approve a revision to the original purchase order with the reason noted, approve the issuance of a supplemental purchase order for the difference, or cancel the original purchase order and issue a new

purchase order. If it is found that such an increase is not warranted, the purchase order shall be canceled and the goods returned. In no instance shall an adjustment be made to a purchase order that changes the purpose or vendor of the original purchase order or a bid award price.

(b) Financial systems shall be programmed to:

1. Limit system access so that only appropriate business office staff may make purchase order adjustments;
2. Reject adjustments in excess of any established approval thresholds;
3. Prevent unauthorized changes to be processed;
4. Reject payments where the sum of the invoice amount plus any previous invoices charged to the purchase order exceeds the sum of the original purchase order amount plus any authorized adjustments;
5. Reject duplicate purchase order numbers;
6. Reject duplicate invoice numbers; and
7. Prepare an edit/change report listing all payments made in excess of the originally approved purchase order amount.

(c) The SBA shall review on a monthly basis edit/change reports listing all payments made in excess of the originally approved purchase order amount to ensure that all payments made are properly authorized.

**6A:23A-6.11 Vehicle tracking, maintenance and accounting**

(a) The school district and county vocational school district board shall adopt a policy for the management, control and regulatory supervision of school district vehicles including, but not limited to, the following:

1. A vehicle inventory control record including:
  - i. The vehicle make, model and year;
  - ii. The vehicle identification numbers (VIN);
  - iii. The original purchase price;
  - iv. The date purchased;
  - v. The license plate number;
  - vi. The person assigned or the pool if not individually assigned;
  - vii. The driver license number of the person assigned and the expiration date;
  - viii. The insurer and policy number of person assigned, and
  - ix. The usage category such as regular business, maintenance, security or pupil transportation;
2. A driving record of the operators of district vehicles including:
  - i. The name of the driver;
  - ii. The driver license number and expiration date;
  - iii. The insurer and policy number of person assigned;
  - iv. Motor vehicle code violations;
  - v. Incidents of improper or non-business usage;
  - vi. Accidents; and
  - vii. Other relevant information; and
3. A record of maintenance, repair and body work for each district vehicle including:
  - i. The vehicle make, model and year;
  - ii. The vehicle identification numbers (VIN);
  - iii. The original purchase price;
  - iv. The date purchased;

- v. The license plate number;
- vi. The usage category such as regular business, maintenance, security or pupil transportation;
- vii. The manufacturer's routine maintenance schedule;
- viii. The category of work performed (routine maintenance, repair or body work);
- ix. The purchase order number;
- x. The date the work was performed;
- xi. A detailed description of the work performed;
- xii. The mileage on the date work was performed; and
- xiii. The cost of the work performed.

**6A:23A-6.12 District vehicle assignment and use policy**

(a) Each school district and county vocational board shall adopt a policy or policies regarding district vehicle assignment that will ensure compliance with this section, in accordance with OMB Circular 08-16-ADM or any superseding circulars.

(b) The Board upon the recommendation of the Superintendent may authorize, at its discretion, by an affirmative vote of the board's full membership, the lease, lease-purchase or purchase and assignment of district vehicles for the conduct of official district business. The vehicles may be assigned either to individuals or to units within the organization for pool use according to the following classifications:

1. Vehicles may be assigned permanently and individually to the superintendent, SBA, head of facilities services, head of security services or other supervisory employees

who based on their job duties may be called upon on a 24 hour, seven-day a week basis. No individual assignment shall be made for the primary purpose of commuting.

2. A unit may be permanently assigned one or more district pool vehicles only if employees of the unit will collectively use the vehicle or each vehicle for more than an average of 750 miles per month on official district business. Pool vehicles shall not be used for the purpose of commuting and shall remain at a district facility when not in official use.

(c) Board members or employees may be temporarily assigned a district vehicle for travel events.

(d) Each school district and county vocational school district board shall ensure that an employee, such as the SBA, insurance or risk management staff member, head of facilities or other appropriate employee is assigned the functions of district vehicle coordinator.

(e) Vehicle use logs shall be maintained for all individual and pool assignments in order to accurately record all usage of each vehicle, including the driver, mileage, and starting and destination points.

(f) All complaints of a potential misuse shall be investigated and appropriate disciplinary action taken.

(g) All changes to vehicle assignment, whether pool or individual, shall require prior written approval of the Superintendent and the authorization of an affirmative majority vote of the full board.

(h) No luxury vehicle, one which exceeds the greater of \$30,000 or any current dollar limit established in Internal Revenue Service (IRS) law or regulation, shall be purchased, lease-purchased or leased by the district. If a vehicle is assigned to the superintendent, it may be a full-size or intermediate, four-door sedan of the non-luxury class. All other vehicles shall be compact sedans, unless special passenger, cargo, equipment, or use requirements make the standard vehicle unsuitable for documented district needs.

(i) The district vehicle shall be used primarily for business purposes; however, incidental and reasonable personal use is permitted.

(j) All damage to district vehicles, regardless of cause, shall be reported within 24 hours to the vehicle coordinator and the employee assigned to file insurance claims.

(k) No physical alterations shall be made to a vehicle without prior board approval.

(l) Drivers of district vehicles shall possess a valid driver's license to operate a vehicle in New Jersey.

(m) When a vehicle is due for routine maintenance in accordance with the manufacturer's schedule, the driver of an individually assigned vehicle or, in the case of a pool vehicle, the vehicle coordinator shall be responsible for ensuring that the vehicle receives the scheduled service.

(n) A driver assigned a district vehicle shall be responsible for the security of the vehicle and its contents.

(o) Drivers shall be personally responsible for all fines accrued as a result of traffic violations related to operation of district vehicles.

(p) The driver, or the driver's supervisor, if the driver is incapacitated, of a district vehicle involved in an accident resulting in damage to the district vehicle or other vehicle shall file, within 24 hours of the accident, a detailed written report with the vehicle coordinator and the district staff member responsible for making insurance claims.

(q) Police shall be immediately notified of an accident by the driver or vehicle coordinator, if the driver is incapacitated. A copy of the police report shall be submitted to the vehicle coordinator and the district staff member responsible for making insurance claims as soon as possible.

(r) If a district vehicle is misused in any of the following ways, the driver's driving privileges for district vehicles shall be suspended or revoked, and additional disciplinary action shall be taken as appropriate.

1. Frequent violation of traffic laws;
2. Flagrant violation of the traffic laws;
3. Operation of a vehicle which the police or insurance company determined was the cause of an accident;
4. Use of a vehicle for unauthorized use whether personal use, business use, or commuting;
5. Violation of these rules or district policy governing the assignment, use, operation, repair, and/or maintenance of vehicles. This includes the failure to submit a

vehicle for routine maintenance as called for in the manufacturer's routine maintenance schedule;

6. Operation of a vehicle while impaired to any degree, or under the influence of alcohol or narcotics as defined by State statutes;

7. Use of a district vehicle by an unauthorized individual while assigned to an employee;

8. Use of a district vehicle to transport any person or child, other than in the course of their assigned duties and responsibilities; or

9. Use of radar detectors in district vehicles.

(s) The board shall establish a policy for progressive, uniform, and mandatory disciplinary actions to be applied as necessary.

### **6A:23A-6.13 Board travel policy**

As a condition of receiving State aid, each school district and county vocational school district shall establish specific policies and procedures on travel that comply with the requirements of N.J.S.A. 18A:11-12 and N.J.A.C. 6A:23A-7.

## **SUBCHAPTER 7. SCHOOL DISTRICT TRAVEL POLICIES AND PROCEDURES**

### **6A:23A-7.1 School district travel expenditures**

(a) Each school district shall ensure the effective and efficient use of funds by adopting and implementing policies and procedures that are in accordance with N.J.S.A. 18A:11-12 and State of New Jersey Department of the Treasury, Office of Management

and Budget Circulars 08-19-OMB and 06-14-OMB (OMB Circulars) and any superceding circulars pertaining to travel, meals, events and entertainment, and the additional requirements set forth in this subchapter. If any superceding circulars of the Office of Management and Budget conflict with the provisions of these rules, the provisions of the superceding circulars shall govern.

(b) The provisions of this subchapter shall apply to charter schools. For purposes of this subchapter, the following shall apply:

1. References to “school districts” shall also mean charter schools;
  2. References to “school board” or “board of education” shall also mean board of trustees of a charter school;
  3. References to “Superintendent” shall also mean charter school lead person;
- and
4. References to “employee” shall also mean employee of a charter school.

(c) Any sections in the OMB Circulars that conflict with New Jersey school law (N.J.S.A. 18A:1-1 et seq.) shall not be included in the school board policy nor authorized under this section. This includes, but is not limited to, the authority to issue travel charge cards as allowed under the OMB Circulars, but not authorized for school districts under New Jersey school law.

(d) School district travel expenditures shall include, but are not limited to, all costs for transportation, meals, lodging, and registration or conference fees directly related to participation in the event.

(e) School district travel expenditures subject to this subchapter shall include costs for all required training and all travel authorized in school district employee contracts and

school board policies. This includes, but is not limited to, required professional development, other staff training and required training for board members, and attendance at specific conferences authorized in existing employee contracts, provided that such travel meets the requirements of this subchapter. All such expenditures are subject to the rules in this subchapter including, but not limited to, inclusion in the annual travel limit, prior board approval, separate tracking, and per diem reimbursements.

**6A:23A-7.2 Board policy for travel expenditures**

(a) A school district board of education shall implement a policy, including procedures, pertaining to travel expenditures for its employees and board members that are in accordance with the provisions of N.J.S.A. 18A:11-12, this subchapter and other rules and procedures the board deems appropriate.

(b) The board policy pertaining to school district travel expenditures shall incorporate either expressly, in whole or in part, and/or by reference the laws and regulations contained in N.J.S.A. 18A:11-12 and this subchapter.

(c) A board shall ensure through its policy and procedures that all travel by its employees and board members is educationally necessary and fiscally prudent, and shall include the requirement that all school district travel expenditures are:

1. Directly related to and within the scope of the employee's or board member's current responsibilities and, for school district employees, the school district's professional development plan, the school building professional development plan, and employee's individual professional development plan;

2. For travel that is critical to the instructional needs of the school district or furthers the efficient operation of the school district; and

3. In compliance with State travel payment guidelines as established by the Department of the Treasury and with guidelines established by the Federal Office of Management and Budget; except that those guidelines that conflict with the provisions of Title 18A of the New Jersey Statutes shall not be applicable, including, but not limited to, the authority to issue travel charge cards. The board of education shall specify in its travel policy the applicable restrictions and requirements set forth in the State and Federal guidelines including, but not limited to, types of travel, methods of transportation, mileage allowance, subsistence allowance, and submission of supporting documentation including receipts, checks or vouchers.

(d) A board shall state in its policy that travel reimbursements will be paid only upon compliance with all provisions of N.J.A.C. 6A:23A-7 and the board's procedures and approval requirements. The policy shall state that the school board will not ratify or approve payments or reimbursements for travel after completion of the travel event, except as provided at N.J.A.C. 6A:23A-7.4(d).

(e) A board shall require that a board member recuse himself or herself from voting on travel if the board member, a member of his or her immediate family, or a business organization in which he or she has an interest, has a direct or indirect financial involvement that may reasonably be expected to impair his or her objectivity or independence of judgment.

(f) A board shall require that a board member shall not act in his or her official capacity in any matter in which he or she or a member of his or her immediate family has

a personal involvement that is or creates some benefit to the school official or member of his or her immediate family; or undertake any employment or service, whether compensated or not, which may reasonably be expected to prejudice his or her independence of judgment in the execution of his or her official duties.

#### **6A:23A-7.3 Maximum travel budget**

(a) Annually in the prebudget year, each board shall establish by board resolution, a maximum travel expenditure amount for the budget year, which the school district shall not exceed. The board resolution shall also include the maximum amount established for the prebudget year and the amount spent to date.

1. The maximum school district travel expenditure amount shall include all travel supported by local and State funds.

2. A board may elect to exclude travel expenditures supported by Federal funds from the maximum travel expenditure amount. If Federal funds are excluded from the established maximum amount, the board shall include in the resolution the total amount of travel supported by Federal funds from the prior year, prebudget year, and projected for the budget year.

3. Exclusion of Federal funds from the annual maximum travel budget does not exempt such travel from the requirements applicable to State and local funds.

(b) A board may authorize in its travel policy an annual maximum amount per employee for regular business travel only for which board approval is not required.

1. The annual maximum shall not exceed \$1,500 and shall be subject to the approval requirements in N.J.S.A. 18A:19-1.

2. Regular school district business travel as defined in N.J.A.C. 6A:23A-1.2 includes attendance at regularly scheduled in-state county meetings and Department sponsored or association sponsored events provided free of charge. It also includes regularly scheduled in-State professional development activities for which the registration fee does not exceed \$150.00 per employee or board member.

3. Regular school district business travel as authorized in the board's travel policy requires approval of the superintendent prior to obligating the district to pay related expenses and prior to attendance at the travel event.

i. The superintendent shall designate an alternate approval authority to approve travel requests in his or her absence when necessary to obtain timely board approval.

ii. The superintendent shall establish in writing the internal levels of approval required prior to his or her approval of the travel event, as applicable.

#### **6A:23A-7.4 Travel approval procedures**

(a) All travel requests for employees of the district shall be approved in writing by the superintendent and approved by a majority of the full voting membership of the board, except where the board has excluded regular business travel from prior approval pursuant to N.J.A.C. 6A:23A-7.3(b), prior to obligating the school district to pay related expenses and prior to attendance at the travel event.

1. The superintendent shall designate an alternate approval authority to approve travel requests in his or her absence when necessary to obtain timely board approval.

2. The superintendent shall establish in writing the internal levels of approval required prior to his or her approval of the travel event, as applicable.

(b) All travel requests for board members shall require prior approval by a majority of the full voting membership of the board, except where the board has excluded regular business travel from prior approval pursuant to N.J.A.C. 6A:23A-7.3(b), and the travel shall be in compliance with N.J.S.A. 18A:12-24 and 18A:12-24.1.

(c) A board may approve, at any time prior to the event, travel for multiple months as long as the board approval, as detailed in board minutes, itemizes the approval by event, total cost, and number of employees and board members attending the event. General or blanket pre-approval is not authorized.

(d) A board may, in its policy, exclude from the requirements of prior school board approval any travel caused by or subject to existing contractual provisions, including grants and donations, and other statutory requirements, or Federal regulatory requirements. For the exclusion of prior board approval to apply, the required travel event must be detailed, with number of employee(s), board member(s), and total cost in the applicable contract, grant, donation, statute or Federal regulation.

1. This does not include general grant guidelines or regulations that are permissive but do not require the travel event, unless the specific travel event, number of employee(s), board member(s) and total cost is detailed in the approved grant, donation, or other fund acceptance agreement.

2. This does not include general contractual provisions in employment contracts for continuing education or professional development, except where the board has

included in its policy, a maximum amount per employee for regular business travel that does not require prior board approval pursuant to N.J.A.C. 6A:23A-7.3.

(e) Where occasional unforeseen situations arise wherein a travel request cannot obtain prior approval of the board, justification shall be included in the text of the travel request.

1. Such requests shall require prior written approval of the superintendent, or designee, and the Executive County Superintendent or designee.

2. The Board shall ratify the request at its next regularly scheduled meeting.

3. Travel to conferences, conventions and symposiums are not considered to be emergencies and shall not be approved after the fact.

#### **6A:23A-7.5 Required documentation for travel**

(a) The board in its policy shall specify the type of documentation required to justify the number of employees attending an event and the benefits to be derived from their attendance;

(b) Neither the superintendent, or designee, nor the board shall approve a travel request unless it includes the following information:

1. The name and dates of the event;

2. A list of board members and/or employees to attend either by name or title;

3. The estimated cost associated with travel;

4. A justification and brief statement that includes the primary purpose for the travel and the key issues that will be addressed at the event and their relevance to improving instruction or the operation of the school district. For training events, whether

the training is needed for a certification required for continued employment, continuing education requirements, requirements of Federal or State law, or other purpose related to the programs and services currently being delivered or soon to be implemented in the school district; or related to school district operations;

5. The account number and funding source – Federal, State, private or local; and

6. In the case of annual events, the total attendance and cost for the previous year.

(c) Detailed documentation shall be maintained on file in the school district which demonstrates compliance with the board's travel policy, including travel approvals, reports and receipts for all school district funded expenditures, as appropriate.

#### **6A:23A-7.6 SBA responsibilities regarding accounting for travel**

(a) The SBA or designee shall prepare itemized travel budgets by function and object of expense for each cost center, department or location maintained in the school district's accounting system, as applicable, as part of the preparation of and documentation for the annual school district budget. The aggregate amount of all travel budgets shall not exceed the board approved maximum travel expenditure amount for the budget year as required by N.J.A.C. 6A:23A-7.3.

(b) The SBA shall maintain separate accounting for school district travel expenditures as necessary, to ensure compliance with the school district's maximum travel expenditure amount. This may include, but need not be limited to, a separate or offline accounting of such expenditures or expanding the school district's accounting system. The tracking system shall be sufficient to demonstrate compliance with the board's policy and this subchapter, and shall be in a detailed format suitable for audit.

(c) The SBA or designee shall review and approve all requests for travel expenditure reimbursement submitted for expenses incurred in the course of school district business as to cost and support documentation required by this subchapter. The SBA shall not approve or issue payment of travel expenditures or reimbursement requests until all required documentation and information has been submitted to support the payment and shall not approve any travel expenditure that when added to already approved travel expenditures would exceed the board approved maximum travel expenditure amount for the budget year.

(d) The SBA shall be responsible for the adequacy of documentation of transactions processed by their staff and the retention of that documentation to permit audits of their records.

(e) An employee of the board, a board member, or organization shall not receive payment, either partial or full, for travel and travel-related expenses in advance of the travel pursuant to N.J.S.A 18A:19-1 et seq. The payment of travel and travel-related expenses shall be made personally by a school district employee, board of education member and reimbursed at the conclusion of the travel event. This applies to travel-related purchases for which a purchase order is not applicable. This section does not preclude the district from paying the vendor directly with the proper use of a purchase order (for example, for registration, airline tickets, hotel).

#### **6A:23A-7.7 Sanctions for violations of travel requirements**

(a) Any board that violates its established maximum travel expenditure as set forth in N.J.A.C. 6A:23A-7.3, or that otherwise is not in compliance with the travel limitations

set forth in this subchapter may be subject to sanctions by the Commissioner as authorized pursuant to N.J.S.A. 18A:4-23 and 18A:4-24, including reduction of State aid in an amount equal to any excess expenditure pursuant to N.J.S.A. 18A:11-12 and 18A:7F-60.

(b) A person who approves any travel request or reimbursement in violation of the district's policy or this subchapter shall be required to reimburse the school district in an amount equal to three times the cost associated with attending the event pursuant to N.J.S.A. 18A:11-12.

(1) The board policy shall include the designation of either the Chief School Administrator or School Business Administrator, or designate both, as the person(s) who are the final approval authority for travel and therefore, subject to this penalty.

(c) An employee or board member who violates the school district's travel policy or these rules shall be required to reimburse the school district in an amount equal to three times the cost associated with attending the event pursuant to N.J.S.A. 18A:11-12.

(d) The board policy shall include procedures to monitor compliance and application of the penalty upon determination a violation has occurred after board payment of the event. If a violation is determined prior to payment or reimbursement of the travel event, the board policy may exclude application of any additional penalties.

(e) The annual audit conducted pursuant to N.J.S.A. 18A:23-1 shall include test procedures to ensure compliance with the district's board policy and travel limitations set forth in this section and N.J.S.A. 18A:11-12.

#### **6A:23A-7.8 Prohibited travel reimbursements**

(a) A board shall state in its policy that the following types of expenditures are not eligible for reimbursement:

1. Subsistence reimbursement for one-day trips, except for meals expressly authorized by and in accordance with the provisions of N.J.A.C. 6A:23A-7.12;

2. Subsistence reimbursement for overnight travel within the State, except where authorized by the Commissioner in accordance with the procedures set forth in N.J.A.C. 6A:23A-7.11;

3. Travel by board members or employees whose duties are unrelated to the purpose of the travel event or who are not required to attend to meet continuing education requirements or to comply with law or regulation;

4. Travel by spouses, civil union partners, domestic partners, immediate family members and other relatives;

5. Costs for employee attendance for coordinating other attendees' accommodations at the travel event;

6. Lunch or refreshments for training sessions and retreats held within the school district including in-service days and for employee participants traveling from other locations within the school district;

7. Training to maintain a certification that is not required as a condition of employment (example: CPE credits to maintain a CPA license if the employee is not required to be a CPA for continued school district employment);

8. Charges for laundry, valet service, entertainment;

9. Limousine services, and chauffeuring costs to or during the event;

10. Car rentals, either utilized for airport transportation or transportation at a conference, convention, etc., unless absolutely necessary for the conduct of school district business. Justification must accompany any request for car rentals. If approved, the most economical scheduling of car rental is to be used, including the use of subcompacts, discounted and special rates. An example of the justified use of car rental is when an employee is out of state, making inspections at various locations, and the use of public transportation is impracticable. When car rental is authorized, the employee shall not be issued an advance payment for the anticipated expense associated with the rental;

11. Alcoholic beverages;

12. Entertainment costs including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities);

13. Gratuities or tips in excess of those permitted by Federal per diem rates;

14. Reverse telephone charges or third party calls;

15. Hospitality rooms;

16. Souvenirs, memorabilia, promotional items or gifts;

17. Air fare without documentation of quotes from at least three airlines and/or on-line services; and

18. Other travel expenditures that are unnecessary and/or excessive.

#### **6A:23A-7.9 Travel methods**

(a) For the purposes of this section, “transportation” means necessary official travel on railroads, airlines, shuttles, buses, taxicabs, school district-owned or leased vehicles and personal vehicles.

(b) The purchase or payment of related transportation expenses shall be made by purchase order or personally by a school district employee, board of education member and reimbursed at the conclusion of the travel event. An actual invoice or receipt for each purchase or expense shall be submitted with a claim for reimbursement.

(c) Pursuant to OMB Circulars, the following travel methods requirements apply:

1. Air and rail tickets shall be purchased via the Internet, if possible, using airline or online travel services such as Travelocity, Expedia or Hotwire.

2. Air travel shall only be authorized when determined that it is necessary and advantageous to conduct school district business.

i. The most economical air travel should be used, including the use of discounted and special rates.

ii. The following options should be considered when booking tickets:

(1) Connecting versus nonstop flights;

(2) Departing earlier or later compared to the preferred departure time;

(3) Utilizing alternative airports within a city, for example, Chicago, Illinois – Midway Airport versus O’Hare Airport;

(4) Utilizing alternative cities, for example, Newark versus Philadelphia;

(5) Utilizing "low cost" airlines; and

(6) Exploring alternate arrival and/or departure days.

iii. No employee or board member can earn benefits as a result of school district funded travel. Employees and board members are prohibited from receiving "Frequent Flyer" benefits accruing from school district funded travel.

iv. Airfare other than economy (that is, Business or First Class) shall not be fully reimbursed by the school district except when travel in such classes:

- (1) Is less expensive than economy;
- (2) Avoids circuitous routings or excessive flight duration; or
- (3) Would result in overall transportation cost savings.

v. All airfare other than economy and not covered by the above exceptions purchased by an employee or board member shall only be reimbursed at the economy rate for the approved destination.

vi. Cost estimates on travel requests and associated authorizations shall be consistent with current airline tariffs, with consideration of available special fares or discounts, for the requested destination.

vii. Airline tickets shall not be booked until all necessary approvals have been obtained.

viii. Justification shall be required when actions by a traveler result in additional expenses over and above the authorized travel request. Sufficient justification shall be considered only for factors outside the control of the purchaser. Additional expenses without sufficient justification shall not be reimbursed.

ix. Justification shall accompany requests for airline ticket reimbursement when purchased by employees or board members contrary to (e)2i through viii. Sufficient justification shall be considered only for factors outside the control of the purchaser.

Noncompliant purchases without sufficient justification shall not be reimbursed. Reimbursement of purchases with sufficient justification shall be otherwise permitted and reimbursed in accordance with this subchapter.

3. Rail travel shall only be authorized when determined that it is necessary and advantageous to conduct school district business.

i. The most economical scheduling of rail travel shall be utilized, including excursion and government discounts, whenever applicable.

ii. When one employee or board member is traveling within the Northeast Corridor, NJ Transit shall be used as the rail option. Use of Amtrak will not be authorized unless it is the only means of travel available.

iii. The use of high speed rail services, such as Acela, shall not be authorized.

iv. When two or more employees and/or board members are traveling to the same event in the Northeast Corridor (between Boston, MA and Washington, DC), rail travel shall not be authorized. In those cases, the travelers must use a school district vehicle or, if not available, a personally-owned vehicle must be used.

v. All rail travel, including rail travel in the Northeast Corridor, must be processed in the same manner as prescribed for air travel in (c)2 above.

4. Use of a school district-owned or leased vehicle shall be the first means of ground transportation. Use of a personally-owned vehicle on a mileage basis shall not be permitted for official business where a school district-owned or leased vehicle is available.

i. Mileage allowance in lieu of actual expenses of transportation shall be allowed at the rate authorized by the annual State Appropriations Act, or a lesser rate at

the board's discretion for an employee or board member traveling by his personally-owned vehicle on official business.

(1) In accordance with the OMB circulars, if any condition in an existing negotiated contract is in conflict with the Circulars, such as the mileage reimbursement rate, the provision of the contract will prevail.

ii. Parking and toll charges shall be allowed in addition to mileage allowance.

iii. Reimbursement for travel to points outside the State by automobile shall be permitted when such arrangements prove to be more efficient and economical than other means of public transportation.

iv. In determining the relative costs of private and public transportation, all associated costs (that is, tolls, taxicabs, airport or station transfers, etc.) shall be considered.

v. All employees and board members using privately-owned cars in the performance of their duties for the school district shall present a New Jersey Insurance Identification Card indicating that insurance coverage is in full force and effect with companies approved by the State Department of Banking and Insurance. The card shall be made available to the superintendent or designee before authorization to use privately-owned cars.

vi. Employees and board members who are out-of-State residents must provide appropriate insurance identification in lieu of the New Jersey Insurance Identification Card.

5. School district-owned or leased vehicles shall be utilized in accordance with N.J.A.C. 6A:23A-6.12.

6. Necessary taxicab charges are permitted. However, travel to and from airports, downtown areas and between hotel and event site shall be confined to regularly scheduled shuttle service, whenever such service is complimentary or is less costly. If shuttle service is not available, taxicabs may be used.

7. Cruises shall not be permitted for travel events or transportation.

#### **6A:23A-7.10 Routing of travel**

(a) Pursuant to OMB Circulars:

1. All travel shall be by the most direct, economical and usually-traveled route. Travel by other routes as a result of official necessity shall only be eligible for payment or reimbursement if satisfactorily established in advance of such travel.

2. In any case where a person travels by indirect route for personal convenience, the extra expense shall be borne by the individual.

3. Reimbursement for expenses shall be based only on charges that do not exceed what would have been incurred by using the most direct, economical and usually-traveled route.

#### **6A:23A-7.11 Subsistence allowance – overnight travel**

(a) Pursuant to the OMB Circulars, one-day trips that do not involve overnight lodging shall not be eligible for subsistence reimbursement, except for meals expressly authorized by and in accordance with the provisions of N.J.A.C. 6A:23A-7.12.

(b) Pursuant to the OMB Circulars, generally, overnight travel shall not be eligible for subsistence reimbursement if travel is within the State. Overnight travel is permitted if such travel is authorized pursuant to (c) below, or is a required component by the entity issuing a grant, donation or other funding agreement with the district. The specific required overnight in-State travel event must be detailed in the final grant, donation, or other fund acceptance agreement along with number of employee(s), board member(s) and total cost. All reimbursements are subject to this subchapter unless the funding acceptance agreement specifies otherwise.

(c) The Commissioner shall be authorized to grant waivers for overnight travel for school board members and school district employees to attend in-State conferences. Such waivers will be granted in only extremely limited circumstances, where the sponsoring organization can demonstrate that the conference is broad and multi-disciplinary in scope, incorporates content offerings from numerous specialty areas, and includes important professional development opportunities and/or required training. In addition, the sponsoring organization must demonstrate that the conference's content, structure, scheduling and anticipated attendance necessitate that it be held on multiple consecutive days with overnight lodging. When such waivers are granted, individual school districts or individuals will not be required to submit waiver requests for attendance at these conferences.

1. Sponsors of conferences may submit to the Commissioner a request for a waiver of this prohibition by providing information regarding the conference as follows:

- i. The name and dates of the event;

ii. Justification for the length of the conference and the necessity to hold events for each day beyond the first day of the conference;

iii. Identification of all other conferences sponsored or co-sponsored by the organization (whether single or multi-day) in the previous year;

iv. A description of the target audience by position title and/or educational certificate and endorsement;

v. Justification of the importance of the target audience attending the event;

vi. The cost of registration;

vii. A detailed list and description of any activities to be charged to the participants by the sponsor separate from the registration fee such as luncheons, work shops, entertainment, etc., including:

(1) The cost of the activity;

(2) Whether participation is mandatory or voluntary; and

(3) The purpose such as social, guest speaker, working session, etc.;

viii. A copy of agenda or program for the event;

ix. A brief statement that includes the primary purpose of the event and the key issues that will be addressed at the event and their relevance to improving instruction or the operation of a school or school district;

x. For training events, whether the training is needed for a certification required for continued employment, continuing education requirements, or requirements of Federal or State law; and

xi. In the case of annual events, total attendance and registration cost for previous year.

(d) If a waiver of the prohibition on overnight travel is granted pursuant to this section, it shall permit reimbursement for travel expenses for only those individuals whose home to convention commute exceeds 50 miles.

(e) Overnight travel within the State shall not be eligible for subsistence reimbursement if travel is on the day prior to the start of the conference. Reimbursement shall be prohibited for lodging prior to check-in time for the first day of the event or after check-out time on the last day of the event.

(f) The US General Services Administration publishes a schedule of Federal per diem rates in the Federal Register for approved overnight travel by the event location. The latest Federal per diem rates schedule for lodging, and meals and incidental expenses by location can be found at [www.gsa.gov](http://www.gsa.gov). The following restrictions apply to allowable per diem reimbursements:

1. Allowable per diem reimbursement for lodging, meals and incidentals shall be actual reasonable costs, not to exceed the federal per diem rates for the event location. Registration and conference fees are not subject to the Federal per diem rate caps. If the event location is not listed, the maximum per diem allowance shall be \$31.00 for meal/incidental expenses and \$60.00 for lodging, or amounts listed in any superceding NJOMB circular.

2. Pursuant to N.J.S.A. 18A:11-12(o), reimbursement for lodging expenses for overnight travel, out-of-State or in-State as authorized by the Commissioner, may exceed the Federal per diem rates if the hotel is the site of the convention, conference, seminar or meeting and the going rate of the hotel is in excess of Federal per diem rates.

i. If the hotel at the site of the current travel event is not available, lodging may be paid for similar accommodations at a rate not to exceed the hotel rate at the site of the current event.

ii. If there is no hotel at the site of the current travel event (for example, Atlantic City Convention Center), then reimbursement for lodging shall not exceed the Federal per diem rate.

3. If the meal is not part of a one-sum fee for a travel event, reimbursement may be approved for the full cost of an official convention meal that the employee or board member attends, when such meal is scheduled as an integral part of the convention or conference proceedings. Receipts shall be submitted in order to obtain reimbursement in such situations. The amount of the Federal per diem rate for the corresponding meal shall be deducted from that day's subsistence allowance.

4. The allowance for a meal or meals, or incidentals shall not be eligible for reimbursement when included and paid in the registration fee, the cost of lodging or transportation charge.

5. Receipts shall be required for all hotel and incidental expenses. Meal expenses under the Federal per diem allowance limits do not require receipts pursuant to N.J.S.A. 18A:11-12o(3).

6. In any cases in which the total per diem reimbursement is greater than the Federal per diem rates, the costs shall be considered excessive in the absence of substantial justification accompanying the travel voucher submitted by the employee or board member. In such cases, receipts shall be submitted for all costs including meals.

7. Employees and board members shall patronize hotels and motels that offer special rates to government employees unless alternative lodging offers greater cost benefits or is more advantageous to the conduct of school district business.

8. Actual subsistence expenses shall not be reimbursable if paid by the traveler to a member of his family, to another school district employee or to a member of the family of another school district employee.

**6A:23A-7.12 Meal allowance – special conditions – and allowable incidental travel expenditures.**

(a) Meals for in-State travel shall not be eligible for reimbursement except as expressly authorized within this subchapter.

(b) Meals during one-day, out-of-State trips required for school business purposes may be authorized for breakfast, lunch and/or dinner in an amount permitted by NJOMB. The Commissioner shall post the most current rates on the Department website for reference.

(c) Lunch for training sessions may be authorized for an amount up to \$7.00 per person only when it is necessary that employees or board members remain at a site other than their school district and there are no viable options for lunch at the off-site location.

1. Per N.J.S.A. 18A:11-12a(1)(d), employee and board member retreats shall be held onsite unless there is no school district site available.

2. If lunch is included in a lump-sum registration fee for the training session, the full amount is eligible for reimbursement if reasonable.

3. Refreshments for breaks may also be provided at training sessions held at a site other than the school district. Therefore, providing lunch for staff meetings and in-

service days or for staff that come from other parts of the school district shall not be permitted. (See N.J.A.C. 6A:23A-7.12(d).)

(d) Subsistence expenses for an employee or board member shall not be allowed at the school district or within a radius of 10 miles thereof, except for meals expressly authorized by and in accordance with the provisions of this section. Non-allowed expenses include, but are not limited to, meals and refreshments for staff meetings and in-service days.

(e) Reimbursement may be approved for the cost of an official luncheon or dinner, up to \$7.00 and \$10.00, respectively, that an employee or board member is authorized to attend, where such a meal is scheduled as an integral part of an official proceeding or program related to school district business and the employee's responsibilities.

1. School district business above refers to the management operations of the district and does not refer to activities that benefit students and are part of the instructional program. Pursuant to N.J.A.C. 6A:23A-5.8(b)4, all reasonable expenditures related to district employees that are essential to the conduct of a student activity are permitted.

(f) Regular meetings, special meetings, and work sessions of the board of education shall be limited to light meals and refreshments for all board members.

1. The meals may be served to employees who are required to attend the event and where it is impractical for the employee to commute to and from his or her residence between the end of the work day and the beginning of the event, or where the employee is required to remain at the school district to prepare for the event.

2. The school district shall acquire the light meals and refreshments by the solicitation of quotes if required pursuant to N.J.S.A. 18A:18A-1 et seq.

3. Where the school district's food service program can prepare comparable meals at a lower cost, the food service program shall be used.

4. The average cost per meal shall not exceed \$10.00.

5. The school district shall purchase or prepare food that are sufficient to provide each board member, dignitary, non-employee speaker or allowable staff member one meal. Meals should be carefully ordered to avoid left-overs. Unintended left-over food should be donated to a charitable shelter or similar facility, if at all possible.

(g) Allowable incidental travel expenses are defined as those that are essential to transacting official business.

1. Charges for telephone calls on official business may be allowed. The voucher must show the dates on which such calls were made, the points between which each call was made and the cost per call.

2. Employees and board members using their personally-owned telephone for business may request reimbursement, less Federal Communications Tax. Calls for business are tax exempt and the telephone company will make allowances for the tax if the employee or board member certifies to the telephone company when paying bills for personally-owned phones that said calls were business calls.

3. Incidental expenses, when necessarily incurred by the traveler in connection with the transaction of official business, may be submitted for reimbursement only when the necessity and nature of the expense are clearly and fully explained on the travel

voucher and the voucher is approved. Travel vouchers shall be supported by receipts showing the quantity and unit price.

### **6A:23A-7.13 Records and supporting documents**

(a) All persons authorized to travel on business shall keep a memorandum of expenditures chargeable to the school district, noting each item at the time the expense is incurred, together with the date incurred.

(b) The travel voucher shall be completed by the employee or board member to document the details of the travel event. The travel voucher must be signed by the employee or board member to certify to the validity of the charges for which reimbursement is sought. The form must also bear the signatures of approval officials for processing.

(c) Sufficient documentation shall be maintained centrally by the school district to support payment and approval of the travel voucher.

(d) In addition to the documentation required for reimbursement, each person authorized to travel shall submit a brief report that includes the primary purpose for the travel, the key issues addressed at the event and their relevance to improving instruction or the operations of the school district. This report shall be submitted prior to receiving reimbursement.

(e) Documentation for requests for travel reimbursement shall show:

1. The dates and individual points of travel, number of miles traveled between such points and kind of conveyance used;

2. If the distance traveled between any given points is greater than the usual route between these points, the reason for the greater distance must be stated;

3. The hours of the normal work day and actual hours worked must be shown when requesting meal reimbursement for non-overnight travel;

4. Original receipts shall be required for all reimbursable expenses, except for meals that qualify for per diem allowances and for parking meters;

5. Actual vendor receipts for personal credit card charges shall be attached to reimbursement requests. Credit card statements shall not be accepted as documentation of expenses;

6. Personal charges on a hotel bill shall be deducted and shown on the bill;

7. When lodging is shared jointly, the fact must be stated on the travel voucher;

8. Where travel is not by the most economical, usually-traveled route, the employee or board member reimbursement request shall set forth the details of the route, the expenses actually incurred, the hour of departure, the hour of arrival and an explanation for the use of costlier travel arrangements;

9. When travel is authorized in the employee's or board member's own automobile on a mileage basis, the points between which travel was made and the distance traveled between each place must be shown. A statement as to ownership of the auto or other conveyance used, as well as a certification that liability insurance is in effect, must be documented;

10. Reimbursement requests must be supported by other receipts as required;

11. The voucher shall be itemized; and

12. Reimbursement requests shall be rendered monthly when in excess of \$25.00.

Travel for a single travel event must be reported as soon as possible after the trip.

(f) All outstanding travel vouchers for the school year ending June 30 shall be submitted as soon as possible after June 30 regardless of amount, notwithstanding (e)12 above.

(g) Travel mileage reimbursement requests of the just completed school year that are not submitted by July 30 or the date approved by the district for the closing of books, whichever is earlier, for the just completed school year shall not be approved or paid.

## **SUBCHAPTER 8. ANNUAL BUDGET DEVELOPMENT AND SUBMISSION**

### **6A:23A- 8.1 Budget submission; supporting documentation; website publication**

(a) Annually, on or before March 4, each district board of education shall adopt, and submit to the Executive County Superintendent for approval, together with such supporting documentation as prescribed by the Commissioner, a budget that provides for a thorough and efficient (T&E) education. The Commissioner may adjust the date for the submission of budgets to conform with the State aid notification date pursuant to N.J.S.A. 18A:7F-5c or if the Commissioner determines that the availability of preliminary aid numbers for the subsequent school year warrants such adjustment.

(b) A district board of education shall complete a budget application prepared and distributed by the Commissioner, which shall be referred to as the School District Budget Statement and Supporting Documentation. The district board of education shall include in the budget application a complete reporting of revenues and appropriations and other requirements pursuant to N.J.S.A. 18A:22-8 and N.J.S.A. 18A:7F-5 through 63.

(c) The budget as adopted for the school year pursuant to N.J.S.A.18A:7F-5 shall be provided for public inspection on the district's Internet site, if one exists, and made available in print in a "user-friendly," plain language budget summary format within 48 hours after the public hearing on the budget.

1. The budget shall be maintained on the district's Internet site, if one exists, with a visible link off the main page, for the entire budget year and revised, as applicable, when changed as follows:

- i. Prior to adoption of a separate proposal(s);
- ii. Upon voter rejection of a separate proposal(s);
- iii. Upon municipal action on a voter rejected base budget question; and
- iv. For any subsequent determination on an application for restoration to the

Commissioner.

2. The Commissioner shall develop and provide through the Department's Internet site "user-friendly," plain language budget summary forms for the use of school districts. Each district shall submit the required budget summary form to the Department of Education following the approval of the base budget question by the voters or board of school estimate, as applicable, or, when the base budget question is rejected by the voters, following municipal action. When the base budget question and any separate question or separate questions are approved by the voters or board of school estimate, as applicable, all approved amounts shall be consolidated and reflected in the "user-friendly," plain language budget summary form.

3. The plain language budget summary shall include an abbreviated version of the formal budget adopted by the school district and such statistical information as the

Commissioner determines to be useful for the public's understanding of the school district's fiscal matters and condition including, but not be limited to, the following information for both the school district's budget year and the prebudget year:

- i. All line items of appropriation aggregated by item type;
- ii. The school tax rate;
- iii. The equalized school tax rate;
- iv. Revenues by major category;
- v. The amount of available surplus;
- vi. A description of unusual revenues or appropriations, with a description of the circumstances of the revenues or appropriations; and
- vii. A list of shared service agreements in which the school district is participating.

4. The Department shall make the plain language budget summary available to the public through its Internet website in an easily accessible location and in a manner that can be downloaded by the public for comparative purposes using commonly-used software.

(d) Pursuant to N.J.S.A. 18A:7F-5.3, the Commissioner shall require each local public school district, CVSD and CSSSD to submit as part of the annual budget submission supporting documentation in regard to the employment contracts of the superintendent, any assistant superintendent, the SBA, and any employee with an annual salary that exceeds \$75,000 who is not a member of a collective bargaining unit. The supporting documentation shall include employment contract information as detailed in (d)1 through 4.

1. A detailed statement of the employment contract terms for these school employees, including, but not limited to, the duration of the contract, number of annual work days, number of annual vacation days, number of annual sick days, number of annual personal days, number of annual consulting days, and any other contracted non-working days. The statement shall also include an itemization of all forms of compensation provided for under the contract.

2. The annualized cost of all benefits provided to these school employees, including, but not limited to, all allowances, bonuses and stipends, and all contributions made by the school district towards the costs of health, dental, life and other types of insurance, medical and reimbursement plans, any reimbursement of the employee share of Federal and/or State taxes or benefits, and retirement and tax sheltered annuity plans which exceed the contributions for the costs of these items made on behalf of a teaching staff member under a collective bargaining agreement with the board.

i. Allowances include, but are not limited to, the provision of a computer/Internet and cell phone, tuition reimbursement, and payment of professional membership fees.

ii. Bonuses include, but are not limited to, additional compensation for longevity and meeting specific performance goals.

iii. Retirement contributions include, but are not limited to, payment of the employee share of contribution to pension, an annuity, and trust account.

3. A detailed statement of any benefits provided for in the employment contract with these school employees which are to be conferred after or upon the separation from

the school district. This includes buyback of vacation days, sick days (if retiring) and any other post-employment benefits.

4. A detailed statement of any form of in-kind or other form of remuneration provided to these school employees that is not otherwise included in the employee's salary or benefits. This includes any annual option to buyback vacation time.

(e) The employment contract information in (d) above shall be provided for public inspection, along with the budget as prescribed in (c) above, in an easily accessible location and in a "user-friendly," plain language format as prescribed by the Commissioner on the local public school district's Internet site, if one exists, no less than 48 hours after the public hearing on the budget.

1. The employment contract information shall be maintained on the district's Internet site, if one exists, with a visible link off the main page, for the entire budget year.

2. The Department shall also post the items in (e) above on its Internet site for public inspection after submission by all districts of the final approved district budget.

(f) A district board of education shall submit at the Commissioner's request supplemental information such as documents, contracts, reports, and financial records and statements required by law or regulation, or other information necessary to conduct a review of the school district's annual spending plan. Additional information may include, but need not be limited to:

1. Contracted salaries:

i. Copies of the current labor contract for each bargaining unit. For any contract that has not been settled or is due to expire at the end of the prebudget year, the

school district shall provide a copy of the last or expiring labor contract, as applicable, and the anticipated range of settlement by unit;

ii. An accurate, complete, and up-to-date position control roster pursuant to N.J.A.C. 6A:23A-6.8;

iii. A list of stipend amounts by staff member name, position and purpose;

2. Health benefits: The school district shall provide the following:

i. A summary list by type of coverage and aggregate annual amount for major medical, prescription, dental and all other benefit costs, including actual costs for the year prior to the prebudget year, and actual or estimated, as available for the prebudget year and budget year;

ii. A summary list by type and category (single, parent and child or family) by amount for the year prior to the prebudget year, prebudget year and budget year;

iii. Documentation from provider(s) showing estimated rate increases;

iv. The reimbursement required by employee, if any.

v. School districts that have elected not to participate in the School Employees' Health Benefits Program shall provide a detailed analysis documenting the cost savings of using the alternative provider;

3. Operation and maintenance of plant services:

i. A detailed list of actual or scheduled equipment purchases with a cost of \$2,000 or more per unit by the actual or estimated cost of each, as available, for the year prior to the prebudget year, prebudget year as of February 1 and the budget year;

ii. The square footage for each building including administration, schools, temporary classroom units; warehouses, bus garages, and other structures;

iii. The full time equivalent (FTE) number of custodians and/or janitors by building;

iv. A summary of the number of maintenance employees by trade and the cost by regular hours and overtime hours for each of the three years included in the budget: prior year actual, projected pre-budget year updated as of February 1 and estimated budget year;

v. An analysis of any leases held by the school district for classroom space, office space and other spaces. The analysis shall include, but not be limited to, the use of the building, square footage, term of the lease, monthly cost and the annual cost for each of the three years included in the budget: prior year audited, pre-budget year updated as of February I and proposed budget; and the school district's long term plan to obtain district-owned space for these purposes;

4. Utilities: Where applicable, an analysis of savings by not using the Alliance for Competitive Energy Services (ACES) or Alliance for Competitive Telecommunications (ACT).;

5. Purchased professional services: A detailed list of all contracts by service type such as auditor, architect, attorney, etc., by actual cost for the year prior to the prebudget year, actual or maximum cost, as available, for the prebudget year and actual or estimated maximum cost for the budget year'

6. Purchased technical services: A detailed list of all contracts by service type by actual cost for the year prior to the prebudget year, actual or maximum cost, as available, for the prebudget year and actual or estimated maximum cost for the budget year.

Identification of any technical services purchased without public bidding under the extraordinary unspecified services provision pursuant to N.J.S.A. 18A:18A-5;

7. Textbook adoptions:

i. A list of any new textbook adoptions for the budget year by title, title and date published of series being replaced and cost;

ii. Summary of text book adoptions expenditures by actual cost for the year prior to the prebudget year, and actual or estimated cost, as available, for the prebudget year and budget year;

8. Equipment purchases: Schedules with descriptions of all actual and scheduled purchases of equipment with a cost of \$2,000 or greater per unit, other than those for Operation and Maintenance of Plant Services, by actual cost for the year prior to the prebudget year, and actual or estimated cost, as available, for the prebudget year and budget year;

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

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

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

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

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

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

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

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

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

(c) Additionally, the district board of education shall prepare a narrative statement based on the thoroughness and efficiency standards established pursuant to N.J.S.A. 18A:7F-46 which describes in specific detail the reasons why and to the extent that the school district's proposed budget contains spending which exceeds the adequacy budget. That statement shall be included with the budget application and other materials for public inspection.

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

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

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

2. The salary of a chief school administrator, business administrator or principal/vice principal shall not be prorated between other functions, except as otherwise

provided in (a)1 above or to instruction when providing direct classroom instruction as part of the school district's regular curriculum.

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

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

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

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

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

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

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

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

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

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

(f) Each district board of education subject to (b) above that submits to the executive county superintendent a proposed budget in which the advertised per pupil administrative cost exceeds the per pupil administrative cost limits in (b) above, and has not received

Executive County Superintendent approval to exceed this requirement as set forth in c) above, or has not presented documentation to the Executive County Superintendent as set forth in d) above, will not receive budget approval.

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

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

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

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

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

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

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

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

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

1. Necessary line items in capital outlay in the budget certified for taxes;
2. Separate voter approved question or board of school estimate approved resolution or capital projects review board approved resolution of the expenditure of local support; or
3. Withdrawals from capital reserve in accordance with N.J.A.C. 6A:23A-14.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The receiving district board of education shall make such reductions in accordance with the option selected in N.J.A.C. 6A:23A-17.1(c) for certification of the "actual cost per student" for each tuition category.

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

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

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

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

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

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

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

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

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

2. Any progress report or other annual report required by the Commissioner regarding compliance with the quality performance indicators pursuant to N.J.S.A. 18A:7A-3 et seq., and N.J.A.C. 6A:30-1;

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

4. Annual independent audits and other external reviews by a State or Federal agency or reviews required by statute and regulation;
5. The comparative spending guide;
6. The school report card;
7. Contractual obligations;
8. The Comprehensive Maintenance Plan pursuant to N.J.A.C. 6A:26A; and
9. The section of Long-Range Facilities Plan (LRFP), submitted pursuant to N.J.S.A. 18A:7G-4, that includes the capital projects proposed in the budget.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Resources and costs that are equal to or less than the “efficiency standards” established pursuant to N.J.S.A. 18A:7F-46 and defined in N.J.A.C. 6A:23A-1.2;
2. Indicators from the Comparative Spending Guide for districts’ operating type and enrollment range indexed to the budget year by the applicable growth in the Consumer Price Index (CPI) as follows:
  - i. Administrative cost per pupil equal to or less than the State median;
  - ii. Support Services cost per pupil equal to or less than the State median;
  - iii. Operation and Maintenance of Plant cost per pupil equal to or less than the State median;
  - iv. A ratio of Students to Administrative Personnel equal to or more than the State average;
  - v. A ratio of Faculty to Administrative Personal equal to or more than the State average; and
  - vi. A ratio of Students to Educational Support Personnel equal to or more than the State average;
3. Custodians and janitors on a ratio of one for every 17,500 square feet of building space calculated on a district-wide basis;
4. A transportation efficiency rating equal to or more than 120 percent;
5. Overtime pay for any given function of 10 percent or less of regular wages for that function;
6. District participation in the SHBP or SEHBP that permits employees with other health care coverage to waive health care coverage and may pay consideration therefore

not to exceed 50 percent of the savings resulting from such waiver of health care coverage;

7. Districts with two or more buildings or buildings configured by two or more grade spans (for example, kindergarten through five, six through eight or nine through 12) that established a tiered system of pupil transportation or demonstrate that doing so would not result in savings or would be more costly. Any district that does not have a tiered system of pupil transportation and cannot demonstrate that such a system would not result in savings or would be more costly shall submit to the Executive County Superintendent on or before December 31, 2009 a plan to establish a tiered system of pupil transportation no later than the opening of schools for the 2011-2012 school year;

8. Vacant positions budgeted at no more than step one of the salary guide unless justification for the additional amount has been approved by the Department;

9. Aides that are not mandated by law or required by an IEP employed only when supported by independent research-based evidence that demonstrates the use of aides is an effective and efficient way of addressing the needs of the particular student population served;

10. The food service fund is self-sufficient and does not require a contribution from the general fund budget;

11. The district solicits competitive proposals with fee quotes or uses a comparable process to ensure the district receives the highest quality services at a fair and competitive price prior to the award of contracts for professional services;

12. Textbook purchases meet one of the following conditions:

i. The purchase is in accordance with a textbook replacement plan;

- ii. Textbooks have been identified as stolen or destroyed;
- iii. A change in curriculum or new edition requires a new textbook; or
- iv. The current supply of a textbook edition or editions is not adequate due to enrollment increases;

13. Library books, magazine subscriptions, video tapes and DVDs are for educational purposes; and

14. Public relations services that are incorporated into the duties of the superintendent, business administrator and/or other staff position or positions and not provided by a dedicated public relations staff position or contracted service provider. Public relations functions as defined in (c)14i and ii below should not comprise more than 50 percent of the duties of any one staff position.

i. For the purpose of this paragraph public relations services include activities directly relating to promotional efforts that advance a particular position and/or communicate information to the news media and district community at large through such means as press releases, press conferences, newsletters, flyers, mass community mailings and emails, television and radio broadcasting, and school-related community events.

ii. Public relations activities do not include activities such as crisis communications, website maintenance, data collection and dissemination, school operations and development of the district calendar or handbook.

(b) The district shall either document that it has taken steps to improve administrative efficiency and reduce non-instructional costs through shared service arrangements or demonstrate that doing so would not result in savings or would be more costly.

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

(a) In those instances in which a district board of education submits a budget with a general fund tax levy and equalization aid set at less than its adequacy budget, the Commissioner may, when deemed necessary to ensure implementation of the thoroughness and efficiency standards, direct additional expenditures, in specific accounts and for specific purposes, up to the district's adequacy budget.

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

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

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

amount required to support the directed increases in expenditure accounts in (a) and (b) above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Budget line number;

(2) Account description;

(3) Account number;

(4) Actual audited expenditure of prior year budget;

(5) Expenditure as of February 1 of the prebudget year (current year);

(6) Originally proposed expenditure for the budget year;

(7) Amount of Executive County Superintendent reduction; and

(8) Proposed expenditure after Executive County Superintendent reduction;

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

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

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

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

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

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

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

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

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

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

Superintendent and the governing body or bodies comprising the district, the following information:

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

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

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

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

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

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

vii. Salary schedules for all employees;

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

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

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

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

xii. The applicable portions of the comparative spending guide;

xiii. The applicable portions of the school report card;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. If either the board of education or municipal governing body, or both, will have a majority present at the meeting, then the meeting must be publicly announced and advertised according to the Open Public Meetings Act by the body(ies) with the majority present.

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

i. The general fund tax levy certification, in the form of a resolution, shall be for the base budget amount and plus, beginning in 2012-13, any additional amounts approved by the voters through separate questions.

ii. The governing body or bodies may include in the resolution a list of recommended line-item reallocations for the district board of education consideration.

iii. If the amount so certified for the base budget is less than the required local share, the certification will be considered a failure to certify in accordance with N.J.A.C. 6A:23A-9.8.

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

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

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

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

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

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

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

(d) In those instances where the governing body or bodies or the board of school estimate has certified an amount of tax levy less than that proposed by the district board

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

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

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

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

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

Pursuant to N.J.S.A. 18A:22-38, in those instances where the governing body or bodies fail to certify by May 19 an amount of tax levy for any item rejected at the annual

school election, or certify different amounts, to the county board of taxation, a district board of education shall submit the budget and any reductions recommended pursuant to N.J.S.A. 18A:7F-5e(1) or (2) by the governing bodies following voter defeat for review and determination by the Commissioner of the tax levy amount to be certified to the county board of taxation.

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

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

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

i. "Stability grounds" as used in the School Funding Reform Act of 2008, N.J.S.A. 18A:7F-43 et al., means reductions which would require long term planning or

budgeting and cannot be accomplished within the budget year; which would adversely affect the district board of education's ability to operate a school system; and which are not a program, service or other expenditure contained within the efficiency standards established pursuant to N.J.S.A. 18A:7F-46 or that are expenditures for items which are in excess of those contained in the efficiency standards established pursuant to N.J.S.A. 18A:7F-46.

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

i. "T&E grounds" means that the reduction or reductions would adversely affect the district board of education's ability to implement programs and services at the level contained in the efficiency standards in order to ensure that its students achieve the Core Curriculum Content Standards. For the 2008-09 school year through the 2010-2011 school year, the efficiency standards are those contained in the report, A Formula for Success: All Children, All Communities dated December 18, 2007 and available on the

DOE Website. Beginning in the 2011-2012 school year and thereafter, the efficiency standards shall be established every three years in the Educational Adequacy Report prepared pursuant to N.J.S.A. 18A:7F-46

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

i. Address each line-item reduction made by the governing body or bodies or the board of estimate; and

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

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

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

board of education's application. A copy of such comments shall concurrently be submitted to the district board of education.

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

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

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

2. In addition to application materials and responsive comments, and those materials submitted to the Executive County Superintendent in accordance with the requirements of (a)1 above, the Commissioner, assessing budgets for certification of tax levy, and assessing applications for restoration may consider such additional information as may be available to him or her through established reporting requirements and Department of Education data collection processes, for example, the Fall Report. Additionally, should the Commissioner or a designee determine during the course of

review that further information or explanation is required from a district board of education, or a governing body or board of school estimate, such information may be requested at any time during the review process.

3. In the case of budgets subject to Commissioner tax levy certification pursuant to N.J.A.C. 6A:23A-9.8 or applications submitted pursuant to (a) above, the Commissioner may consider enrollment increases or decreases within the district, the history of voter or board of estimate approval or rejection of district budgets, the impact on the local tax levy, whether reductions made will impact on the ability of the district to fulfill its contractual obligations, and the other factors listed in (b)4 below.

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

- i. Increases or decreases in enrollment;
- ii. The history of voter approval or rejection of district budgets;
- iii. The impact on the local tax levy;
- iv. The ability of the district to fulfill its existing contractual obligations on the effective date of N.J.S.A. 18A:7F-43 et seq. and the relationship of contractual obligations since the effective date of N.J.S.A. 18A:7F-43 et seq. to Statewide trends in bargaining practices;
- v. The impact on class sizes relative to instructional space;
- vi. The impact on class sizes relative to teaching staff reductions under existing teacher contracts;
- vii. The link between the proposed reduction and classroom instruction or health and safety;

viii. The nature of the reduction as to whether it is a continuation expenditure or a new or increased expenditure;

ix. The district's relative standing in the Comparative Spending Guide on the indicators for Total Administration, Administrative Salaries and Benefits, Total Operations and Maintenance of Plant, Board Contributions to the Food Service Program and Extracurricular Costs;

x. The district's original budget to actual spending and undesignated general fund balance usage and projections trend histories;

xi. Nonrecurring costs;

xii. The degree to which a district exceeds the adequacy budget; and

xiii. Any facts or data which would provide evidence of the reduction's impact.

5. In directing adjustments to budgets which are subject to Commissioner certification, application for restoration or required review, the Commissioner may reallocate or sustain reductions to surplus where such reallocations or reductions do not decrease surplus below \$250,000 or the minimum amount necessary based on the district's specific circumstances and needs, whichever is greater, notwithstanding that budgeted amounts are within the level permitted by N.J.S.A. 18A:7F-7.

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

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

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

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

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

i. The efficiency standards and efficient business practices established pursuant to N.J.A.C. 6A:23A-9.3;

ii. The district's year-end board secretary's report;

iii. The district's independent annual audits and Comprehensive Annual Financial Reports;

iv. Recent evaluations and progress reports of the five key components of district effectiveness under NJQSAC;

v. The results of year-end financial procedures conducted pursuant to N.J.A.C. 6A:23A-9.11;

vi. Routine district inspections made pursuant to N.J.S.A. 18A:7-8(a); and

vii. Other information or documentation obtained during the performance of the duties of the Executive County Superintendent pursuant to N.J.S.A. 18A:7-8; and

2. Notify in writing any district where administrative efficiencies and/or excessive non-instructional costs are identified of the findings and amounts by account that shall

not be included in the district's subsequent budget and that transfers shall not be made during the budget year from those accounts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SUBCHAPTER 10. SPENDING GROWTH LIMITATION**

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

(a) For the 2008-09 school year through the 2011-12 school year, the tax levy growth limitation established pursuant to N.J.S.A. 18A:7F-37 through 40 and N.J.A.C. 6A:23A-

11.1., shall be applied to the annual school budgets for those years in lieu of the spending growth limitation established pursuant to N.J.S.A. 18A:7F-5, and N.J.A.C. 6A:23A-10.2 and 10.3 (banked cap).

(b) Pursuant to N.J.S.A. 18A:7F-39, for the 2008-09 school year through the 2011-12 school year, voter rejection of a separate proposal or separate proposals to exceed the spending growth limitation shall be final and conclusive, and the municipal governing body shall have no authority to overturn the will of the voters, either in whole or in part.

(c) The Commissioner shall complete by the end of the 2010-11 school year a study of the tax levy growth limitation enacted pursuant to N.J.S.A. 18A:7F-37 through 40, for the purpose of analyzing any effects that the tax levy growth limitation has had on disparities in spending among the school districts. The study shall include a recommendation by the Commissioner on whether the tax levy growth limitation should be continued after the 2011-12 school year, or whether the spending growth limitation under N.J.S.A.18A:7F-5, and N.J.A.C. 6A:23A-10.2 and 10.3 (banked cap) would be more effective in addressing any identified disparities in school district spending, or whether a revised growth limitation method might be warranted.

#### **6A:23A-10.2 Adjustments to spending growth limitation**

(a) When adjusting the spending growth limitation for capital outlay expenditures pursuant to N.J.S.A. 18A:7F-5, a district board of education shall:

1. Adopt and submit with the budget application a true copy of a formal board resolution which contains a narrative description of the capital project(s) and

project number as included in the district board of education's long-range facilities plan (LRFP), the full amount to be included in the base budget, and the need for and the amount of the adjustment;

2. Provide evidence of one of the following:
  - i. The proposed capital project(s) is directly related to classroom instruction;
  - ii. The proposed capital project(s) is part of an established periodic schedule of equipment replacement;
  - iii. The proposed capital project(s) is essential to the administration of necessary school level activities;
  - iv. The proposed capital project(s) is required to ensure the health and safety of persons using school facilities or sites; or
  - v. That the capital outlay portion of the prebudget year was an aberration in that it was the lowest of the previous three budget years;
3. Provide a true copy of the minutes of the board meeting at which the proposal was formally introduced and discussed in public if the proposed capital outlay portion of the budget includes funds to purchase, expand, renovate or construct capital projects or sites;
4. In the event that the capital outlay portion of the budget will not be or is not fully expended or encumbered by the end of the budget year, reserve and designate any balances in the subsequent budget year when determined prior to the adoption of that budget or the second subsequent budget year when determined after adoption; and
5. Use amounts for the purchase, expansion, renovation or construction of school facilities or sites or the major replacement or purchase of equipment exclusively

for their intended purposes, and reserve and designate any balances which will not be or are not expended or encumbered by the end of the budget year in the subsequent budget year when determined prior to the adoption of that budget or the second subsequent budget year when determined after adoption. A district board of education may apply to the Commissioner for an exemption to this provision due to unforeseeable conditions which result in other urgent capital outlay needs. The district board of education shall be eligible for an exemption if the existence of such conditions is demonstrated.

(b) A district board of education's adjustment to the spending growth limitation for pupil transportation costs provided pursuant to N.J.S.A. 18A:39-1.1 shall be calculated pursuant to N.J.S.A. 18A:7F-5d(1), and the determination of such costs for the budget and prebudget year shall be calculated as follows:

$$\frac{\text{TNRM}}{\text{TM}} \times \text{TPTC}$$

where:

TNRM is the total mileage for all non-remote pupils provided transportation services pursuant to N.J.S.A. 18A:39-1.1

TM is the total mileage for all remote and non-remote pupils provided transportation services pursuant to N.J.S.A. 18A:39-1.1

TPTC is the total pupil transportation costs contained in the proposed budget

(c) A district board of education's adjustment to the spending growth limitation for changes in enrollment and for special education costs per pupil in excess of \$40,000 shall be provided pursuant to N.J.S.A. 18A:7F-5d.

(d) A sending school district's application pursuant to N.J.S.A. 18A:7F-5d(8) for an adjustment to the spending growth limitation for increases in receiving school district tuition shall not be approved in an amount greater than that which would restore the school district's per pupil net budget, adjusted for inflation and after deducting the tuition increase per resident pupil, to its actual prebudget year level. In determining the adjustment amount, any available reports, documents or other pertinent information will be considered.

(e) A district board of education's adjustment to the spending growth limitation for opening a new school facility pursuant to N.J.S.A. 18A:7F-5 shall be applied only to the budget year the new facility or addition is scheduled to open for educational purposes, except for cap banking purposes pursuant to N.J.A.C. 6A:23A-10.3. The adjustment shall not be applied in subsequent years for the same new school facility.

1. The adjustment includes the incremental cost of opening a new school facility, defined pursuant to N.J.A.C. 6A:23A-1.2 as a new school facility or addition to an existing school facility characterized by an increase in the gross square footage of the school facility used wholly or in part for education purposes by the school district, in the following areas:

i. Salary and benefit costs of new teaching staff members and support staff, including but not limited to, support staff for security, custodial and maintenance;

ii. Material and supply costs, including custodial and maintenance, related to the opening of a new school facility;

iii. Equipment costs for which the district board of education has not already received an adjustment to its spending growth limitation under the capital outlay

adjustment in (a) above or generated unused spending authority pursuant to N.J.A.C. 6A:23A-10.2;

- iv. Energy costs;
- v. Utility costs (water and sewer);
- vi. Insurance costs; and
- vii. Transportation costs.

2. A district board of education shall comply with the following requirements when adjusting the spending growth limitation for opening of a new school facility during the budget year pursuant to N.J.S.A. 18A:7F-5:

i. Adopt and submit with the budget application a true copy of a formal board resolution which contains a narrative description of the new school facility, including square footage, number of classrooms, and enrollment. The district board of education shall also include in the description the full amount to be included in the base budget, the need for and the amount of the adjustment and the capital project number assigned by the Department upon approval of final eligible costs, if applicable and if not applicable, the capital project's name and number as identified in the district board of education's LRFP; and

ii. Provide evidence that the new school facility is scheduled to be completed and opened in the budget year.

**6A:23A-10.3 Unused spending authority (banked cap)**

(a) Pursuant to N.J.S.A. 18A:7F-5a, a district board of education that increases its net budget between the prebudget year and budget years less than that authorized pursuant to

N.J.S.A. 18A:7F-5d may include 50 percent of the unused spending authority, which is the amount of the difference between its actual net budget and its permitted net budget, in either of the next two succeeding budget years.

(b) A district board of education shall comply with all of the following requirements when including unused spending authority in either of the next two budget years:

1. Fully exhaust all spending authority authorized pursuant to N.J.S.A. 18A:7F-5d in the budget prior to including unused spending authority calculated under (a) above in that budget year;

2. Adopt and submit with the budget application a true copy of a formal board resolution which contains the need for and the amount of the unused spending authority to be included in the base budget, and a statement that said need must be completed by the end of the budget year and cannot be deferred or incrementally completed over a longer period of time; and

3. Submit with the budget application a true copy of the minutes of the board meeting at which the need for the unused spending authority to be included in the base budget was formally introduced and discussed in public.

(c) Unused spending authority calculated pursuant to (a) above that is created by merging a passed separate proposal(s) with the base budget shall not be considered unused spending authority available to a district board of education in the next two subsequent budget years.

(d) A district board of education shall fully utilize unused spending authority from the prior prebudget year before utilizing unused spending authority from the prebudget year.

(e) The Executive County Superintendent may disapprove use of banked cap pursuant to N.J.S.A. 18A:7F- 5 if he or she determines that the district board of education has not implemented all potential efficiencies in the administrative operations of the school district.

## **SUBCHAPTER 11. TAX LEVY GROWTH LIMITATION**

### **6A:23A -11.1 Adjusted tax levy growth limitation**

(a) A school district shall not adopt a budget with an increase that exceeds the adjusted tax levy growth limitation. The adjusted tax levy growth limitation shall be calculated as the sum of the:

1. Prebudget year adjusted tax levy and adjustments for increases in enrollment multiplied by four percent calculated pursuant to N.J.S.A 18A:7F-38; and
2. Adjustments for a reduction in total unrestricted State aid in the prebudget year calculated pursuant to N.J.S.A 18A:7F-38, an increase in health care costs calculated pursuant to N.J.A.C. 6A:23A-11.4, and Commissioner approved waivers granted pursuant to N.J.S.A. 18A:7F-39.

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

- i. The CPI shall not exceed four percent.

ii. If the reduction would bring the school district's spending below adequacy, the amount of the reduction made to the school district's tax levy growth limitation shall not be greater than the amount that brings the school district's spending to adequacy; and

iii. Any reduction pursuant to this provision shall be a one-time adjustment and shall be restored in the prebudget year adjusted tax levy used to calculate the adjusted tax levy growth limitation for the subsequent budget year.

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

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

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

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

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

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

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

3. 1.0 for each unit of weighted resident enrollment that constitutes an increase from the prebudget year over four percent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- i. Plan type (for example, traditional, HMO or PPO);
  - ii. Cost by coverage category (single, parent and child(ren) or family); and
  - iii. The number of employees in each plan by category;
5. Reimbursement required by employees, if any;
6. A written assurance that health benefit invoices are reviewed at least quarterly or that personnel and payroll systems contain controls to ensure that coverage and payments are made only for current eligible employees; and
7. For school districts that do not participate in the SEHBP:
  - i. A detailed analysis documenting the cost savings achieved from the current provider(s) as compared to participation in the SEHBP; and
  - ii. Documentation that the cost of health care insurance and alternative insurers, including group plans and consortiums, were examined at least once in the last three years and the school district participates in the most cost effective plan available pursuant to N.J.S.A.18A:55-3a given the requirements of the existing collective bargaining agreement(s).

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

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

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

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

1. Failure to meet the CCCS as determined through the NJQSAC or, prior to full implementation of NJQSAC, the No Child Left Behind Act, P.L. 107-110;
2. Energy cost increases over the prebudget year in excess of four percent;
3. Capital outlay increases, less withdrawals from the capital reserve account, over the prebudget year in excess of four percent;
4. Use of non-recurring general fund revenues in the prebudget year original budget, including the appropriation of surplus;
5. Increases in insurance costs over the prebudget year in excess of four percent;
6. Increases in transportation costs required to service hazardous routes over the prebudget year in excess of four percent;
7. Increases in special education costs that exceed \$40,000 per each special education pupil over the prebudget year in excess of four percent;
8. Increases in tuition costs charged to a sending school district by the receiving school district or charged by a county vocational school district over the prebudget year in excess of four percent; and
9. Incremental increases in costs associated with opening a new school facility in the budget year.

(c) Extraordinary costs shall not include the following:

1. Annual salary increases in excess of four percent whether the result of collective bargaining or individual agreement; and
2. Costs to maintain class sizes which are already addressed through the adjustment to the tax levy limitation for enrollment increases pursuant to N.J.S.A. 18A:7F-38.

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

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

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

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

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

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

1. A written plan, including goals, objectives and progress benchmarks for each program and/or service to be implemented or expanded that demonstrates that each program and/or service will effectively address the specific cause or causes of failure identified;

2. A budget for each new or expanded program or service consistent with the line-item account numbers and definitions contained in the State-prescribed chart of accounts; and

3. A copy of the independent research-based evidence that demonstrates the programs and/or services to be implemented or expanded have been proven effective in addressing the cause or causes of the failure.

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

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

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

1. A three year trend analysis including actual costs for the year prior to the prebudget year, actual costs to date and projected costs to the end of the prebudget year, and projected costs of the budget year;

2. Evidence of participation in the Alliance for Competitive Energy Services (ACES) or an analysis of savings by not participating; and

3. An analysis supporting the school district budget projection, including any information relied upon from vendors, Board of Public Utility notices, ACES, or other industry sources.

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

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

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

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

1. A narrative description of the capital project and project number as included in the school district's Long Range Facilities Plan;
2. The full amount to be included in the base budget;
3. The need for and amount of the adjustment;
4. Evidence that the proposed capital project is one of the following:
  - i. Directly related to classroom instruction;
  - ii. Part of an established periodic schedule of equipment replacement;
  - iii. Essential to the administration of necessary school level activities;
  - iv. Required to ensure the health and safety of persons using school facilities or sites; or

v. capital outlay portion of the prebudget year was an aberration in that it was the lowest of the previous three budget years; and

5. A true copy of the minutes of the board meeting at which the proposal was formally introduced and discussed in public, if the proposed capital outlay portion of the budget includes funds to purchase, expand, renovate or construct school facilities or sites.

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

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

1. A district board of education may apply to the Commissioner for an exemption due to unforeseeable conditions which result in other urgent capital outlay needs.

2. Any balance from capital outlay appropriations that were not or will not be expended or encumbered by the end of the budget year shall be designated in the subsequent budget year, or the second subsequent budget year when determined after adoption of the budget.

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

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

1. A three-year trend analysis including the actual revenue by source for the second year prior to the prebudget year, actual revenue by source for the year prior to the prebudget year, and the revenue anticipated in the original budget certified for taxes by source for the prebudget year;
2. A schedule showing the liquidation of encumbrances for the year prior to the prebudget year;
3. The account number;
4. The original prebudget year amount;
5. The amount projected to be realized in the prebudget year;
6. An explanation of the circumstances for the non-recurrence of the source; and
7. Whether it is anticipated to be a one-time or permanent event.

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

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

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

1. A three-year trend analysis including actual insurance costs for the year prior to the prebudget year, actual insurance costs for the prebudget year, and projected insurance costs or actual costs, if available, of the budget year;
2. A written verification or estimate, as applicable, of the rate increases for each category of insurance coverage from the insurance broker or insurer, or an analysis of claims experience for the prior 18 months for each self insured category;

3. A list of insurance policies or coverages including for each category of coverage the insurance limit, deductible and premium for the prebudget year and budget year;

4. A copy of the board policy on insurance;

5. Documentation that the school district examined at least once in the last three years all available group options for every insurance policy held by the school district, including the self-insurance plan administered by the NJSBA Insurance Group on behalf of school districts, and that the school district participates in the most cost effective plans pursuant to N.J.S.A. 18A:55-3(a); and

6. If not a group plan, a copy of the request for proposals from the last solicitation of competitive quotes for insurance coverage.

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

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

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

i. A copy of the board policy regarding transportation of students who walk along hazardous routes in accordance with N.J.S.A. 18A:39-1.5; and

ii. A list of the routes the district board of education designated as hazardous, either in-whole or in-part, for the prebudget year and budget year including for each route:

(1) The number of buses serving the route, by tier if a tiered schedule is used, and their seating capacity per bus;

(2) The number of students transported along the route that are not eligible for required remote transportation pursuant to N.J.S.A. 18A:39-1 that are transported due to the designated hazardous conditions;

(3) If only a portion of the route is designated as hazardous, the number of students transported along the route that are not eligible for required remote transportation pursuant to N.J.S.A. 18A:39-1 but who are transported as a courtesy;

(4) The number of students transported along the route that are eligible for required remote transportation pursuant to N.J.S.A. 18A:39-1; and

(5) A description of the conditions resulting in the hazardous route designation.

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

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

(b) The total per pupil cost for a student serviced in-house shall be the self-contained class cost for that pupil (total costs divided by the number of pupils in the class), plus any

related and extraordinary costs, less any costs for new placements absorbed by restricted funds, such as Individual with Disabilities Education Act funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The square footage of the existing building;

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

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

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

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

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

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

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

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

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

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

1. A district board of education resolution including the following:
  - i. A narrative description of the new school facility, including square footage, number of classrooms, and enrollment;
  - ii. The full amount to be included in the base budget;
  - iii. The need for and amount of the adjustment; and
  - iv. The capital project number assigned by the Department upon approval of final eligible costs, if applicable, or as identified in the school district's Long Range Facilities Plan; and
2. Evidence that the new school facility is to be completed and opened in the budget year. Evidence can include a schedule of completion or a certificate of occupancy.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The conditions for receipt of state aid set forth in N.J.A.C. 6A:23A-6.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Any rejection by the voters of a school district's separate proposal or proposals shall be final and conclusive with no appeal. The local municipal governing

body or bodies or the board of school estimate shall not authorize the raising of additional tax levy upon rejection by the voters of a school district's separate proposal or proposals.

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

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

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

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

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

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

## **SUBCHAPTER 13. BUDGET TRANSFERS, UNDERESTIMATED SURPLUS AND DEFICITS**

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

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

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

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

Whenever the Executive County Superintendent shall, pursuant to N.J.S.A. 18A:7-8, disapprove a portion of a school district's proposed budget because the school district has not implemented all potential efficiencies in its administrative operations or because the

budget includes excessive non-instructional expenses, the school district shall not transfer funds back into those accounts during the budget year.

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

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

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

1. Documentation of approval of the transfer by a two-thirds affirmative vote of the authorized membership of the school board;
2. Certification by that same membership that the transfer is necessary to achieve the thoroughness standards for the current year. The certification shall include the purpose, need of transfer and include, at a minimum, a list of specific line items to be transferred into and corresponding amounts. Requests to appropriate surplus for

textbooks, computers, equipment or other needs for use and operation for the subsequent school year is not considered a need for the current year and shall not be approved; and

3. The latest board secretary's report as documentation that no other line item balances are available and all appropriation balances are or will be expended or encumbered.

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

1. Certification that the transfer is necessary for an emergent circumstance, that no other line item balances are or will be available, and that the remaining surplus will enable the district board of education to operate in a fiscally solvent position for the remainder of the budget year;

2. Documentation that the emergent circumstance, if not addressed through an appropriation of additional revenue, would render peril to the health and safety of students or staff, and/or force the school district into an operating deficit as a result of the required implementation of the thoroughness standards;

3. The latest board secretary's report as documentation that no other line item balances are or will be available as set forth in (c)3i below:

i. Any unexpended, unencumbered balances are for non-discretionary fixed costs and supported by historical expenditures or other documentation ensuring that the balances will be expended by June 30; and

4. Evidence of approval of the petition and supporting documentation by a two-thirds affirmative vote of the authorized membership of the school board.

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

1. Appropriate unbudgeted or underbudgeted State aid for which the approval was granted by the Department in the written notification to the district board of education of the additional aid;

2. Appropriate unbudgeted and underbudgeted tuition revenue generated from a school district specific program, which is not part of a formal sending-receiving relationship pursuant to N.J.S.A. 18A:38-19 and 18A:46-21;

3. Appropriate unbudgeted or underbudgeted school transportation revenue generated from a school district's or Coordinated Transportation Services Agency's role as the host provider of school transportation services pursuant to N.J.S.A. 18A:39-11 and 18A:39-11.1;

4. Appropriate unbudgeted or underbudgeted restricted miscellaneous local revenue;

5. Appropriate unbudgeted or underbudgeted Federal revenue; and

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

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

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

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

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

the Commissioner's designee, by submitting the request and purpose for the transfer using the report pursuant to (i) below.

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

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

2. Prior to any transfers from capital outlay accounts to current expense, except for equipment, a district board of education shall submit a written request for approval to the Executive County Superintendent, with documentation that such transfer is required due to demonstrated hardship.

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

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

i. The school district's budget currently exceeds the administrative cost limits; or

ii. The transfer would result in a budget in excess of the administrative cost limits in the applicable budget year, as prescribed in N.J.S.A. 18A:7F-5(c).

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

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

(i) Each district board of education shall maintain a report of current month and year-to-date transfers between general fund appropriation accounts as defined in (e) above, in a format prescribed by the Commissioner, or in a format developed locally and approved by the Executive County Superintendent, and submit such report to the Executive County Superintendent with any transfer requests and in accordance with the submission requirements of the board secretary's and treasurer's financial reports under N.J.A.C. 6A:23-2.12.

## **SUBCHAPTER 14 RESERVE ACCOUNTS**

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

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

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

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

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

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

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

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

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

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

i. Formally established a capital reserve account; and

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

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

1. The amount of the deposit;

2. A description of the future capital project and purpose; and
3. A statement that “The amount represents expenditures for construction elements or projects that exceed the facilities efficiency standards determined by the Commissioner as necessary to achieve the Core Curriculum Content Standards.”

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

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

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

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

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

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

1. By board resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund pre-development or other pre-application costs associated with architects, lawyers and construction managers for school facilities projects included in the approved LRFP;

i. Pursuant to N.J.A.C. 6A:26-4.2(a), a district board of education that used capital reserve for such costs in a capital project funded in part or in whole by bond proceeds has the option to reimburse the general fund from the capital projects fund after approval of the referendum or resolution;

2. By board resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund the local share less any excess costs of a school facilities project as determined in accordance with N.J.A.C. 6A:26-3;

3. By board resolution for the transfer of funds to the line items in the capital outlay major account/fund to fund the total costs, less any excess costs, of an other capital project, which would otherwise be eligible for State support, as determined in accordance with N.J.A.C. 6A:26-3;

4. By board resolution for the transfer of funds to the capital projects fund pursuant to N.J.A.C. 6A:26-4, after receiving voter, board of school estimate or capital

project review board approval, as applicable, of the capital reserve use and specific amount in an approved referendum or resolutions pursuant to N.J.A.C. 6A:26-3.7;

5. By board resolution after receiving voter, board of school estimate or capital project review board approval, as applicable, except as authorized in N.J.A.C. 6A:26-3.12(c), for the transfer of funds to the line items in the capital outlay major account/fund to fund excess costs of a school facilities project and to fund the total costs for other capital projects that would not otherwise be eligible for State support as determined in accordance with N.J.A.C. 6A:26, Educational Facilities;

i. Voter, board of school estimate, or capital project review board approval may be obtained through the original budget certified for taxes, in which the district board of education shall include a statement of purpose in the advertised budget, or through a board of school estimate's special appropriation process.

ii. The district board of education or board of school estimate shall include in the statement of purpose or special question for the capital project:

(1) The total costs;

(2) The final eligible costs;

(3) The amount requested for withdrawal for excess costs;

(4) A description/purpose of the capital project, or portion thereof, which the excess costs will fund; and

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

iii. If requesting a withdrawal for multiple capital projects, the district board of education or board of school estimate shall include in the statement of purpose or special question the required information identified in (h)4i and ii above separately for each individual capital project.

iv. The district board of education or board of school estimate shall ensure that the amount(s) approved by the voters, board of school estimate or capital project review board are used exclusively for the purpose or purposes contained in the associated statement or question.

v. For any approved amounts that remain unexpended or unencumbered at the end of the school year, the district board of education or board of school estimate shall:

(1) Return such funds to the capital reserve account;

(2) Anticipate such funds as part of the designated general fund balance of the subsequent school year budget; or

(3) Reserve and designate such funds in the second subsequent school year budget.

6. By board resolution and after receiving Commissioner approval in accordance with N.J.A.C. 6A:26-3.13, and voter, board of school estimate or capital project review board approval pursuant to (c)2 above and this subsection, for the transfer of funds to the line items in the capital outlay major account/fund for the purchase of land; or

7. By board resolution for the transfer of funds to the debt service account for the purpose of offsetting locally funded principal and interest payments for bonded projects that are included in the school district's LRF.

(i) Notwithstanding (h) above, a district board of education or board of school estimate may, at any time, apply to the Commissioner for approval to withdraw funds from its capital reserve account for uses authorized in (b) above. A district board of education or board of school estimate may make a withdrawal pursuant to this subsection only upon receipt of written approval of the Commissioner. To obtain the Commissioner's approval, the district board of education shall establish to the satisfaction of the Commissioner that an emergent condition exists necessitating an immediate withdrawal of capital reserve account funds.

(j) A district board of education shall administer and account for the capital reserve account as follows:

1. The district board of education shall establish and maintain the capital reserve account in accordance with Generally Accepted Accounting Principles, and shall be subject to annual audit pursuant to N.J.S.A. 18A:23-1 et seq;

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

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

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

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

- i. Anticipate as miscellaneous income any investment income included in the original annual general fund budget certified for taxes; and

- ii. Include any investment earnings in the maximum amount of capital reserve permitted in (g) above; and

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

- i. Dr: Capital Reserve Account; and

- ii. Cr: Reserved Fund Balance--Capital Reserve Account.

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

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

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

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

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

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

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

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

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

(e) In any year that maintenance reserve account funds are withdrawn, the district board of education shall restore any unexpended required maintenance appropriations, up to the amount of maintenance reserve account funds withdrawn, to the maintenance reserve account at year-end.

(f) The district board of education shall, by resolution, transfer to the general fund on an annual basis any interest earned on the investments in the maintenance reserve account. Such interest may be transferred on a more frequent basis at the discretion of the district board of education.

(g) The district board of education shall ensure that the maintenance reserve account balance does not, at any time, exceed four percent of the replacement cost of the school district's school facilities for the current year. If the account exceeds this maximum amount at June 30, the district board of education shall reserve and designate such excess in the subsequent year's budget.

#### **6A:23A-14.3 Supplementation of capital reserve and maintenance reserve accounts**

(a) A district board of education or board of school estimate, as appropriate, may supplement a capital reserve account through a transfer by board resolution of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end for withdrawal in subsequent school years. Any such transfer resolution shall be adopted by the board no earlier than June 1 and no later than June 30 of the respective school year.

(b) A district board of education or board of school estimate, as appropriate, may supplement a maintenance reserve account through a transfer by board resolution of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end, for withdrawal in subsequent school years. Any such transfer resolution shall be adopted by the board no earlier than June 1 and no later than June 30 of the respective school year.

#### **6A:23A-14.4 Establishment of other reserve accounts**

(a) A district board of education or a board of school estimate, as appropriate, may through the adoption of a board resolution establish the following reserve accounts:

1. Current expense emergency reserve account.

i. The funds in the reserve shall be used to finance unanticipated general fund current expense costs required for T&E. For the purpose of the emergency reserve account “unanticipated” shall mean reasonably unforeseeable and shall not include additional costs caused by poor planning or error.

ii. The account shall not exceed \$250,000 or one percent of the school district’s general fund budget as certified for taxes up to a maximum of \$1,000,000, whichever is greater.

iii. A district board of education may appropriate funds to establish or supplement the reserve in the school district’s annual budget or through a transfer by board resolution of any unanticipated revenue and/or unexpended line-item appropriation amounts anticipated at year end. Any such transfer resolution shall be adopted by the board no earlier than June 1 and no later than June 30 of the respective school year.

iv. Withdrawals from the reserve shall require the approval of the Commissioner unless the withdrawal is necessary to meet an increase in total health care costs in excess of four percent, for which the district did not receive an automatic adjustment for health care costs pursuant to N.J.A.C. 6A:23A-11.4. Total health care costs include medical insurance and prescription drug insurance costs.

2. Debt service reserve account in the debt service fund for proceeds from the sale of school district property. For the purposes of the debt service reserve account “property” shall mean land, buildings and other property that was incidental to the sale of land or a building. The funds in the reserve shall be used by the district first to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt service principal payments. The funds may be used for any outstanding debt obligation or

debt obligations of the school district. The reserve shall be liquidated within the lesser of five years from its inception or the remaining term on the obligations. Any remaining balance shall be used for tax relief.

3. Tuition adjustment reserve account in the general fund for up to 10 percent of the estimated tuition cost in the contract year for an anticipated tuition adjustment in the third year following the contract year. In such case, the district board of education shall:

i. Establish the tuition adjustment reserve account at June 30 by board resolution;

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

iii. Exclude from the cap calculation the budgeted fund balance and appropriation of the tuition adjustment reserve in the third year following the contract year for such tuition adjustments; and

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

**6A:23A-14.5 Reserve accounts recorded in accordance with GAAP; audit**

(a) All reserve accounts shall be recorded in accordance with GAAP and subject to annual audit. Any capital gains or interest earned shall become part of the reserve account. A separate bank account is not required; however, a separate identity for each reserve account shall be maintained.

**SUBCHAPTER 15. STATE AID CALCULATIONS AND AID ADJUSTMENTS  
FOR CHARTER SCHOOLS**

**6A:23A-15.1 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Average daily enrollment" for the purpose of determining the adjusted State, local and Federal aid means the sum of the days (present and absent) of all students are enrolled in the register(s) of the program for which the aid is being determined divided by the number of days school was actually in session.

"Categorical aid attributable to the student" means security categorical aid attributable to the student and a percentage of the school district's special education categorical aid equal to the percentage of the school district's special education students enrolled in the charter school and , if applicable, 100 percent of preschool education aid. Preschool education aid is restricted revenue, which is to be recorded in the special revenue fund-20 and is subject to the provisions of N.J.A.C. 6A:13A.

"Certification" means the endorsement of a person who is employed by a district board of education or a charter school board of trustees to perform duties that are regulated by N.J.A.C. 6A:9, 6A:11 and 6A:23, and N.J.S.A. 18A:26-2.

"Charter school rate" means an amount equal to 90 percent of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation pursuant to N.J.S.A.18A:36A-12.

"District of residence" means the school district in which a charter school facility is physically located; if a charter school is approved with a region of residence comprised of contiguous school districts, that region is the charter school's district of residence.

"Initial recruitment period" means the period during which there are the first outreach efforts by a charter school to a cross section of the community for the application, random selection process (if applicable) and enrollment of students for the next school year.

"Local share" means that percentage of the school district's adequacy budget supported by general fund tax levy.

"Non-resident district" means a school district outside the school district of residence of the charter school.

"Non-resident student" means a student from a non-resident district attending a charter school.

"Prebudget year" means the school fiscal year immediately preceding the year in which the school budget is implemented.

"Projected enrollment(s)" means the estimated total enrollment(s) from both the school district of residence and non-resident district(s) as follows:

1. For the first year, the projected enrollment is based on the enrollment as indicated in the New Jersey Charter School Application;
2. In subsequent years, projected enrollment is based on actual charter school enrollment as of October 15 of the prebudget year, the initial recruitment period that is submitted by January 15 and any approved change of enrollment as specified in the school's charter or an approved amendment.

"Region of residence" means the contiguous school districts in which a charter school operates and is the charter school's district of residence.

"Resident student" means a student who resides in the area served by the district board of education that is the same as the school district of residence of the charter school.

"School year" means July 1 to June 30 of any given academic year. If operating with an extended school year, this term means an alternate fiscal year beginning no later than September 1 and ending no later than August 31 of any given academic year.

"State share" means the percentage of the school district's adequacy budget that is supported by State aid.

#### **6A:23A-15.2 Per pupil calculations, notification and caps**

The resident and non-resident school districts shall use projected charter school aid as established by the Commissioner in a report to be distributed no later than February 15 of the prebudget year for budget purposes and to initiate school district payments to the charter school for the subsequent year. The report establishes for each resident and non-resident school district a per pupil amount for the local and State shares and categorical aids per student. Once the per pupil amount is established, it is not adjusted. Projected charter school aid is based on projected enrollments at the charter school. The number of students enrolled in the charter school is adjusted based on average daily enrollment for aid purposes throughout the school year in accordance with the prescribed adjustments listed in N.J.A.C. 6A:23A-15.3.

The per pupil amount comprises local share as defined in (b)1 below and State share as defined in (b)2 below.

1. The local share per pupil is that part of the per pupil amount that includes the general fund tax levy of the school district of residence's or nonresident district(s)' budget(s).

2. The State share per pupil is that part of the per pupil amount that includes the equalization aid portion of the school district of residence's or nonresident district(s)' budget(s) or amounts, if any, contained in the annual appropriations act in-lieu-of or to supplement equalization aid for the corresponding fiscal year.

On or before March 30 of each year, a charter school board of trustees shall submit to the Commissioner a budget summary, budget narrative and cash flow statement for the following fiscal year, all of which are based on the most recent enrollment projections provided to the charter school by the Commissioner.

### **6A:23A-15.3 Enrollment counts, payment process and aid adjustments**

(a) In order to enroll in a charter school, the student must first be registered in the school district in which the student resides. For any student who applies for enrollment in a charter school, a district board of education in which the charter school applicant resides shall process the registration of the student for the subsequent school year upon submission of the registration forms. A district board of education shall process in a timely manner all such registrations, including the assessment of residency and the subsequent transfer to the charter school, and shall identify the specific categorical aid for which each student qualifies.

(b) In the subsequent school year, actual average daily enrollment in a charter school shall not exceed the enrollment as specified in the school's charter and approved by the Commissioner.

(c) A district board of education shall pay to a charter school, aid the school district receives for categorical programs pursuant to N.J.S.A. 18A:36A-12b. Such aid shall be paid to a charter school in the amount that is attributable to each resident student enrolled in that charter school.

(d) A district board of education that receives preschool education aid pursuant to the provisions of N.J.S.A. 18A:7F-54 shall pay to a charter school the amount of that aid attributable to a resident student attending that charter school where:

1. The charter school has a concentration of at-risk pupils, as defined in N.J.S.A. 18A:7F-45, that is equal to or greater than 40 percent; and
2. The resident student is receiving appropriate services to be funded through that type of aid.

(e) All categorical aids paid to a charter school by a district board of education shall be accounted for in the general fund of the charter school. Preschool aid is restricted and should be accounted for in fund 20.

(f) A charter school may apply directly to the Commissioner for aid for high cost placements for a special education student in accordance with N.J.S.A. 18A:7F-55b and c.

(g) A district board of education shall process payment(s) and payment adjustments to a charter school during any given school year as follows:

1. The district of residence and non-resident district(s) shall initiate payments to the charter school based on projected enrollment, as set forth in N.J.A.C. 6A:23-9.4(a).

2. The school district of residence and non-resident district(s) shall pay directly to a charter school the local share per pupil at the charter school rate pursuant to N.J.S.A. 18A:36A-12b in 12 equal installments starting July 15 and thereafter on the 15th of each month.

3. Pursuant to N.J.S.A. 18A:36A-12b, the district of residence and non-resident district(s) shall pay directly to the charter school for the following aids in 20 equal installments on the 9th and 23rd of every month starting with September 9 and ending with June 23, or as established by the Legislature:

- i. The State share per pupil at the charter school rate; and
- ii. Categorical aid attributable to the student.

4. The charter school shall submit to the resident school district a listing of all students on roll on October 15th in a format prescribed by the school district for purposes of determining State aid. Pursuant to the guidelines in the school register, the charter school shall also submit to the school district copies of all source documents related to the determination of State aid.

5. During the school year, a charter school board of trustees shall conduct an enrollment count on October 15 and the last day of the school year. A charter school board of trustees shall submit each count in a summary school register for the purposes of determining average daily enrollment.

- i. The charter school board of trustees shall submit the summary school register to the Commissioner no later than one week after the two required enrollment counts required pursuant to (g)5 above.

(1) All aid paid to the charter school by the school district will be adjusted accordingly from projected enrollment to average daily enrollment on October 15 and the adjustment will be spread evenly over the remaining pay periods in the school year.

(2) A final adjustment will be calculated at year-end to account for changes in the average daily enrollment from October 15 to the end of the school year.

(3) The Commissioner will issue a report for the end of year adjustment to both the charter school and the district of residence and non-resident district(s) after the final enrollment count. If there is a reduction in aid, the charter school shall pay the full amount to the school district no later than September 30 of the subsequent school year. If there is an increase in aid, the school district shall pay the full amount to the charter school no later than September 30 of the subsequent school year.

(4) A district board of education and a charter school board of trustees may change the payment provisions as outlined in (g)2, 3 and 4 above, if mutual agreement can be reached on an alternative payment schedule.

ii. Such change in the payment provisions are only effective for the stated school year.

iii. Such change in the payment provisions require the written approval through board resolutions of both the board of trustees of the charter school and the district board of education. The charter school board of trustees and district board of education shall submit copies of such board resolutions to the Commissioner on or before July 1 of the school year in which the payment schedule is effective.

6. In the event a district board of education falls behind by 15 days in the payment schedule in (g)2, 3, 4 and 5 above, a charter school board of trustees may

petition the Commissioner to have the amounts owed to the charter school deducted from the district board of education's State aid and paid directly to the charter school.

7. The payment schedule may be adjusted by the Commissioner based on the effective date of the final granting of the charter or based on significant change in enrollment during the school year.

#### **6A:23A-15.4 Procedures for private school placements by charter schools**

(a) Within 15 days of the provision of written notice to the parent(s) by a charter school of a proposed individualized education program (IEP) or proposed amendment to a child's IEP that provides for placement of the child in a private day or residential program, the charter school shall also provide written notice of such proposed placement to the school district of residence of the child's parent(s).

1. The district of residence may immediately request a copy of the student records to determine whether a less restrictive program that can appropriately meet the student's educational needs exists. The charter school shall forward a copy of the records without delay. In accordance with N.J.A.C. 6A:32-7.5(f)10, the charter school shall provide written notification to the parent that a copy of the records have been forwarded to the district of residence.

(b) When the school district of residence determines to challenge the placement, the school district of residence may, within 30 days of receiving notice of the placement, file for a due process hearing against the charter school and parent(s) of the student. The due process hearing shall be limited in scope to a determination by an administrative law judge as to whether there is a less restrictive placement that will meet the student's

educational needs and, if so, whether the charter school must place the student in such program.

1. The request for a due process hearing shall be processed in accordance with the provisions of N.J.A.C. 6A:14-2.7 and, if the parties agree, mediation will be offered prior to transmittal of the matter to the Office of Administrative Law for a due process hearing.

2. For purposes of administering the request for a due process hearing, the school district of residence shall be considered the “school district” as that term is utilized in N.J.A.C. 6A:14-2.7 and the request shall be processed in accordance with the regulations applicable to requests for a due process hearing by a school district.

3. All procedural issues that arise with respect to filings by a district of residence for a due process hearing in accordance with these regulations shall be addressed by the administrative law judge assigned to hear the matter.

4. In the event that the due process petition is resolved with a determination that the student must be placed in the less restrictive program sought by the district of residence, the student shall still be considered a student enrolled in the charter school that has been placed in that program by the charter school. The charter school shall maintain the student’s slot in its enrollment and provide all child study team services for the student, including the development of an IEP and the monitoring of the implementation of the student’s IEPs.

## **SUBCHAPTER 16. DOUBLE-ENTRY BOOKKEEPING AND GAAP ACCOUNTING**

### **6A:23A-16.1 Prescribed system of double-entry bookkeeping and GAAP accounting**

(a) Each district board of education and charter school board of trustees shall maintain a uniform system of financial bookkeeping and reporting.

(b) Each district board of education and charter school board of trustees shall ensure that the uniform system is fully consistent with the "generally accepted accounting principles" (henceforth referred to as GAAP) as set forth in the Governmental Accounting and Financial Reporting Standards Original Pronouncements, published annually by the Governmental Accounting Standards Board (GASB; 401 Merritt 7, P.O. Box 5116, Norwalk CT), incorporated herein by reference as amended and supplemented, and is compatible with the financial accounting terminology and classifications established in the Federal accounting manual, Financial Accounting for Local and State School Systems, 2003 Edition by the National Center for Education Statistics (NCES; K Street NW, Washington, DC 20006), incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Commissioner, as required by N.J.S.A. 18A:4-14.

### **6A:23A-16.2 Principles and directives for accounting and reporting**

(a) Each district board of education and charter school board of trustees shall use accounting and reporting directives as prepared, published and distributed by the Commissioner in addition to any books, materials or bulletins, for the guidance of school officials in establishing and maintaining the double-entry bookkeeping and accounting system mandated in this subchapter.

(b) Each district board of education and charter school board of trustees shall develop a system of accounting and reporting objectives that makes it possible to:

1. Present fairly and with full disclosure the funds and activities of the district board of education and charter school board of trustees in conformity with GAAP; and

2. Determine and demonstrate compliance with finance-related legal and contractual provisions.

(c) Each district board of education and charter school board of trustees shall develop an accounting system that is organized and operated on a fund basis and shall:

1. Report governmental, proprietary and fiduciary funds in the fund financial statements to the extent that they have activities that meet the criteria for using those funds;

2. Establish and maintain those funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements should be established;

3. Use the modified accrual or accrual basis of accounting as appropriate in measuring financial position and operating results in accordance with GAAP and regulatory provisions; and

4. Recognize transfers in the accounting period in which the interfund receivable and payable arise.

(d) Each district board of education and charter school board of trustees shall adopt an annual budget and shall include the adopted annual budget in the minutes of the board.

1. A district board of education or charter school board of trustees shall develop a detailed budget statement, which includes the classification of expenditures by program

and function and is prepared on a fund basis in accordance with N.J.S.A. 18A:22-8, on a form prescribed by the Commissioner.

2. A district board of education or charter school board of trustees shall prepare detailed budgets for each special project, each capital project as separately identified in the referendum, and each Federal or State grant and maintain them, along with all authorized revisions, on file in the district board of education or charter school board of trustees' business office.

3. Each district board of education and charter school board of trustees shall take appropriate action, as necessary, to maintain a balanced budget.

(e) Each district board of education and charter school board of trustees shall ensure that the accounting system provides the basis for appropriate budgetary control.

(f) Each district board of education and charter school board of trustees shall use a common terminology and classification consistently throughout the budget, the accounts and the financial reports of each fund, and shall adopt a chart of accounts prepared in conformity with the following:

1. Each district board of education and charter school board of trustees shall use, for financial reporting to the Department of Education, a uniform minimum chart of accounts published and distributed by the Commissioner consistent with Financial Accounting for Local and State School Systems, 2003 Edition, developed by the National Center for Education Statistics (NCES; K Street NW, Washington DC 20006), incorporated herein by reference, as amended and supplemented.

2. A district board of education or charter school board of trustees wishing to expand upon the minimum requirements for the budget system established in (f)1 above

shall compile budget data in the expanded and minimum format each month and at the end of the fiscal year, and shall use for such expanded systems the Financial Accounting for Local and State School Systems, developed by the National Center for Education Statistics, as published and distributed by the Commissioner.

3. A district board of education and charter school board of trustees shall approve and adopt any modifications to the chart of accounts, and shall ensure conformance of the modifications to the standards established in (f)1 and 2 above.

(g) Each district board of education and charter school board of trustees shall establish an adequate internal control structure and procedures for financial reporting.

(h) Each district board of education and charter school board of trustees shall prepare monthly financial statements and reports of financial condition, operating results and other pertinent information, in accordance with directions issued by the Commissioner, to facilitate management control of financial operations, legislative oversight and, where necessary or desired, for external reporting purposes.

(i) Each district board of education and charter school board of trustees shall prepare and publish a Comprehensive Annual Financial Report (henceforth referred to as CAFR) in compliance with the standards set forth by the Government Accounting and Financial Reporting Standards Original Pronouncements, incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Governmental Accounting Standards Board (GASB 401 Merritt 7, P.O. Box 5116, Norwalk CT 06856-5116) and GAAP, covering all activities of the district board of education and charter school board of trustees. The district board of education and charter school board of trustees shall ensure that the CAFR includes, but is not limited to: an introductory

section; basic financial statements; required supplementary information; schedules, narrative explanations, and a statistical section. Each district board of education and charter school board of trustees shall use the uniform program as published and distributed by the Commissioner for preparing the Comprehensive Annual Financial Report.

1. A district board of education or charter school board of trustees shall cause an audit of the annual financial statements to be made pursuant to N.J.S.A. 18A:23-1 et seq., and shall engage only a licensed public school accountant to conduct the annual audit who has an external peer/quality report performed in accordance with Government Auditing Standards (Yellow Book) by the Comptroller General of the United States (U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001). The district board of education or charter school board of trustees shall ensure that the external peer/quality report is completed within the time established by Government Auditing Standards issued by the Comptroller General of the United States unless the accountant or firm can show good cause as to why there is a delay.

2. A district board of education or charter school board of trustees shall require the submission of the most recent external peer/quality report and letter of comment to the district board of education or charter school board of trustees for review and evaluation prior to each appointment of a licensed public school accountant to conduct the annual audit.

i. A district board of education or charter school board of trustees shall acknowledge the receipt, review, and evaluation of the external peer/quality report in the public session and board minutes in which the district board of education or charter

school board of trustees authorizes the engagement of the accountant or firm to perform the audit.

ii. A district board of education or charter school board of trustees shall require the submission of an updated external peer/quality report of the licensed public school accountant engaged by the district board of education within 30 days after the issuance date of the external peer/quality report if such report is issued prior to the date of the audit opinion for the most recent fiscal year.

iii. In accordance with NJOMB Circular Letter 98-07 including any amendments or revisions thereto, a district board of education or charter school board of trustees shall ensure that the public school accountant provides a copy of the most recent external peer/quality report to the Department, within 30 days after the initial engagement of a licensed public school accountant or firm and within 30 days after the issuance of a subsequent peer/quality report.

3. A district board of education or charter school board of trustees shall engage a public school accountant during the audit engagement period for non-auditing, management, or other consulting services only if the services comply with the independent standards as established in Government Auditing Standards (Yellow Book) by the Comptroller General of the United States.

4. A district board of education or charter school board of trustees may be prohibited for good cause by the Commissioner from engaging a particular licensed public school accountant, or may be directed by the Commissioner on a process to be used in the appointment of a licensed public school accountant. For the purpose of this provision, good cause includes documented violations of N.J.S.A. 18A:23-1 et seq.,

reported deficiencies or violations identified through the American Institute of Certified Public Accountants (AICPAs) Peer Review Process as applied by the New Jersey Society of Certified Public Accountants (NJSCPA), disciplinary action by the State Board of Accountancy or AICPA, or after an investigation by the Department and hearing before the Commissioner or his or her designee.

5. Documented violations of N.J.S.A. 18A:23-1 et seq. will be reported to the State Board of Accountancy with a recommendation by the Commissioner to cancel the license of the licensed public school accountant. A district board of education or charter school board of trustees is prohibited from employing any accountant subject to this provision until the State Board of Accountancy makes a determination on the cancellation of the license.

(j) Each district board of education shall, pursuant to N.J.S.A. 18A:4-14, maintain legal reserves as defined at N.J.A.C. 6A:23A-1.2 and published by the Governmental Accounting Standards Board (GASB; 401 Merritt 7, P.O. Box 5116, Norwalk, CT) for encumbrances, or state or other government-imposed or permitted legal restrictions. A district board of education may request approval to establish a legal reserve other than those authorized herein by submitting a written request to the Division of Finance in accordance with the annual audit program.

#### **6A:23A-16.3 Conflicts between legal provisions and GAAP**

(a) Where financial statements prepared in conformity with GAAP do not demonstrate finance related legal and Federal or State contractual compliance, a district board of education or charter school board of trustees shall present such additional

schedules and narrative explanations in the Comprehensive Annual Financial Report as may be necessary to report its legal compliance responsibilities and accountabilities.

(b) Each district board of education and charter school board of trustees shall maintain the accounting system on a legal-compliance basis, and shall include sufficient additional records to permit GAAP-based reporting.

**6A:23A-16.4 Minimum bond requirements for treasurer of school moneys**

(a) Each district board of education and charter school board of trustees shall use as the minimum requirements for the surety bond for the treasurer of school moneys such percentage of the current year's school budget as is required in the schedule set forth below:

<u>Total School Budget</u>	<u>Minimum Bond Required</u>
Up to \$100,000.00 -	20 percent of budget (Minimum \$10,000)
\$100,000.01 to \$250,000.00 -	\$20,000 plus 15 percent of all over \$100,000
\$250,000.01 to \$500,000.00 -	\$42,500 plus 13 percent of all over \$250,000
\$500,000.01 to \$750,000.00 -	\$75,000 plus eight percent of all over \$500,000
\$750,000.01 to \$1,000,000.00 -	\$95,000 plus four percent of all over \$750,000
\$1,000,000.01 to \$2,000,000.00 -	\$105,000 plus two percent of all over \$1,000,000
\$2,000,000.01 to \$5,000,000.00 -	\$125,000 plus one percent of all over \$2,000,000
\$5,000,000.01 to \$10,000,000.00 -	\$155,000 plus ½ percent of all over \$5,000,000
\$10,000,000.01 and upwards -	\$180,000 plus ¼ percent of all over \$10,000,000

(b) A district board of education or charter school board of trustees, in fixing such minimum bond, shall round to the nearest \$1,000.

(c) A district board of education and charter school board of trustees shall ensure that the independent school auditor verifies the adequacy of the treasurer's surety bond which is required by N.J.S.A. 18A:17-32, and includes appropriate comment, and a recommendation, if needed, in the annual school audit report.

#### **6A:23A-16.5 Supplies and equipment**

(a) Criteria to distinguish between supplies and equipment for accounting purposes as prescribed by GAAP pursuant to N.J.A.C. 6A:23A-16.1 and contained in the Financial Accounting for Local and State School Systems, which is established by the National Center for Education Statistics, and further specified in the New Jersey Department of Education's Uniform Minimum Chart of Accounts for New Jersey Public Schools, is incorporated by reference herein, as amended and supplemented, and on file and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, PO Box 049, Trenton, New Jersey and the Department of Education, PO Box 500, Trenton, New Jersey.

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

(c) Whenever any district board of education or charter school board of trustees 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 pursuant to N.J.S.A. 18A:18A-5, 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 or charter school board of trustees will solicit and accept quotations. A district board of education or charter school board of trustees shall adopt this policy before the opening of schools each year, and shall make the policy known to the public.

(d) A district board of education or charter school board of trustees shall provide definite and uniform specifications governing standards of quality to each eligible vendor from whom quotations are solicited.

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

2. The person(s) designated to purchase the food supplies shall purchase them from the vendor giving the lowest quotation, unless the person(s) designated by the district board of education or charter school board of trustees to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation. The person(s) designated shall retain such justification, together with all quotations received, in permanent record form, available to school officials, the district board of education or charter school board of trustees and the Department of Education for review and for audit for a minimum of three years.

(e) Contingent upon approval of the district board of education or charter school board of trustees in its adopted policy, the person(s) designated by the district board of

education or charter school board of trustees to purchase food supplies may purchase food supplies for any school cafeteria or home economics class to the extent of not more than \$500.00 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, and shall retain such record for review and for audit.

(f) Paragraphs (d)1 and 2 above do not apply to food supplies purchased by advertising for bids.

#### **6A:23A-16.6 Mechanical bookkeeping systems**

A district board of education or charter school board of trustees which contracts 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 (SAS) No. 70, as amended by SAS No. 88 of the American Institute of Certified Public Accountants, incorporated herein by reference, and maintain a copy of such audit on file.

#### **6A:23A-16.7 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 or charter school board of trustees in this State may have deductions made from this compensation for the purpose of paying dues to a bona fide employee organization.

(b) A district board of education or charter school board of trustees shall require that employees desiring payroll deductions of organizational dues 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 or charter school board of trustees.

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

**6A:23A-16.8 Petty cash fund**

(a) Pursuant to the provisions of N.J.S.A. 18A:19-13, a district board of education or charter school board of trustees 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 or charter school board of trustees establishing a petty cash fund shall:

1. Indicate the amount or amounts authorized for each fund;
2. Set the maximum expenditure that may be made from each fund;
3. Designate an employee who shall 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 or charter school board of trustees on amounts disbursed from each fund; and
5. Approve a voucher prepared by the school business administrator/board secretary to replenish each fund.

(c) Each person designated per (b)3 above shall ensure that all unused petty cash funds are returned to the depository at the close of each fiscal year.

**6A:23A-16.9 Summer payment plan**

A district board of education, in accordance with N.J.S.A. 18A:29-3, shall establish a Summer Payment Plan which will provide for withholding 10 percent of the salary of 10-month employees during the academic year. The district board of education shall ensure that the amount withheld earns interest and is available to the employee either at the end of the academic year or in installments prior to September 1.

**6A:23A-16.10 Budgetary controls and overexpenditure of funds**

(a) A district board of education or charter school board of trustees shall implement controls over budgeted revenues and appropriations as follows:

1. A district board of education or charter school board of trustees shall only approve an encumbrance or expenditure (liability or payment) that, when added to the total of existing encumbrances and expenditures, does not exceed the amount appropriated by the district board of education or charter school board of trustees in the applicable line item account established pursuant to the minimum chart of accounts referenced in N.J.A.C. 6A:23A-16.2(g)1.

2. A district board of education or charter school board of trustees shall only approve the recording of revenues when measurable and available, in accordance with GAAP, unless otherwise authorized pursuant to N.J.S.A. 18A:22-44.2(a). State aid and tax levy approved in the budget certified for taxes shall be recorded in full as of July 1.

State restricted and unrestricted grants shall be recorded in full upon signing and execution of the grant agreement or as otherwise directed by the grantor.

3. When a district board of education or charter school board of trustees adopts an expanded chart of accounts pursuant to N.J.A.C. 6A:23A-16.2(g)2, such district board of education or charter school board of trustees shall adopt a policy concerning the controls over appropriations for line item accounts that exceed the minimum level of detail established pursuant to N.J.A.C. 6A:23A-16.2(g)1. If a district board of education or charter school board of trustees fails to adopt such a policy, such school district shall apply the restrictions contained in (a)1 above to line item accounts that exceed the minimum level of detail.

4. A district board of education or charter school board of trustees, unless otherwise restricted by law or Commissioner directive, may transfer amounts from line item accounts with available appropriation balances to permit the approval of encumbrances or expenditures otherwise prohibited in (a)1 and 3 above. A district board of education or charter school board of trustees shall make these transfers prior to the approval of such encumbrances or expenditures. A district board of education or charter school board of trustees shall make all transfers in accordance with N.J.S.A. 18A:22-8.1, 18A:22-8.2, 18A:7F-6c, and 18A:7G-31, and N.J.A.C. 6A:23A-13 and N.J.A.C. 6A:23A-14.

(b) A district board of education or charter school board of trustees incurring or projecting a year-end deficit on a budget basis in the general fund, capital projects fund or debt service fund or for a restricted project in the special revenue fund as designated in N.J.A.C. 6A:23A-16.2(c) shall proceed in the following manner:

1. The district board of education or charter school board of trustees shall direct the chief school administrator, or charter school lead person, to notify the executive county superintendent of schools within two working days, of the following:

- i. The projected amount of the overexpenditure/deficit; and
- ii. The preliminary findings of the conditions that caused the projected or actual overexpenditure/deficit.

2. The district board of education or charter school board of trustees shall develop, and adopt at a public meeting, an acceptable corrective action plan to eliminate the projected/actual fund deficit within 30 days of the discovery of such fund deficit, but in no circumstance more than 30 days after completion of the CAFR for that year. The corrective action plan shall include:

- i. The projected or actual amount of the fund deficit;
- ii. A detailed list of the line items and the actual or projected deficit amount comprising the overall fund deficit;
- iii. Conditions producing the deficit;
- iv. Corrective actions taken or to be taken to correct or prevent the deficit and dates or projected dates of such actions;

3. The executive county superintendent shall immediately notify the Commissioner, in writing, of a school district or charter school with an actual or projected fund deficit and the amount of said deficit.

4. The office of the executive county superintendent shall immediately investigate to determine if the corrective action being taken by the district board of education or charter school board of trustees is sufficient to avoid a fund deficit or correct

an actual fund deficit. If necessary, the office of the executive county superintendent shall assist the district board of education or charter school board of trustees in determining what further corrective action can be taken, or request assistance from the Division of Finance.

5. The executive county superintendent shall immediately notify the Commissioner, in writing, should it appear that a fund deficit has occurred or may occur and the district board of education or charter school board of trustees is not taking adequate action to avoid the overexpenditure/deficit.

(c) Each district board of education or charter school board of trustees shall ensure the following occurs at every regular district board of education or charter school board of trustees meeting:

1. The school business administrator/board secretary shall present to the district board of education or charter school board of trustees a report showing all transfers between line item accounts as well as appropriations, adjustments to appropriations, encumbrances and expenditures for each line item account shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report is in addition to the report required by N.J.S.A. 18A:17-9.

2. The school business administrator/board secretary shall report to the district board of education or charter school board of trustees any changes in anticipated revenue amounts and revenue sources.

3 A district board of education or charter school board of trustees shall obtain a certification from the school business administrator/board secretary each month that the

total of encumbrances and expenditures for each line item account do not exceed the line item appropriation in violation of (a) above.

i. If a violation has occurred, the district board of education or charter school board of trustees shall, by resolution, approve by a two-thirds affirmative vote of the authorized membership of the board, pursuant to N.J.S.A. 18A:22-8.1, to either transfer amounts among line items if no department approvals are required pursuant to N.J.A.C. 6A:23A-13, or direct the school business administrator-board secretary, or the chief school administrator or charter school lead person, as appropriate, to request approval pursuant to N.J.A.C. 6A:23A-13 to transfer amounts among line items and/or from undesignated fund balance or other unbudgeted or underbudgeted revenue to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide a detailed report of approvals granted and the subsequent amounts transferred into and out of the affected line item account(s), undesignated fund balance, or other unbudgeted or underbudgeted revenue account for the board's ratification at the next regularly scheduled meeting.

ii. As applicable, the school business administrator/board secretary shall reflect in the minutes of the board, the certification or a detailed account of all transfers and the board's ratification, when this option is selected. The district board of education or charter school board of trustees shall make such transfers in accordance with this subchapter and N.J.S.A. 18A:22-8.1, 18A:22-8.2, 18A:7F-6c and 18A:7G-31.

4. A district board of education or charter school board of trustees, after review of the school business administrator/board secretary's and treasurer's monthly financial reports and upon consultation with the appropriate school district or charter school

officials, shall certify in the minutes of the board each month that no fund has been overexpended in violation of (b) above and that sufficient funds are available to meet the district board of education's or charter school board of trustee's financial obligations for the remainder of the fiscal year.

i. If the district board of education or charter school board of trustees is unable to make such a certification, the board shall direct the chief school administrator or charter school lead person to initiate the steps outlined in (b) above and shall reflect such directive in the minutes of the board.

ii. If the district board of education or charter school board of trustees is able to make such certification, but one or more members of the board votes no to the certification, the district board of education or charter school board of trustees shall provide to the executive county superintendent, the board vote, names of members that voted no, and the reason for the no vote.

iii. Within 60 days of month-end, or later upon approval of the executive county superintendent, district boards of education subject to N.J.S.A. 18A:7F-6b, district boards of education that satisfy less than eighty percent of indicators in the fiscal management section of the district performance review located in the appendix to N.J.A.C. 6A:30 and other district boards of education or charter school boards of trustees at the Commissioner's discretion shall provide a copy of the school business administrator/board secretary's and treasurer's monthly financial reports submitted to the district board of education or charter school board of trustees under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 to the executive county superintendent.

iv. Within 60 days of the December month-end, or later upon approval of the executive county superintendent, every district board of education shall provide a copy of the school business administrator/board secretary's and treasurer's monthly financial reports submitted to the board of education under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 to the executive county superintendent.

v. Within 60 days of the September, December and March month end, every charter school board of trustees shall provide a copy of the monthly financial reports submitted to the board of trustees under (c)1 above and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 to the executive county superintendent.

vi. Any school business administrator/board secretary that is more than two months behind in submitting the report pursuant to N.J.S.A. 18A:17-9 to a district board of education or charter school board of trustees shall immediately report this noncompliance to the executive county superintendent.

(d) The executive county superintendent shall report to the Commissioner by August 15, or for charter schools, 45 days after end of year, all fund overexpenditures as shown on the June report of the school business administrator/board secretary filed pursuant to N.J.S.A. 18A:17-10.

1. A district board of education or charter school board of trustees shall immediately develop and adopt an acceptable remedial plan to address any fund(s) deficits consistent with the provisions of (b) above.

2. If necessary, the executive county superintendent shall assist the district board of education or charter school board of trustees in determining what further action can be taken, or request assistance from the Division of Finance.

3. The executive county superintendent shall immediately notify the Commissioner, in writing, should it appear that the district board of education or charter school board of trustees is not taking adequate action to remediate the fund(s) deficit.

(e) A district board of education or charter school board of trustees that fails to develop a corrective action plan or fails to take adequate action in order to avoid or remediate an overexpenditure or fund deficit may be subject to the following:

1. Comprehensive review pursuant to N.J.A.C. 6A:30-3, improvement activities pursuant to N.J.A.C. 6A:30-5, or intervention activities pursuant to N.J.A.C. 6A:30-6, as deemed warranted by the Commissioner.

2. Beginning in the second year following the year in which the projected overexpenditure or fund deficit occurred, a reduction in a district board of education or charter school board of trustees cash payment of State aid by the percentage of the sum of the deficits or projected deficit in any fund to its Adequacy Budget calculated pursuant to the provisions of N.J.S.A. 18A:7F-51, or, in the case of a charter school, a reduction in the charter school aid. Reductions shall be made in the following descending order:

- i. Equalization aid;
- ii. Adjustment aid;
- iii. Transportation aid;
- iv. Security categorical aid;
- v. Special education categorical aid;
- vi. Extraordinary special education cost aid
- vii. Preschool education aid;

3. A district board of education or charter school board of trustees shall apply deficits incurred for State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds and student activity funds, to the balance or deficit of the general fund when such overexpended projects and funds should have been balanced by expenditures from or transfers to that fund.

(f) In those cases where the Commissioner determines that the failure to develop a corrective action plan or take adequate action in order to avoid or address an overexpenditure or fund deficit impacts upon the school district's ability to meet its goals and objectives, the Commissioner may recommend to the State Board of Education that action be taken pursuant to (b) above as deemed warranted by the Commissioner, or in the case of a charter school that its charter be revoked, pursuant to N.J.S.A. 18A:36A-17.

#### **6A:23A-16.11 Internal service funds**

(a) Internal service funds are used to account for and report any activity that provides goods and services from one department or office to other departments or offices of the district board of education, or to other district boards of education and governmental units, on a cost-reimbursement basis. Internal service funds are cost accounting and distribution entities and are intended to recover their costs annually or over a reasonable time period.

(b) A district board of education or charter school board of trustees providing a shared service under a shared service agreement with another board of education or external entity shall account for the shared service costs in an internal service fund in accordance with GAAP.

1. The district board of education or charter school board of trustees providing the shared service shall allocate the costs on a user charge basis to all participating entities on an annual basis at a minimum.

i. A district board of education or charter school board of trustees that is receiving the services shall report user charges in the applicable line item account for the goods or services received.

ii. A district board of education or charter school board of trustees shall report as revenues the sales and purchases of goods and services for a price approximating their external exchange value ("Services Provided to Other Funds") in provider/seller funds.

2. The district board of education or charter school board of trustees shall ensure that the shared service agreement includes an agreed upon mechanism for the use and/or distribution of any unexpended balances.

3. The district board of education or charter school board of trustees shall evaluate annually any unexpended balances to determine the amount of monies, if any, due back to the shared service entities.

(c) A district board of education providing a shared service within the district may allocate costs on a user charge or other basis.

**6A:23A-16.12 Student activity funds**

(a) Student activity funds are used to account for funds derived from athletic events or other activities of pupil organizations and to account for the accumulation of money to pay for student group activities. A district board of education or charter school board of trustees shall establish student activity funds by resolution. Such funds are maintained

under the jurisdiction of the board of education or charter school board of trustees and supervision of the school business administrator/board secretary, who may appoint a designee for purposes of administering the funds.

(b) Each district board of education and charter school board of trustees shall maintain student activity funds in an interest-bearing account separate from all other funds of the district board of education or charter school board of trustees. The district board of education or charter school board of trustees shall disburse interest on this account(s) to each student activity fund in proportion to the balances on deposit for each activity.

(c) Each district board of education and charter school board of trustees shall ensure through adoption of a formal board policy that all financial and bookkeeping controls are adequate to ensure appropriate fiscal accountability and sound business practices. The district board of education or charter school board of trustees shall include in its policy the following minimum requirements:

1. Receipts are detailed showing date, sources, purpose and amount. The district board of education or charter school board of trustees shall promptly deposit all receipts in the bank. The district board of education or charter school board of trustees shall ensure that all deposits agree with the entries in the cash receipt book and are traceable to the actual receipts or groups of receipts.

2. Disbursements are recorded chronologically showing date, vendor, check number, purpose and amount. The district board of education or charter school board of trustees shall make all disbursements by check bearing a minimum of two authorized

signatures, and shall support all disbursements by a claim, bill or written order to persons supervising the fund.

3. Book balances are reconciled with bank balances. The district board of education or charter school board of trustees shall retain canceled checks and bank statements for examination by the licensed public school accountant as part of the annual audit required under N.J.S.A.18A:23-1 et seq. and stated in N.J.A.C. 6A:23A-16.2(i).

4. Student activity funds are classified by school.

5. Borrowing from the student activity accounts is prohibited.

(d) The district board of education or charter school board of trustees shall not be responsible for the protection of and the accounting for funds collected by any teacher or pupil for an outside organization, and shall not approve such funds for deposit in a school activity account.

#### **6A:23A-16.13 School store business practices**

A district board of education or any organization under its auspices shall comply with sales tax rules established by the New Jersey Division of Taxation when operating a school store or offering goods for sale.

#### **6A:23A-16.14 Dismissal or re-assignment of a school business administrator**

(a) In order to protect the integrity of the school business administrator office, a district board of education shall submit to the executive county superintendent a written justification for the non-renewal, dismissal for cause, re-assignment or elimination of the position of a school business administrator, or the individual duly certified and

performing the duties of a school business administrator, within 48 hours of said notification by the district board of education to the affected employee.

(b) The affected employee may request a meeting with the executive county superintendent to discuss the justification submitted by the district board of education. The executive county superintendent shall initiate any follow-up action as warranted on issues under the jurisdiction of the Department.

### **6A:23A-16.15 Appeals**

(a) Decisions of the Commissioner issued pursuant to this chapter may be appealed to the Appellate Division of the Superior Court.

(b) Decisions of the Assistant Commissioner and executive county superintendent issued pursuant to this chapter may be appealed pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

## **SUBCHAPTER 17. TUITION PUBLIC SCHOOLS**

### **6A:23A-17.1 Method of determining tuition rates for regular public schools**

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

(b) The term "actual cost per student" for determining the tuition rate or rates for a given year referred to in N.J.S.A. 18A:38-19 and 18A:46-21 means the local cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories in N.J.S.A. 18A:7F-50 and N.J.S.A. 18A:7F-55, that is, regular education classes: preschool and kindergarten, grades one through five, grades six

through eight, and grades nine through 12; and special class programs as defined in N.J.A.C. 6A:14-4.7. Districts that receive preschool education aid shall determine only an actual cost per student for kindergarten. Pursuant to N.J.A.C. 6A:13A-2.1, districts that receive preschool education aid and charge tuition to another district and/or parent or guardian as permitted under chapter 13A, may charge any amount, not to exceed the per pupil amount established pursuant to P.L. 2007, c. 260.

1. The receiving district board of education shall include in its calculation all expenditures for each purpose except Federal and State special revenue fund expenditures and those specifically excluded in (e)5 below.

2. "Average daily enrollment," for the purpose of determining the "actual cost per student," means the sum of the days present and absent of all students enrolled 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. Beginning in the 2008-09 school year, a receiving district board of education shall phase-out the reduction of the "actual cost per pupil" by the amount of Abbott Parity Remedy Aid, Educational Opportunity Aid and Discretionary Educational Opportunity Aid pursuant to section 61 of P.L. 2007, c. 260. The receiving district shall reduce as appropriate the "actual cost per student" for all grade and program categories by the total amount of the above aid categories received in the 2007-08 school year as follows: .80 in the 2008-09 school year, .60 in the 2009-10 school year, .40 in the 2010-11 school year, and .20 in the 2011-12 school year. For the 2012-2013 school year and thereafter, no reduction shall be made to the "actual cost per pupil" for this purpose.

The receiving district board of education shall make such reductions in accordance with the option selected in (c) below for certification of the "actual cost per student" for each tuition category.

(c) The receiving district board of education shall obtain certification of its "actual cost per student" for each tuition category for a given year from the Commissioner 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 establishes the "actual cost per student" for each tuition category using the following:

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

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

iii. Criteria contained in (e) below.

(d) Once having determined to annually submit the report pursuant to (c)1 above to the Commissioner, a receiving district board of education shall submit a written request to the Commissioner for review and approval in order to change to the certification

method in (c)2 above. The receiving district board of education shall indicate reason(s) for the change.

(e) The receiving district board of education shall determine the share of each item of expenditure for each grade/program category on the report in (c)1 above on a pro rata or actual basis as follows:

1. The actual expenditures for each category as reflected in the receiving district board of education's annual independent audit for the following items:

- i. Teachers' salaries and equipment 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 board of education and supported by documentation for the following items:

- i. Rental of land and buildings;
- ii. Interest on lease purchase agreements;
- iii. School sponsored co-curricular activities, athletics and other instructional programs of the general fund;
- iv. Local vocational programs;
- v. Facilities acquisition and construction services included in the budget approved by the executive county superintendent and certified for taxes;
- vi. Building use charges as defined in (e)6 and 7 below;
- vii. Other support services, special education students;

viii. Related services; and

ix. Benefits for special programs.

3. Unallocated expenditures for general education class categories as reflected in the receiving district board of education's annual independent audit and allocated in proportion to the average daily enrollment in the grade categories for general 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. Equipment;

iv. Teaching supplies;

v. Purchased professional educational services;

vi. Purchased technical educational services;

vii. Other support services, regular students;

viii. Other direct expenses of general education classes;

ix. Direct instructional expenditures for salaries, other expenses and equipment for basic skills remedial programs; and

x. Employee benefits.

4 Expenditures including related employee benefits and equipment as reflected in the receiving district board of education's annual independent audit and allocated in proportion to the average daily enrollment in each category for all categories listed in (b) above for the following items:

- i. General administration, central services, administrative information technology, and business and other support services;
- ii. Improvement of instructional services;
- iii. Staff training services;
- iv. Educational media services, school library;
- v. School administration;
- vi. Attendance, social work and health;
- vii. Contracted transportation or transportation provided by district board of education 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;
- ix. Fixed charges including unallocated employee benefit costs for retirement and social security contributions except Teacher's Pension and Annuity Fund (TPAF) contributions, insurance and judgments including unemployment compensation (UCC), 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 (e)2 above, and principal on lease purchase agreements and tuition which are excluded pursuant to (e)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 and home instruction.

5. Expenditures that are excluded from the actual cost per student for tuition purposes for the following items:

i. Transportation to and from school which is paid by the resident district board of education;

ii. Employee retirement and social security contributions for TPAF members which are fully funded by the State;

iii. Principal on lease purchase agreements;

iv. Tuition;

v. Community services;

vi. Resource rooms which are determined pursuant to (e)9 below and permitted as a separate charge over and above tuition for general education classes;

vii. Accredited adult education programs and nonaccredited adult and evening programs; and

viii. Extraordinary services provided to special education students for which a district board of education may bill directly.

6. Building use charge 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 (e)6i above;

iii. Subtract the amount obtained in (e)6ii above from the debt service interest charge paid on debt for the buildings in which the program is located; and

iv. Distribute the amount obtained in (e)6iii above in accordance with (e)2 above.

7. Special building use charge determined as follows:

i. Whenever a receiving district board of education receives more than 50 percent of the average daily enrollment in a program for which a tuition rate is being determined, the receiving district board of education may include in accordance with (e)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 board of education consulted with each sending district board of education 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 district boards of education with more than 10 percent of the enrollment in the program have passed a resolution in support of the receiving district board of education's determination to issue such bonds or the Commissioner, after a conference, has approved the proposal for the issuance of such bonds.

ii. A receiving district board of education for which this section is applicable may include in accordance with (e)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 board of education consulted with each sending district board of education 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 board of education with more than 10 percent of the enrollment in the program has passed a resolution in support of the receiving district board of education'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.

iii. A receiving district board of education for which this section is applicable may include, in accordance with (e)2 above, a facilities acquisition and construction service charge which is determined by the straight line amortization over three years of that part of the total expenditure for facilities acquisition and construction services which is over and above the amount stated in the budget certified for taxes and used in (e)2v above.

8. The actual and prorated expenditures for all grade/program categories adjusted to determine the "actual cost per student" for tuition purposes as follows:

i. For the 2008-09 school year through the 2011-12 school year, Abbott Parity Remedy Aid, Educational Opportunity Aid and Discretionary Educational Opportunity Aid received in the 2007-08 school year shall be deducted in accordance with N.J.A.C. 6A:23A-17.1(b)3 in proportion to the average daily enrollment for each category weighted on a basis consistent with N.J.S.A. 18A:7F-49. For this purpose, the average weight for the grade categories in N.J.S.A. 18A:7F-49 shall be used to determine the weighted average daily enrollments for special education classes.

9. In addition to the tuition charged for each grade category, a receiving district board of education may charge for students receiving services in a resource room an additional amount up to the actual direct instructional cost per student for such services

calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 100-1 issued by and available from the Division of Finance, State Department of Education, PO Box 500, Trenton, New Jersey 08625-0500).

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

1. "Estimated cost per student" shall be determined by the receiving district board of education using the appropriate supporting schedule in their annual budget for the ensuing year. In lieu of completing the form specified in (c)1 above, a receiving district board of education that has elected to use (c)1 above to certify actual cost per student shall have the option of setting an estimated cost per student up to an amount which shall be determined by multiplying the most recent year's certified cost per student by one plus the Consumer Price Index (CPI) as defined in N.J.S.A. 18A:7F-45 for the budget year or 2.5 percent, whichever is greater. If this option is selected and more than one fiscal year has elapsed since the most recent cost per student certification, the receiving district board of education shall further increase the estimated cost per student by multiplying the above by the sum of one plus the CPI for each additional year.

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

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

ii. Estimated average daily enrollment (EADE) equals  $Y1 \times (1+G)^2$  where the growth rate  $G = 0.5 \times (Y1 - Y3) / Y3$ , where G shall not exceed +/-10 percent, Y1 is the ADE two years prior to the year for which the tuition is being estimated, and Y3 is the ADE four years prior to the year for which the tuition is being estimated. For the purposes of the tentative tuition contract, a receiving district board of education shall apply the same growth rate calculation (as noted above) to project the number of students to be received from each sending district board of education.

3. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, except for a contractual agreement for a student enrolled in a special education class, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the executive county superintendent. The sending district board of education shall be required in the contractual agreement to pay 10 percent of the tentative tuition charge no later than the first of each month from September through June of the contract year. The contractual agreement, except for a contractual agreement for a student enrolled in a special education class, shall require that all adjustments which shall be made because of a

difference in cost or in the number of students sent shall only be made during the second school year following the contract year. All contractual agreements shall contain a payment schedule for all adjustments, which may be necessary.

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

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

- i. Annual budgets including supporting documents;
- ii. Application for State School Aid (ASSA) reports;
- iii. School register summary reports;

iv. Tuition contracts; and

v. Any other information deemed necessary.

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

7. If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was less than the actual cost per student during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the second school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a student enrolled in a special education class shall be made no later than the end of the second school year following the contract year. The executive 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 second school year following the school year for which the tentative charge was paid would cause a hardship.

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

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

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

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

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

(h) In any year in which the receiving district board of education can prove to the satisfaction of the Commissioner that the charge for the use of the school facilities

pursuant to (e)6 above is not adequate, the Commissioner may approve an additional charge for the use of such school facilities.

**6A:23A-17.2 Method of determining tuition rate in a new district board of education**

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

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

(c) If, after the first year of operation, the Commissioner determines that the tentative tuition charge was greater than the actual cost, the receiving district board of education shall return, except if the tentative tuition charge was for a student who was enrolled in a special education class, in the second school year following the first year of operation to each sending district board of education the amount by which the tentative charge exceeded the actual cost, or, at the option of the receiving district board of education, shall credit each sending district board of education with the amount by which the tentative tuition charge exceeded the actual cost. The receiving district board of education shall remit payment or credit for a student who was enrolled in a special education class no later than the end of the second school year, following the first year of operation.

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

**6A:23A-17.3 County vocational-technical school districts funding; public school district tuition payments, post-secondary vocational-technical education fund sources**

(a) This subsection will be effective with the calculation of certified rates beginning with fiscal year 2010-2011. The board of education of any county vocational-technical school district may receive, but not be limited to the following general fund revenue and fund sources for programs and services provided to students of local public school districts within or outside the county:

1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of unrestricted state aid;
2. Funds as may be appropriated by the county pursuant to N.J.S.A.18A:54-29.2 and designated for the programs and services provided to students of local public school districts within the county;

3. Tuition from the sending districts in which the pupils attending the county vocational-technical school district reside for a sum not to exceed the actual cost per pupil as determined for the applicable program as follows:

i. Tuition rates shall be calculated separately for the following:

(1) One tuition rate for regular vocational-technical programs for students sent by local public school districts;

(2) One tuition rate for all learning disability program categories for special education programs provided during the regular school year for students sent by local public school districts;

(3) One tuition rate for all learning disability program categories for special education programs provided for extended periods beyond the regular school year (extended school year programs) for students sent by local public school districts.

4. A nonresident fee in addition to tuition for any pupils of sending school districts who are not residents of the county whenever funds have been appropriated by the county.

i. The fee shall not exceed the amount of the county's per pupil appropriation to the county vocational-technical school district pursuant to N.J.S.A. 18A:54-20.1.

ii. The maximum fee per nonresident student shall be calculated by dividing the total county appropriation to the county vocational-technical school district pursuant to N.J.S.A.18A:54-29.2 and (a)2 above by the average daily enrollment (ADE) of students who are residents of the county and are sent on a tuition basis to the county vocational-technical school district by the public school districts of the county in which the county vocational-technical school district is located.

5. Reimbursement for any extraordinary special education services provided to an individual student from the student's resident district. The cost of extraordinary special education services shall not be included in the actual cost per pupil for purposes of determining tuition rates for special education programs.

(b) The board of education of any county vocational-technical school district may receive, but not be limited to the following revenue and fund sources for post-secondary vocational-technical programs provided to post-secondary students who reside within or outside the county:

1. Funds as may be appropriated by the county pursuant to N.J.S.A.18A:54-29.2 and designated for post-secondary vocational-technical programs for post-secondary students within the county;

2. Amounts charged pursuant to N.J.S.A. 18A:54-20.1 and 23.4 to each county of residence for post-secondary vocational-technical students who are not residents of the county as follows:

i. \$200 per each non-resident post-secondary vocational-technical student to be applied to the county's share of the county vocational-technical school district's capital expenses; and

ii. The average county share of budgeted operating cost per full-time post-secondary vocational-technical students who are resident of the county as certified by the commissioner; provided however, that the said board may, with the approval of the commissioner, charge and collect a higher annual amount(s) when high-cost or high-priority programs are provided.

(1) The average county share of budgeted operating cost per full-time post-secondary vocational-technical students who are residents of the county shall be calculated by dividing the county contribution pursuant to N.J.S.A.18A:54-29.2 and (b)1 above by the average daily enrollment (ADE) of post-secondary vocational-technical students who are residents of the county.

**6A:23A-17.4 Method of determining tuition rates for county vocational-technical schools**

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

1. The county vocational-technical school district board of education shall determine tuition rates for each applicable program category consistent with N.J.A.C. 6A:23A-17.3(a)3.

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

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

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

1. Revenues, expenditures and fund balances reflected in the county vocational-technical school district's annual independent audit; and

2. Average daily enrollment data by category submitted by the county vocational-technical school district on a form prescribed by the Commissioner.

(c) The maximum tuition rate per pupil for each education program shall be sufficient to enable the county vocational-technical school district to cover the net cost of said program.

(d) The maximum tuition rate per pupil for each education program for sending public school districts shall be based on the net cost calculated by reducing the amount of general fund expenditures by the following:

1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of state aid except for restricted state grants;

2. All other revenue sources other than tuition (such as the county contribution, nonresident fees, Medicaid reimbursements and miscellaneous revenue) available to fund the education program for sending public school districts;

3. All direct and indirect expenditures that are not associated with the education program for sending public school districts such as post secondary vocational-technical programs;

4. All expenditures associated with each education program for sending public school districts but that are funded through sources other than the tuition rate such as

extraordinary special education costs, which are separately reimbursed for individual students;

5. Expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, and

6. Refunds of prior year tuition adjustments made to sending public school districts.

(e) The Commissioner shall develop and disseminate workpapers for the purpose of allocating revenue, other fund sources and expenditures amongst the various programs and services within the general fund.

1. With the exception of the regular vocational-technical education program the actual programs and/or services will vary by individual county vocational-technical school district.

2. The purpose of this allocation shall be to isolate the revenue, other fund sources and expenditures related to the tuition for each regular and special vocational-technical education program by segregating programs and services that are not related to those programs or are related but funded through sources other than tuition.

3. Expenditures shall be allocated on a direct and indirect basis amongst the various general fund programs and services when funded through sources other than tuition, such as extraordinary special education services.

i. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment and other expenses for each program or learning disability program category, as applicable, shall be allocated on an actual basis;

ii. When allocating indirect expenditures amongst major programs such as regular vocational-technical education, special vocational-technical education, post-secondary vocational-technical education and other programs, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst the various programs based on the percent of direct expenditures in each program to the total of all direct expenditures since there is no common ADE equivalent among all programs.

iii. Services provided as part of a program, such as extraordinary special education services, shall not bear part of the indirect expenditures but shall include only direct instruction and support services expenditures.

iv. When allocating indirect expenditures between the learning disability program categories of the regular school year and the extended school year, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated in proportion to the average daily enrollment.

(f) The county vocational-technical school district board of education shall adjust as appropriate its net cost determined for each tuition category in (d) above to include in the certified maximum tuition rate for each category an amount that will permit the county vocational-technical school district board of education to maintain at its discretion for the year the tuition rate applies an ending general fund free balance not to exceed the amount permitted pursuant to N.J.S.A. 18A:7F-7.

1. If the county vocational-technical school district board of education's general fund budget for the prebudget year is \$100 million or less and the ending general fund

free balance is less than the greater of six percent of its general fund budget or \$250,000 for the year the tuition rate applies, the county vocational-technical school district board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category. If the amount of the general fund budget for the prebudget year exceeds \$100 million, and the undesignated general fund balance is less than the sum of 6% of the first \$100 million and 3% of the amount which exceeds \$100 million, the county vocational-technical school district board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category.

2. If the county vocational-technical school district board of education's general fund budget for the prebudget year is \$100 million or less and the ending general fund free balance is equal to or greater than the greater of \$250,000 or six percent of its general fund budget for the year the tuition rate applies, the county vocational-technical school district board of education shall not add an amount to the net cost of any tuition category. If the amount of the general fund budget for the prebudget year exceeds \$100 million, and the undesignated general fund balance is in excess of the sum of 6% of the first \$100 million and 3% of the amount which exceeds \$100 million, the county vocational district board of education shall not add an amount to the net cost of any tuition category.

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

(h) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made by the county vocational-technical school district board of education in accordance with N.J.A.C. 6A:23A-17.1(e) except that the county vocational-technical school district board of education shall base the tentative tuition rates on the county vocational-technical school district board of education's estimated adjusted net cost per student consistent with the calculation in (d) through (f) above.

The county vocational-technical school board of education shall use the "actual cost per student" certification forms, contract forms and tentative tuition rate forms as prepared and provided by the Commissioner.

**6A:23A-17.5 County special services school districts funding; budget limitations; tuition payments**

(a) This subsection will be effective with the calculation of certified rates beginning with fiscal year 2010-2011. The board of education of any county special services school district may receive, but not be limited to the following revenue and fund sources:

1. Funds as may be appropriated by the county pursuant to N.J.S.A.18A:46-41;
2. Tuition from the sending districts in which the pupils attending the county special services school district reside for a sum not to exceed the actual cost per pupil as determined for the special education program as follows:

- i. Tuition rates shall be calculated separately for the following:

- (1) Special education programs provided during the regular school year;

and

(2) Special education programs provided for extended periods beyond the regular school year (extended school year programs);

ii. Tuition may be determined and charged as follows:

(1) One tuition rate for the regular school year program; or

(2) One tuition rate for each learning disability program category within the regular school year program; and

(3) One tuition rate for the extended school year program, when applicable; or

(4) One tuition rate for each learning disability program category within the extended school year program, when applicable.

3. A nonresident fee in addition to tuition for any pupils who are not residents of the county whenever funds have been appropriated by the county.

i. The fee shall not exceed the amount of the county's per pupil appropriation to the special services school district pursuant to N.J.S.A. 18A:46-31.

ii. The maximum fee per nonresident student shall be calculated by dividing the total county appropriation to the county special services school district by the number of students who are residents of the county and are sent on a tuition basis to the county special services school district by the public school districts of the county in which the special services school district is located.

4. Reimbursement for any extraordinary special education services provided to an individual student from the student's resident district. The cost of extraordinary special education services shall not be included in the actual cost per pupil for purposes of determining tuition rates for regular year or extended year programs.

(b) Tuition rates shall be at the same rate per pupil for each sending district whether within or without the county and consistent with the methodology as chosen in (a)2 above.

(c) The annual aggregate amount of all estimated tuition may be anticipated by the board of education of the county special services school district with respect to the annual budget of the county special services school district.

(d) Tuition charged to the resident district shall be deducted from the resident district's State aid and transferred directly to the county special services school district by the Department of Education.

1. The transfers shall equal 1/20th of the tuition charged and shall occur on the same schedule of State aid payments for the resident districts.

2. Beginning in May of the preceding year the county special services school district shall report to the department and the resident districts the current enrollments and tuition rates by district. Enrollment changes reported at least 30 days in advance of a scheduled transfer shall be honored.

(e) Unless specifically designated, county special services school districts shall not receive State aid under the provisions of N.J.S.A. 18A:7F-43 et seq.

**6A:23A-17.6 Calculation of Maximum General Fund Budget Net of County Contribution and Maximum Average Tuition Rate**

(a) Pursuant to NJSA 18A:46-31, the county special services school district general fund budget, exclusive of any county contribution received pursuant to N.J.S.A. 18A:46-41, shall not exceed the general fund budget, exclusive of any county contribution

received pursuant to N.J.S.A. 18A:46-41, in the prebudget year adjusted by the CPI or three percent, whichever is greater, plus an enrollment factor.

1. The general fund budget, exclusive of any county contribution, in the prebudget year shall be the sum of all originally budgeted general fund revenue and other fund sources of the prebudget year, except the county contribution of the prebudget year received pursuant to N.J.S.A. 18A:46-41, and shall include, but not be limited to, the following:

- i. Designated, unreserved general fund balance;
- ii. Tuition from sending public school districts for the regular school year programs;
- iii. Tuition from sending public school districts for any extended school year programs;
- iv. Prior year tuition adjustments received from sending public school districts;
- v. Tuition for programs other than programs for students of sending public school districts;
- vi. Nonresident fees received pursuant to N.J.S.A. 18A:46-31;
- vii. Reimbursements from sending public school districts for extraordinary special education costs;
- viii. Medicaid reimbursements, and
- ix. All other revenue sources of the general fund with the exception of the county contribution received pursuant to N.J.S.A. 18A:46-41.

2. The enrollment growth factor shall equal the percentage growth in estimated Average Daily Enrollment (ADE) between the prebudget year and the budget year.

(b) The Maximum General Fund Budget Net Of County Contribution shall establish the maximum amount of tuition revenue receivable and the associated tuition rate a county special services school district can charge to local public school districts for special education programs for the regular school year.

1. The maximum tuition revenue for the regular school year special education program shall be calculated by deducting from the Maximum General Fund Budget Net Of County Contribution calculated pursuant to N.J.A.C. 6A:23A-17.6, all budget year revenue sources and other funding sources of the general fund as delineated in N.J.A.C. 6A:23A-17.6(b), except for the county contribution and estimated tuition for the regular school year special education program.

2. The maximum average tuition rate per pupil for the regular school year special education program shall be calculated by dividing the maximum tuition revenue for the regular school year program calculated in 1 above by the estimated ADE for the budget year.

(c) Any undesignated general fund balance replenishment amount to be included in the tuition rate pursuant to the provisions of N.J.S.A. 18A:46-31 shall not exceed the lesser of the amount needed to maintain a 10 percent undesignated general fund balance or the amount which may be added to the tuition rate without exceeding the Maximum General Fund Budget Net of County Contribution.

**6A:23A-17.7 Method of determining tuition rates for county special services schools**

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

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

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

(b) Each county special services school district board of education shall obtain from the Commissioner certification of the "actual cost per student" for a given year either for the county special services school district as a whole or for each special education program by learning disability category based on the following:

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

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

(c) The maximum tuition rate per pupil for the regular school year special education program shall be sufficient to enable the county special services school district to cover the net cost of said program subject to the statutory Maximum General Fund Budget Net

of County Contribution and statutory limitations on undesignated, unreserved general fund balance.

(d) The tuition rate per pupil for the regular school year special education program for sending public school districts shall be based on the net cost calculated by reducing the amount of general fund expenditures by the following:

1. All revenue sources other than tuition (such as the county contribution, nonresident fees, Medicaid reimbursements and miscellaneous revenue) available to fund the regular school year special education program for sending public school districts;

2. All direct and indirect expenditures that are not associated with the regular school year special education program for sending public school districts;

3. All expenditures associated with the special education program for sending public school districts but that are funded through sources other than the regular school year tuition rate such as extraordinary special education costs, which are separately reimbursed for individual students, and the extended school year special education program for which an additional tuition fee is charged; and

4. Refunds of prior year tuition adjustments made to sending public school districts.

(e) The Commissioner shall develop and disseminate workpapers for the purpose of allocating revenue, other fund sources and expenditures amongst the various programs and services within the general fund.

1. With the exception of the regular school year special education program the actual programs and/or services will vary by individual county special services school district.

2. The purpose of this allocation shall be to isolate the revenue, other fund sources and expenditures related to the tuition for the regular school year special education program by segregating programs and services that are not related to the regular school year special education program or are related but funded through sources other than regular school year special education tuition.

3. Expenditures shall be allocated on a direct and indirect basis amongst the various general fund programs, and services when funded through sources other than tuition, such as extraordinary special education services.

i. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment and other expenses for each program or learning disability program category shall be allocated on an actual basis;

ii. When allocating indirect expenditures amongst major programs such as regular school year special education, extended school year special education and other programs, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst the various programs based on the percent of direct expenditures in each program to the total of all direct expenditures since there is no common ADE equivalent among the programs.

iii. Services provided as part of a program, such as extraordinary special education services, shall not bear part of the indirect expenditures but shall include only direct instruction and support services expenditures.

iv. When allocating indirect expenditures amongst the learning disability program categories of the regular school year or amongst the learning disability program categories of the extended school year, indirect expenditures, except expenditures for

Teachers' Pension and Annuity Fund (TPAF) pension and social security, shall be allocated amongst all learning disability program categories in proportion to the average daily enrollment.

(f) Pursuant to N.J.S.A. 18A:46-31, an undesignated general fund balance of 10 percent of the general fund budget exclusive of tuition adjustments of prior years may be maintained.

1. When estimating the tuition rate for the budget year the estimated ending undesignated general fund balance of the budget year for this purpose shall be the estimated beginning fund balance of the budget year less any prior-year tuition adjustment refunds to be made to sending public school districts during the budget year.

2. When certifying actual final tuition rates the actual audited ending undesignated general fund balance shall be used.

3. Undesignated general fund balance in excess of 10 percent of the general fund budget exclusive of tuition adjustments of prior years shall be deducted from adjusted expenditures calculated pursuant to (d) above for purposes of calculating the regular school year special education program tuition rate.

4. When undesignated general fund balance is under 10 percent of the general fund budget exclusive of tuition adjustments of prior years an amount may be added to adjusted expenditures calculated pursuant to (d) above for purposes of calculating the regular school year special education program tuition rate subject to the Maximum General Fund Budget Net Of County Contribution calculated pursuant to the provisions of N.J.A.C. 6A:23A-17.6(a)2.

(g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee) and adjustments to tentative tuition charges upon certification of actual tuition rates by the Commissioner shall be made by the county special services district board of education in accordance with N.J.A.C. 6A:23A-17.1(e) except that the county special services school district board of education shall base the tentative tuition rates on the county special services district board of education's estimated adjusted net cost per student consistent with the calculation in (c) through (f) above. The tentative tuition rate and actual cost per student for a given fiscal year shall be calculated in the same manner chosen pursuant to (b) above.

(h) The county special services district board of education shall use the "actual cost per student" certification forms, contract forms and tentative tuition rate forms as prepared and provided by the Commissioner.

(i) A new county special services district board of education shall use the method of determining tentative tuition rates contained in N.J.A.C. 6A:23A-17.2.

## **SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES**

### **6A:23A-18.1 Definitions**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

"Advertising costs" means the costs incurred for, but not limited to, the following: cable television, videos, open houses, marketing and public relations. (The cost of a web site, the printing of descriptive brochures, newspapers advertising and advertising in a telephone book are not included in this definition.)

"Administrative costs" means those costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.4(a)7.

"Assistant Director" means an individual whose job function includes a majority of the following: the formulation of school goals, plans, policies, and budgets and the recommendation of their approval to the school's board of directors; the recommendations for all staff appointments and other personnel actions, such as terminations, suspensions and compensation, including the appointment of the business manager to the school's board of directors; responsibility for school operations and programs including administration, supervision and evaluation of administrators, supervisors, and all other school staff. The holder of this job title shall hold a bachelor's degree from an accredited institution but is not required to hold a school certification.

"Average daily enrollment (ADE)" means the sum of the days present and absent of all school students enrolled in the register(s) of the school divided by the number of days the approved private school for students with disabilities was actually in session for the entire school year rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days.

"Bonus" means any payment to an employee which:

1. Is not part of the employee's executed contracted salary;

2. Is not part of the employee's base salary in the subsequent school year;
3. Is arbitrary and not based on any specific criteria or qualifications; and
4. Is paid solely at the discretion of management.

"Business Manager" means an individual whose job function includes a majority of the following: financial budget planning and administration, insurance/risk administration, purchasing, financial accounting and reporting, facility planning, construction and maintenance; personnel administration; administration of transportation and food services and data processing. The holder of this job title shall hold a bachelor's degree in business, accounting, finance or economics from an accredited institution or shall hold a standard school business administrator's certificate but is not required to hold a school certification.

"Certified actual cost per student" means the actual allowable cost for the entire school year plus the applicable maximum surcharge/public school placement restricted working capital fund divided by the average daily enrollment for the school year.

"Compensation increases" means any additional payment made to an employee after the start of the fiscal year that would appear on the employee's W-2 and/or should result in a Form 1099 being issued to the employee.

"Conditional approval status" means the approved private school for students with disabilities is precluded from accepting new students.

"Contingent pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is paid to all staff in the event that the approved private school for students with disabilities attains the predetermined average

daily enrollment for the school year that was filed with and approved by the Commissioner.

"Director" means the same as the Assistant Director above.

"Entertainment expenses" means the cost of providing any type of food/beverage to school officers, school directors/trustees, consultants and/or individuals providing services to the school at any time, or to school employees after school hours.

"Executive Director" means the same as the Assistant Director above.

"Extraordinary service" means the services of a one-to-one aide for a student.

"Final tuition rate" means an amount equal to or less than the certified actual cost per student calculated in accordance with N.J.A.C. 6A:23A-18.2(a).

"Instructional costs" means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.4(a)7.

"Internal Revenue Code" means any federal tax code section indicated in this subchapter and as amended and supplemented.

"Keyman life insurance" means insurance on staff members for which the school is the beneficiary of the life insurance policy.

"New private school for students with disabilities " means an approved private school for students with disabilities in the first two years of operation.

"Merit pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is based on specific performance criteria that was previously submitted to and approved by the Commissioner.

“Private placement student” means a student placed in an approved private school for students with disabilities by other than a New Jersey school district or a New Jersey State agency. For tuition rate purposes for a private placement student, the approved private school for students with disabilities must charge not less than the audited cost per student or the approved private school for students with disabilities must have other means of financing excess costs over the tuition rate charged.

"Public school placement restricted working capital fund" means a non-profit school's total public school restricted assets less the total public school restricted liabilities.

“Public school placement student” means a student placed in an approved private school for students with disabilities by a New Jersey school district or a New Jersey State agency.

"Related services" means the type of services defined in N.J.A.C. 6A:14-1.3.

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

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

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

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

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

#### **6A:23A-18.2 Tuition rate procedures**

(a) The board of directors of an approved private school for students with disabilities located in New Jersey shall determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department pursuant to N.J.A.C. 6A:23A-18.9.

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

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

2. If the approved private school for students with disabilities proposes to charge a final tuition rate in excess of 10 percent above the tentative tuition rate charged, the private school shall notify each sending district board of education and the Assistant

Commissioner, Division of Finance that such an increase will be charged and the reason for the increase on or before the following dates: December 15th for the first quarter, March 15th for the second quarter, June 15th for the third quarter and September 15th for the fourth quarter, or the next business day when applicable. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23A-18.4(a)11.

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

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

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

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

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

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

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

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

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

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

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

1. Maintain bookkeeping and accounting records by class type and school location for the school year;

2. Charge a separate tuition rate for each class type served;

3. Prepare in the Department-prescribed format the audited costs by class type for the first two years that tuition is charged by class type in order for the Commissioner to determine the tentative tuition rates in accordance with (i) below; and

4. Determine on a pro rata basis the individual share of a particular allowable cost item for a class type, when it is not possible to charge the actual amount expended, in accordance with the following ratios or an alternative method as approved by the Commissioner:

Ratio of average daily enrollment in each class type to the total average daily enrollment;

ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; and

iii. Direct costs.

(c) An approved private school for students with disabilities shall record direct costs that can be specifically attributed to a program and/or revenue source, in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23A-18.4(a)8.

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

(e) An entity that operates only as an approved private school for students with disabilities and operates one or more tuition programs at one or more locations shall charge their costs as follows:

1. Direct costs for each program as determined pursuant to (c) above; and

2. Indirect costs in accordance with an equitable allocation plan approved by the Commissioner, or in accordance with either of the following ratios:

i. Direct costs for each program determined pursuant to (c) above to total direct costs; or

ii. Average daily enrollment for each program to total average daily enrollment.

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

1. Direct costs for each program as determined pursuant to (c) above;

2. Indirect cost centers established as follows:

i. A cost center, which shall include indirect costs that are allowable costs in accordance with N.J.A.C. 6A:23A-18; and

ii. A cost center, which shall include indirect non-allowable costs in accordance with N.J.A.C. 6A:23A-18.

3. Allowable indirect costs shall be included on a consistent basis in the respective actual cost per student in accordance with an equitable allocation plan approved by the Commissioner, or in accordance with either of the following ratios:

i. Direct costs for each program determined pursuant to (c) above to total direct costs; or

ii. Average daily enrollment for each program to total average daily enrollment.

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

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

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 student was enrolled during the month, for each month the student is enrolled. The per diem rate is determined by dividing the tentative tuition rate for the school year by the estimated number of days school will be in session, but not less than 180 days, and rounding to the nearest two decimal places.

2. If applicable, the contractual agreement shall require the sending district board of education to pay the approved private school for students with disabilities the tentative tuition charge for extraordinary services.

3. The contractual agreement shall require the sending district board of education to pay the approved private school for students with disabilities the tentative tuition charge based on one of the following options as determined by the approved private school for students with disabilities. The approved private school for students with disabilities shall use the same option for all students enrolled in the approved private school for students with disabilities:

i. Option 1: A sending district board of education shall pay the approved private school for students with disabilities no later than the first of each month prior to the services being rendered.

(1) For a student already enrolled in the approved private school for students with disabilities, the sending district board of education shall pay the tentative tuition charge by the first day of the second month after services begin. A sending district board of education that fails to pay tuition by the 30th day after services begin may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.

(2) For a student enrolled after the first of the month, the sending district board of education shall pay the tentative tuition charge for the first two months of enrollment no later than 60 days after the first day services begin. Payment in subsequent months are due by the first of each month prior to the services being rendered. A sending district board of education that fails to pay tuition by the 30th day after services begin may be

charged interest by the approved private school for students with disabilities calculated at the rate of one percent per month on the unpaid balance.

ii. Option 2: A sending district board of education shall pay the approved private school for students with disabilities no later than 60 days after the last day of each month in which services were rendered. A sending district board of education that fails to pay tuition by the 60th day after the last day of a month in which services were rendered may be charged interest by the private school calculated at the rate of one percent per month on the unpaid balance.

(i) The Commissioner will issue notification of the maximum tentative tuition rate for each approved private school for students with disabilities no later than January 1 for the ensuing school year, calculated as follows:

1. The maximum tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year inflated by twice the spending growth limitation of 2.5 percent and any applicable change to this percentage identified in N.J.S.A. 18A:7F-5d or the CPI, whichever is greater.

2. The maximum tentative tuition rate includes:

i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23A-18.6; and

ii. For non-profit schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23A-18.7.

(j) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for students with disabilities can prove to the satisfaction of

the Commissioner that the maximum tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school.

1. In the event of such hardship claim, the approved private school for students with disabilities shall submit its request for a higher tentative tuition rate for the entire school year to the Assistant Commissioner, Division of Finance no later than January 31 preceding the beginning of the ensuing school year. The approved private school for students with disabilities shall submit such request with appropriate documentation, which shall include, but may not be limited to, the following information:

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

ii. A detailed explanation of the need for increases in excess of those already provided in the tentative tuition rate calculation; and

iii. A financial report which is properly completed and in the format prescribed by the Commissioner for the six months of operations ending December 31 immediately preceding the school year. This report format is available at the Division of Finance, PO Box 500, Trenton, New Jersey 08625-0500.

2. When a student's Individualized Education Program team determines the need for extraordinary services.

(k) The Commissioner will issue notification that the final tuition rates charged are based on the certified actual cost per student pursuant to (a) above.

(l) If the Commissioner determines that the tentative tuition rate for the school year established by written contractual agreement is greater than the final tuition rate charged for the school year, the approved private school for students with disabilities shall pay or

credit the difference to subsequent tuition bills for each sending district board of education no later than June 30 of the school year in which the final tuition rate charged is received from the Commissioner, or not more than 30 days after an appeal on a certified amount is finally resolved. The same final tuition rate charged shall be charged to each sending district board of education.

(m) If the tentative tuition rate for the school year established by written contractual agreement pursuant to (h) above is less than the final tuition rate charged for the school year, the approved private school for students with disabilities may charge each sending district board of education all or part of the difference owed, but the same final tuition rate shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date during the second school year following the year for which the actual cost per student is certified.

(n) The approved private school for students with disabilities shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year, and if applicable, the tentative tuition rate for extraordinary services on forms prepared by the Commissioner.

(o) An approved private school for students with disabilities shall reference as guidance the list of maximum allowable salaries by job title and county according to the job titles contained in N.J.A.C. 6A:9 which pertain to approved private schools for students with disabilities that is published by the Commissioner. Except for administrative job titles referenced in (p) below, maximum allowable salaries are based on the highest contracted salaries (not including payment of unused sick and vacation days and severance pay) of certified staff by job title in a district board of education for any prior year indexed by the

average increase in salary between the two preceding school years for each job title. Such salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of an approved private school for students with disabilities staff member shall be prorated for staff employed for less than 12 months. Under no circumstances shall the maximum allowable salary calculated be less than the corresponding salary in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

(p) An approved private school for students with disabilities shall reference as guidance a list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9 and 6A:23A-18.1 which pertain to approved private schools for students with disabilities that is published by the Commissioner. Maximum allowable salaries are based on the highest contracted salary (not including payment of unused sick and vacation days and severance pay) by administrative job title for the entire State in a district board of education, special services district board of education and educational services commissions with comparable average daily enrollments for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. Such salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of the private school staff member shall be prorated for staff employed for less than 12 months. Each district board of education, special services district board of education and

educational services commission with an ADE equal to or less than the highest approved private school for students with disabilities ADE will be considered comparable. Under no circumstances shall the maximum allowable salary calculated, be less than the corresponding salary in the prior year for the same job title. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

(q) For the 2006-2007 school year and years thereafter:

1. For a staff member who was employed by the approved private school for students with disabilities prior to the 2006-2007 school year whose salary is greater than the maximum allowable salary in accordance with (o) and (p) above, such salary shall be frozen at the 2005-2006 salary level or until such time as the maximum allowable salary in accordance with (o) and (p) above exceeds the 2006-2007 salary level;

2. For a staff member who was employed by the approved private school for students with disabilities prior to the 2006-2007 school year whose salary is less than the maximum allowable salary in accordance with (o) and (p) above, the maximum salary shall be determined in accordance with (o) and (p) above; and

3. For a staff member in a new private school for students with disabilities opening on or after July 1, 2006, for a staff member whose employment commences on or after July 1, 2006 at private schools existing as of June 30, 2006 and for a staff member employed by a private school prior to June 30, 2006 whose job title changes effective July 1, 2006 or any time thereafter, the maximum salaries shall be determined in accordance with (o) and (p) above.

(r) An approved private school for students with disabilities shall employ staff pursuant to the list of the recognized job titles in accordance with N.J.A.C. 6A:9 that require certification and N.J.A.C. 6A:23A-18.4 that require a bachelor's degree, which is published by the Commissioner. An approved private school for students with disabilities shall only hire staff or consultants in job titles that require certification or a bachelor's degree if such titles are included on this list, or if such titles are unrecognized job titles that are approved annually in accordance with N.J.A.C. 6A:9-5.5. The approved private school for students with disabilities may use unrecognized administrative job titles, but maximum salaries of these titles are restricted in accordance with N.J.A.C. 6A:23A-18.5(a)9. If an approved private school for students with disabilities hires staff in administrative or support job titles such as but not limited to Chief Executive Officer or Chief Financial Officer, the maximum salaries of such job titles shall be limited to the maximum salary of a director in accordance with N.J.A.C. 6A:23A-18.2(p).

(s) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day, or to a third party location and require the services of an approved private school for students with disabilities staff person, the ADE for tuition rate purposes shall be computed as follows:

1. Regardless of the time period that a student is enrolled in a program outside the approved private school for students with disabilities, the student shall be considered a full time student of the private school, the student's ADE shall be considered as 1.0 and the sending district board of education shall pay the full-time tuition rate.

2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

(t) For students who are transitioning back to a program of the sending district board of education for a portion of the enrolled school day or to a third party location, the approved private school for students with disabilities shall compute the tuition rate as follows:

1. The approved private school for students with disabilities shall calculate the student's ADE based on the number of hours enrolled in the program relative to the total number of possible hours of the program.

2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

**6A:23A-18.3 New approved private schools for students with disabilities**

(a) A prospective applicant shall file an application to establish an approved private school for students with disabilities with the Office of Special Education Programs and obtain approval of such application from the Commissioner prior to operating an approved private school for students with disabilities.

1. A currently approved private school for students with disabilities which is expanding a program to another location or opening a new program is considered a new private school subject to (a) above.

2. A currently approved private school for students with disabilities that is expanding a program, or adding a new class type(s) to be housed in another building at the current

location, shall not be considered a new private school for students with disabilities and shall charge as a tentative tuition rate the tuition the school is currently charging.

(b) An applicant applying for approval as a new private school for students with disabilities shall provide evidence to the Department that there is sufficient need for the new private school as defined as follows:

1. The applicant shall submit documentation of intent signed by the superintendent of the sending district board of education to place a student in the new program and verification that there is no other appropriate placement for the student(s); and

2. The applicant shall file an application to establish an approved private school for students with disabilities with the Office of Special Education Programs and document the need for a minimum of 24 public school placement students in order to be approved by the Commissioner.

(c) Applicants that meet the criteria in (b) above, shall be approved as follows:

1. The school shall receive preliminary approval to operate for a two year period, after which the school shall provide documentation that the school has a minimum ADE of 24 public school placement students by the end of the second school year;

i. A school meeting the minimum ADE of 24 public school placement students by the end of the second school year shall receive new school approval;

ii. A school not meeting the minimum ADE of 24 public school placement students by the end of the second school year shall have its preliminary approval status revoked and shall no longer be considered an approved private school for students with disabilities;

iii. Any previously approved private school for students with disabilities that falls below the previous minimum ADE of 16 public school placement students in a school year shall have its status as an approved private school for students with disabilities rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for students with disabilities;

iv. Any new private school for students with disabilities approved in 2004-05 or thereafter that falls below an ADE of 24 public school placement students in a subsequent school year shall be considered preliminarily approved. The school shall attain a minimum ADE of 24 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an approved private school for students with disabilities;

v. Approved private schools for students with disabilities operating in and affiliated with a public school are exempt from (b)2 and (c)1i, ii, iii and iv above; and

vi. An approval for an approved private school for students with disabilities operating in and affiliated with a public school is restricted to operate in the public school district location only. An approved private school for students with disabilities operating in and affiliated with a public school that chooses to move to a location other than in a public school location shall comply with (a) and (b) above and this section.

(d) An approved private school for students with disabilities shall amortize start-up costs, if any, over a 60-month period.

(e) For the first two years of operation of an approved private school for students with disabilities, the tentative tuition rate charged at each site shall be established annually and be based on budgeted allowable costs. An approved private school for students with disabilities shall submit such estimated cost(s) to the Assistant Commissioner, Division of Finance for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Assistant Commissioner, Division of Finance which provides for, but is not limited to, the following:

1. Fiscal and programmatic data;
2. Projected allowable cost items and projected enrollments;
3. A projected budget that reflects administrative costs not in excess of, and instructional costs not less than, the percentages identified in N.J.A.C. 6A:23A-18.2(a)3 and as defined in the chart of accounts;
4. A report of all funding resources;
5. An affidavit of compliance; and
6. A statement of assurance.

(f) If the Commissioner approves the tentative tuition rate charged, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per student for the first two years of operation.

(g) If, after each year of operation, the tentative tuition rate charged differs from the final tuition rate charged, the tentative tuition charges will be adjusted in accordance with N.J.A.C. 6A:23A-18.4.2.

(h) In addition to this section, new approved private schools for students with disabilities shall be regulated in accordance with this subchapter.

#### **6A:23A-18.4 Bookkeeping and accounting**

(a) An approved private school for students with disabilities shall maintain accounting and bookkeeping systems as prescribed in Financial Accounting for New Jersey Private Schools for students with disabilities issued by the Department in accordance with the following standards:

1. An approved private school for students with disabilities shall maintain accounts in accordance with generally accepted accounting principles (GAAP) as defined by the American Institute of Certified Public Accountants, except as already modified in this chapter.

2. At a minimum, an approved private school for students with disabilities shall use accrual accounting on a quarterly basis.

3. An approved private school for students with disabilities shall capitalize fixed asset expenditures of \$2,000 or more and depreciate such expenditures using the straight line depreciation method and using a useful life consistent with current Federal tax law as defined in Internal Revenue Code Section 168 and class lives as defined in that section (also see IRS Publication 946), except for real property which may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.

4. An approved private school for students with disabilities shall capitalize leasehold improvements and depreciate such improvements using the straight-line method and a useful life equal to that of the lease, but not less than five years.

5. An approved private school for students with disabilities shall maintain asset, liability and fund balance accounts, as well as expenditure and revenue accounts.

6. Non-profit organizations shall maintain financial records on a fund basis, which requires that restricted or unrestricted donations shall be maintained in funds separate from the public school restricted fund. Costs incurred as a result of restricted or unrestricted donations shall be charged to the appropriate fund and not through the public school restricted fund. Profit-making organizations shall maintain financial records on a modified fund basis.

7. A chart of accounts issued by the Commissioner shall be maintained by each approved private school for students with disabilities. Effective July 1, 2002, a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems 2003, developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Commissioner for use in the accounting systems of all approved private schools for students with disabilities shall be used for financial reporting to the Department. For entities that operate other programs and the total private school tuition expenses are less than 51 percent of the entity's total expenses, the Commissioner may approve the use of an alternative chart of accounts, but the private school shall provide evidence that such chart of accounts may be cross-walked to the prescribed chart of accounts.

8. If multiple facilities for a private school have been approved, financial information shall be segregated by facility in the bookkeeping records. If the approved private school for students with disabilities chooses to charge tuition rates by class type, financial information shall be segregated by class type 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; and
- vi. Fixed asset inventory.

9. An approved private school for students with disabilities shall maintain documentation to verify all amounts recorded in the general ledger. 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 and services. 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 used.

10. An approved private school for students with disabilities shall prepare a payroll that is supported by an accurate 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 minimum semi-monthly. An employee time record shall be prepared for all employees of the private school for students with disabilities including all administrative employees.

11. An approved private school for students with disabilities shall prepare a financial report in a format prescribed or approved by the Commissioner each quarter at a minimum for the school year program. This report shall be submitted to the school's governing body and its acceptance shall be documented in the minutes of the meetings.

12. An approved private school for students with disabilities shall maintain acceptable internal control practices, which include the separation of duties such as the recording and authorizing of checks and purchase approvals.

13. An approved private school for students with disabilities shall use the mandated tuition contract prescribed by the Commissioner for each student received from a district board of education. The mandated tuition contract may only be revised by the approved private school for students with disabilities or the sending district board of education with prior written approval by the Commissioner.

14. An approved private school for students with disabilities that incurs contingent pay increases shall have in place an employee contract that contains the criteria by which the increase will be paid. The plan shall be submitted to the Commissioner for approval prior to implementation. The private school shall make payment of such increase upon achievement of the contractual contingencies as set forth in the approved plan. Such payment shall not be at the discretion of management. The employee contract shall contain the following:

i. The date and signature of both the staff member and authorized school representative;

ii. The average daily enrollment contingency the approved private school for students with disabilities must achieve in order to generate the increase; and

iii. The specific dollar amount or percentage of original contracted salary to be paid pursuant to (a)14ii above.

15. An approved private school for students with disabilities that incurs merit pay increases shall have adopted a formal board policy that outlines the criteria of the merit pay plan(s). The plan(s) shall be submitted for approval to the Commissioner prior to implementation. The private school shall make payment of such merit pay increase upon achievement of the criteria set forth in the approved plan, but no later than the following January 31st. Such payment shall not be at the discretion of management. 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; and
- v. The date of board approval and date of initiation of the plan(s).

16. A petty cash fund shall be approved by the governing body and supported by documentation. The fund shall not exceed \$1,500 and, disbursements shall not exceed \$150.00, except in the case of an emergency.

17. 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.

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. The mileage record shall be maintained on a trip by trip basis and include any personal use including to/from work commutation. At the end of the fiscal year, the percentage determined by the total

personal miles to total miles shall be applied to all costs associated with the vehicle(s) and those costs shall be excluded from the actual allowable costs. Vehicle costs may include, but not be limited to, the following: depreciation, lease costs, gas, oil, repairs and maintenance, insurance and car phone.

19. Upon request from the Commissioner:

i. A profit-making approved private school for students with disabilities shall submit a copy of the Internal Revenue Service (IRS) tax return; and

ii. A non-profit approved private school for students with disabilities shall submit a copy of IRS form 990.

20. An approved private school for students with disabilities shall maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the audit.

21. A non-profit entity that has chosen to cease operations as a non-profit private school for students with disabilities shall distribute its accumulated public school placement restricted working capital fund to each sending district board of education that had enrolled students during the private school's last five years of operation.

i. The distribution shall be based on each district board of education's total ADE in the private school for the last five years of operation to the private school's total ADE for the same period.

ii. Within 90 days of filing the required year-end audited financial statements with the Department in accordance with N.J.A.C. 6A:23A-18.9, the private school shall submit to the Commissioner a listing of the total distribution of the public school placement restricted working capital fund, by sending district board of education.

22. An approved private school for students with disabilities shall ensure that school staff, outside consultants and subcontractors including members of a management company hold the proper school certification, license or bachelor's degree required pursuant to N.J.A.C. 6A:23A-18.1 to provide the services being rendered.

(b) An approved private school for students with disabilities that 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 to 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.

(c) An approved private school for students with disabilities shall execute an employment contract annually with each school employee whose position requires a certificate, license or a bachelor's degree, which contains the following information:

1. Name of employee;
2. Dates of employment;
3. Work hours;
4. Certification(s) and/or degree(s) held;
5. Job description;
6. Job title; and
7. Salary.

(d) An approved private school for students with disabilities shall request approval from the Department to purchase or rent in a related party transaction an administrative or

business office at a location outside of the approved private school for students with disabilities. At the Department's request:

1. The County Office of Education shall conduct an on-site facility review to determine if there is sufficient space at the school for these operations; and/or

2. The approved private school for students with disabilities shall submit documents to the Assistant Commissioner, Division of Finance that substantiate the need for additional space.

(e) An approved private school for students with disabilities shall ensure that its employees provide:

1. The instructional program to the students for which they are compensated during the hours the school is in session; and

2. All administrative and business functions on premises that are either owned or leased by the approved private school for students with disabilities, and during the private school's normal hours of operation with the exception of meetings and/or conferences held offsite related to the job function. If this is not deemed feasible for any administrative or business function, the school shall provide written justification to the Assistant Commissioner, Division of Finance and request approval of any reasonable alternative work location.

(f) An approved private school for students with disabilities shall establish, maintain and distribute an employee handbook to all staff. The approved private school for students with disabilities shall include in the employee handbook an outline of all employee fringe benefits. All employee fringe benefits shall be adopted in a board of directors meeting and documented in the board minutes prior to implementing the fringe

benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23A-18.5(a)23 for which costs are deemed allowable are as follows:

1. Health insurance coverage (including dental and vision);
2. Life insurance;
3. Type(s) and qualification for retirement plan(s);
4. Severance pay;
5. Vacation;
6. Long term disability;
7. Sick day and personal day benefits;
8. Premium-only plans;
9. Cafeteria plans;
10. Section 125 plans;
11. Tuition reimbursement; and

12. Other benefits for which an approved private school for students with disabilities has applied and received written approval from the Commissioner.

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

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

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

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

(k) An approved private school for students with disabilities shall issue compensation increases after the start of the fiscal year only in accordance with N.J.A.C. 6A:23A-18.2q, and when the increase:

1. Is due to a staff member(s) promotion that results in additional job responsibilities;
2. Is due to a staff member(s) attaining a higher degree or certification;

3. Is due to a staff member(s) additional job responsibilities such as a coach, class or school advisor or mentor;

4. Is in accordance with (a)14 or 15 above; or

5. Has been approved by the Department after review of a formal written request to the Assistant Commissioner, Division of Finance documenting the facts supporting the increase, if none of the above applies.

(l) An approved private school for students with disabilities shall ensure that employees which are new to the positions listed below on or after July 1, 2006 possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23A-18.1. In addition, approved private schools for students with disabilities shall ensure that employees functioning in the following positions on or before June 30, 2006 either currently possess the appropriate bachelor's degree as defined in N.J.A.C. 6A:23A-18.1 or, will obtain the proper bachelor's degree no later than June 30, 2006, or will be removed from the position:

1. Director;

2. Assistant Director;

3. Executive Director; and

4. Business Manager.

(m) An approved private school for students with disabilities that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-18.5(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-18.5(a)56 shall include these costs in the certified actual cost per student on the cash basis of accounting.

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

(o) An approved private school for students with disabilities shall comply with the maximum salaries determined in accordance with N.J.A.C. 6A:23A-18.2(o) and (p) and restricted in accordance with N.J.A.C. 6A:23A-18. 5(a) 6, 8 and 9 regardless of the job titles used and whether these job titles comply with the list of job titles published by the Commissioner.

(p) An approved private school for students with disabilities shall under no circumstances other than in accordance with N.J.A.C. 6A:23A-18.4(k), provide compensation increases after the start of the fiscal year.

#### **6A:23A-18.5 Non-allowable costs**

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

1. An administrative cost in excess of and/or instructional cost less than the percentages indicated in N.J.A.C. 6A:23A-18.2(a)3;
2. The cost of maintaining an administrative office in a private home or other residence;
3. An advertising cost in excess of 0.5 percent of the private school's for students with disabilities actual allowable costs not including advertising;
4. Any cost associated with lobbying including salaries and fringe benefits

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

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

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

6. The salary of a professional staff member, consultant or subcontractor including a member of a management company who is not certified but is functioning in a position requiring certification in accordance with N.J.A.C. 6A:9 or bachelor's degree required in accordance with this subchapter;

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

8. A salary in excess of the associated maximum allowable salary determined in N.J.A.C. 6A:23A-18.2(o), (p) and (q) for a staff member or consultant whose position requires certification, license or a bachelor's degree including a director, assistant director, executive director, and business manager.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23A-18.2(e) and (f);

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

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

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

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

9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries determined in N.J.A.C. 6A:23A-18.2(o), (p) and (q) whose position does not require certification, license or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23A-18.1.

i. An approved private school for students with disabilities shall prorate salaries for such part-time or split-time positions including salaries in entities described in N.J.A.C. 6A:23A-18.2(e) and (f).

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

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

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

(3) Subtract the amount calculated in item (a)9ii(2) above from the amount calculated in item (a)9ii(1) above and if the result is a positive amount this is the non-allowable part-time or split-time salary.

10. The cost of fringe benefits that are based on a non-allowable salary;

11. A legal, accounting or consultant fees 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 factors that include, but may not be limited to, the following:

- i. Overall merit of the claim; and
- ii. Whether the challenge serves the public interest;

12. A consultant fee for services:

i. That are not detailed in an executed written contract that includes a list of the nature of the services provided, the approximate number of days to complete the work, the charge per day and the product or outcome of the consultation; and

ii. Are performed by a consultant who does not possess the appropriate school certification when such certification exists;

13. Total contributions, donations, awards and scholarships in excess of \$1,500;

14. Depreciation that is unacceptable under N.J.A.C. 6A:23A-18.4(a)3 and (a)4, and depreciation:

- i. On donated goods and assets;
- ii. That is not based on estimated straight-line method;
- iii. On autos in excess of the dollar or percentage limitation contained under

Internal Revenue Service Code Section 280F including any passenger vehicle not used in

transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);

iv. On a stepped up basis resulting from the sale to a related party as defined in Internal Revenue Service Code Section 318 for Constructive Ownership of Stock. For a not-for-profit organization, Section 318 will apply to the members of the Board of Directors or related parties as defined in Section 267(b) or 267(c) of the Internal Revenue Code unless the gain from such a sale was used to offset tuition for a prior year; and

v. On a stepped up basis from transfer from one spouse to another upon death as defined in Internal Revenue Code Section 1014;

15. The yearly cost of a lease for a vehicle in excess of the maximum depreciation allowed in any given year without regard to special deductions allowed by the Internal Revenue Code under Section 280F (a) (1) (A) (for example: \$4,100 for second year can be applied to all years of the lease) including the amortization of the lease down payment over the term of the lease. This applies to any passenger vehicle not used for transporting students or supplies without regard to the weight class exceptions under 280F (d) (5) (A);

16. An investment expense associated with the purchase/sale of stock, securities, other investment instruments or other investments not associated with the education of disabled children;

17. Total costs in excess of \$1,000 incurred for entertainment expenses;

18. The cost of food/beverages in excess of \$3,000 for activities such as, but not limited to staff meetings, parent/teacher meetings, workshops and professional development seminars for parents or teachers;

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 of meals:

i. For students when the meals do not meet the nutritional requirements of the Child Nutrition Program as administered by the New Jersey Department of Agriculture;

ii. Effective July 1, 2007 for students when a non-profit approved private school for students with disabilities has not applied for and received funding from the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to apply for and receive funding from the Child Nutrition Program (CNP);

iii. Effective July 1, 2007 for students when the approved private school for students with disabilities has not charged students for paid and reduced meals in accordance with the income eligibility criteria established by the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to charge students for a reduced and/or paid meal; and

iv. For staff except as allowable in accordance with N.J.A.C. 6A:23A-18.5(a)18;

21. The cost of keyman insurance except where a term insurance policy is required by a lender as collateral for a loan;

22. The cost of an employee's life insurance coverage, both term and whole life policies, in excess of 3.5 times their gross salary;

23. Fringe benefits:

i. When the benefits are determined in an arbitrary or capricious manner including, but not limited to, class of employee whether by title or position rather than on an existing written uniform policy based on an equitable standard of distribution, such as years of service or education. The criteria cannot be exclusionary regardless if based on an equitable standard of distribution, such as years of service or education;

ii. When the fringe benefit has not been adopted by the school's Board of Director's at a board meeting prior to the implementation of the benefit, documented in the board minutes and the employees were not made aware of the policy; and

iii. When the benefit is not listed in N.J.A.C. 6A:23A-18.4(f) or not approved by the Commissioner;

24. The cost of fund raising, such as a financial campaign, an endowment drive or solicitation of a gift and bequest that is done to raise capital or obtain a contribution;

25. Goodwill;

26. 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 and has not been repaid in accordance with the Department's approval letter; and

iii. The loan is not exclusively used to meet program needs;

27. 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; and

iii. The interest costs are on the portion of the loan term that exceeds the recovery period for depreciation of the fixed asset securing the loan;

28. A loss incurred on the sale or exchange of fixed assets between related parties;

29. The write-off of uncollected accounts receivable (bad debts) before three years has elapsed and before a reasonable effort has been made to collect such accounts receivable;

30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;

31. Retirement plan costs that are:

i. Not in conformance with the Employee Retirement Income Security Act of 1974, P.L. 93-406, and its successor legislation and that exceed costs allowed by the Internal Revenue Service;

ii. For a non-qualified retirement plan(s);

iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount (see Internal Revenue Code Section 415(c)) as the lesser of 100 percent of the employee's compensation or \$44,000;

iv. For a defined benefit plan in excess of an amount, by employee, which would allow the defined plan to provide a benefit in excess of the percentage of the employee's

number of years of service divided by 55 times the highest three year average salary and at an age prior to age 55;

v. For contributions to a retirement plan that are not applied consistently in accordance with (a)23 above even if in compliance with ERISA. Such excess contributions as determined will be deemed a non-allowable cost;

vi. Not paid to a qualified plan within nine months of the end of the fiscal tax year of the approved private school for students with disabilities;

vii. Not paid in accordance with the fringe benefits criteria in (a)23 above; and

viii. If applicable, not in conformance with a church plan as defined in ERISA;

32. The cost associated with a conference, meeting or seminar held in countries not contiguous to the United States;

33. The costs of a contingent pay increase or merit pay award when such amount(s) were not in accordance with N.J.A.C. 6A:23A-18.4(a)14 or 15 or the contingent pay increase or merit pay award(s) are not consistent with the plan(s) submitted to and approved by the Commissioner prior to implementation;

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, in which case, the approved private school for students with disabilities shall obtain documentation from the airline or travel agent;

35. The cost for meals and hotel accommodations associated with daily or overnight travel in excess of those contained in New Jersey Office of Management and Budget (OMB) Circular Letter 98-03 OMB as amended and supplemented;

36. A payment of a bonus;

37. A loss on an investment;
38. The cost of staff salaries, supplies or printing and reproduction of a material for a research activity;
39. Payment of Federal, State and local income taxes on income other than tuition;
40. Any cost associated with travel to and from the officer's or employee's home and the school or agency;
41. All personal expenses, such as a personal travel expense or repair on a personal vehicle;
42. Personal use of a school-owned or leased vehicle, which includes to/from work commutation as determined in accordance with N.J.A.C. 6A:23A-18.4(a)18;
43. Any costs associated with a school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services where a mileage log was not maintained;
44. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the United States Internal Revenue Service for automobile travel;
45. Transportation costs for a student to and from school, except where the student's IEP requires after school activities;
46. Rental costs for buildings and equipment when the lessor is not a separate legal entity;
47. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, those between divisions of an institution; institutions or organizations under common

control through common officers, directors, or members; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:

i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23A-18.4(a)3, mortgage interest, real estate taxes, property insurance and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The approved private school for students with disabilities shall include in the lease agreement a list of anticipated costs to be incurred by the property owner, prepared in the format supplied by the Commissioner, signed by the property owner and notarized;

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

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

iv. Cost of personal services paid to a related party when such services are provided by an employee or consultant of the approved private school for students with disabilities

acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year including, but not limited to, wages, salaries, management fees and fringe benefits; and

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

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

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

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

50. Indirect and direct costs associated with unrelated activities or enterprises as defined in N.J.A.C. 6A:23A-18.2(g);

51. Cost of the year-end audited financial statements prepared by an individual who does not meet the requirements contained in N.J.A.C. 6A:23A-18.9(a);

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

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

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

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

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

53. Salary of a staff member that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23A-18.4(a)10;

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

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

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

with disabilities and have less than 10 years of service in an approved private school for students with disabilities;

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

58. Cost of employee severance pay:

- i. In excess of four weeks' salary; and
- ii. If, in addition, the cost of a buyout of the employee's contract;

59. Cost of a buyout of an employee contract:

- i. In excess of 90 days' salary; and
- ii. If, in addition, the cost of the employee's severance pay;

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

61. Cost to purchase or rent in a related party transaction an administrative office or business office at a location other than at the approved private school for students with disabilities location that was not approved in accordance with N.J.A.C. 6A:23A-18.4(d);

62. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23A-18.4(k); and

63. Start-up costs in excess of those allowed in N.J.A.C. 6A:23A-18.3(d);

64. Costs including salaries and fringe benefits of employees providing services not in compliance with N.J.A.C. 6A:23A-18.4(e)2;

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

- i. A criminal history clearance prior to starting employment or;
- ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;

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

67. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23A-18.2(r) and determined in accordance with N.J.A.C. 6A:23A-18.4(o) and (p); and

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

**6A:23A-18.6 Surcharge**

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

(b) For profit-making schools, interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is an unrestricted revenue and is not part of the school's surcharge computation.

(c) For profit-making schools, the allowable Federal, State and local income tax liability in N.J.A.C. 6A:23A-18.5(a)39 is computed using only the public school placement tuition income and all allowable and non-allowable approved private school for students with disabilities expenses that are allowable tax deductions on the school's Federal, State and local income tax returns.

(d) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added to the total allowable costs to determine the certified actual cost per student.

**6A:23A-18.7 Public school placement restricted working capital fund**

(a) For approved non-profit private schools for students with disabilities, the school's tuition rate may include an amount that will permit the school to establish a public school placement restricted working capital fund of up to 15 percent of the private school's allowable actual costs, for the 2006-2007 through 2007-2008 school year, but the private school shall not include an amount in excess of 2.5 percent of the private school's allowable actual costs per year.

(b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the school's total allowable costs incurred in account numbers classified as undistributed expenditures—business and other support services when calculating the certified actual cost per student.

(c) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added the total allowable costs to determine the certified actual cost per student.

(d) Interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is unrestricted revenue and is not part of the school's public school placement restricted working capital fund computation.

**6A:23A-18.8 Calculation of student attendance**

(a) Each approved private school for students with disabilities shall maintain a school register in accordance with N.J.A.C. 6A:32-8, to record all student attendance.

(b) Each approved private school for students with disabilities shall submit to the Commissioner by September 1 verification of the average daily enrollment for the previous school year on forms provided by the Department.

(c) Each approved private school for students with disabilities shall identify private placements in the register.

(d) Each approved private school for students with disabilities shall maintain a separate register by class type.

**6A:23A-18.9 Audit requirements**

(a) Regardless of the fiscal year of the school, each approved private school for students with disabilities shall submit to the Commissioner audited financial statements based on the July 1 to June 30 school year which must be postmarked on or before November 1 or the following business day if November 1 falls on a weekend or holiday.

1. The approved private school for students with disabilities shall engage only an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey to conduct the annual audit, who holds a valid registration license as a public school accountant of New Jersey. The approved private school for students with disabilities shall ensure the independent status of the auditor in accordance with standards set forth in the Code of Professional Ethics issued by, and

available from, the American Institute of Certified Public Accountants (AICPA). Additionally, upon review by the Department, 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 approved private school for students with disabilities.

(b) The audit shall follow generally accepted auditing standards (GAAS), as set forth in the Codification of Statements on Auditing Standards, 1993, published for the American Institute of Certified Public Accountants, (1211 Avenue of the Americas, NYC, NY 10036-8775), incorporated herein by reference, as amended and supplemented and when applicable, OMB Circular A-133 or NJOMB Circular Letter 98-07 as amended and supplemented. The approved private school for students with disabilities shall ensure the use of the auditing guidelines as published and distributed by the Commissioner.

1. The approved private school for students with disabilities shall ensure that the audit includes basic financial statements, required supplementary information, schedules and narrative explanations.

(c) The approved private school for students with disabilities shall ensure that the audited financial statements reflect the certified actual cost(s) per student as determined by the independent auditor and final tuition rate(s) charged at the end of the school year as determined by the school's management.

(d) The approved private school for students with disabilities management representative(s) shall discuss with the auditor the results of the auditor's determination of the certified actual cost per student in order for management to determine the final tuition rate charged as a result of the audit.

1. The approved private school for students with disabilities shall charge as the final tuition rate an amount equal to or less than the certified actual cost per student.

2. The approved private school for students with disabilities shall ensure that the audit report contains a letter signed by both the school auditor and an authorized school representative indicating that both parties have met and discussed the audit, and that the determination of the final tuition rate charged was a management decision.

(e) Within 60 days of receipt of the year-end audit, school management shall develop a corrective action plan pursuant to this subchapter in response to recommendations contained in the year-end audit, and shall submit such corrective action plan to the Assistant Commissioner, Division of Finance for review and approval.

(f) The approved private school for students with disabilities shall not amend the final tuition rate charged after certification by the Commissioner.

(g) Any adjustments that result from the certified audit or a tuition audit performed by the Commissioner that are in excess of \$10.00 per sending district board of education will be paid in accordance with N.J.A.C. 6A:23A-18.2(l) and (m).

(h) An approved private school for students with disabilities that files an audit postmarked after November 1 shall cause the tentative tuition rate per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and N.J.A.C. 6A:23A-18.2(j) will not apply.

(i) Failure to comply with this section may result in the Commissioner placing the approved private school for students with disabilities on conditional approval status.

(j) Upon request, the approved private school for students with disabilities shall submit to the Department a copy of the corporation's agency wide audited financial statements.

#### **6A:23A-18.10 Appeals**

(a) The decision of the Assistant Commissioner, Division of Finance regarding the calculation of the tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.2(j), regarding the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.3 and regarding conditional approval status pursuant to N.J.A.C. 6A:23A-18.9(i), may be appealed in accordance with N.J.A.C. 6A:3.

(b) The decision of the Assistant Commissioner, Division of Finance in regard to certification may be appealed in accordance with N.J.A.C. 6A:3.

(c) The decision of the Commissioner in regard to N.J.A.C. 6A:23A-18.3, New private schools for students with disabilities, may be appealed to the State Board of Education in accordance with N.J.S.A. 18A:6-27 and N.J.A.C. 6A:4.

#### **6A:23A-18.11 Out-of-State approved private schools for students with disabilities**

(a) Out-of-State private schools for students with disabilities shall be approved to provide special education programs by the department of education of the state in which they are located. Exceptions to this requirement may be made only at the discretion of the Office of Special Education, New Jersey Department of Education in accordance with N.J.A.C. 6A:14-7.1(e).

(b) The Commissioner shall abide by the tuition regulations for approved private schools for students with disabilities adopted by the department of education or other

regulatory agency in the state in which the private school for students with disabilities is located. The approved private school for students with disabilities shall submit verification of the approval of the tuition rate to the Commissioner either on prescribed forms or verification from the out-of-State Department of education or other regulatory agency.

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

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

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

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the approved private school for students with disabilities shall file a budget in a format prescribed by the Commissioner to determine a tentative tuition rate and shall comply with the provisions of this subchapter in order to collect tuition from a New Jersey district board of education or agency. The cost of the audit contained in N.J.A.C.

6A:23A-18.9 may be charged to the sending district board of education or agency that did not mutually agree to the tuition rate.

**6A:23A-18.12 Inspection of records**

(a) All financial and accounting records maintained by the approved private school for students with disabilities, as required by this subchapter, shall be open during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.

(b) All financial and accounting records maintained by a related party which pertain to a transaction between a related party and the approved private school for students with disabilities shall be open during normal business hours for review and audit by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.

(c) All auditor's workpapers used in the preparation of the year-end audited financial statements shall be open during normal business hours for review by the Commissioner or his or her representative(s) for the period indicated in N.J.A.C. 6A:23A-18.4(a)20.

**6A:23A-18.13 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans**

(a) The Commissioner or his or her representative(s) shall monitor approved private schools for students with disabilities in accordance with this subchapter. On site monitoring shall be conducted at least every six years.

(b) The monitoring process may include, but is not limited to, all financial information required in this subchapter.

(c) After the monitoring process is completed, a report shall be written and sent to the approved private school for students with disabilities, the executive county superintendent and the school's auditor.

(d) If the school receives a final report that indicates noncompliance, a corrective action plan shall be developed and submitted to the Department for approval.

(e) The corrective action plan shall include, but is not limited to, the following:

1. Objective and strategies for correcting each noncompliance item; and
2. The dates by which noncompliance will be corrected.

(f) When an approved private school for students with disabilities is determined to be in noncompliance, the Commissioner may:

1. Issue a conditional approval status when noncompliance with State rules and/or implementation of the corrective action plan is demonstrated; or

2. Immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger.

(g) The actions of the Commissioner may be appealed according to N.J.A.C. 6A:3.

(h) Annually, the Department shall publish the results of the on-site fiscal monitoring of private schools for students with disabilities.

#### **6A:23A-18.14 Fiscal information**

(a) Annually, each approved private school for students with disabilities shall submit information to the Assistant Commissioner, Division of Finance including, but not limited to:

1. Fiscal and program information, including:

- i. The number of students served;
- ii. The number of and types of class types;
- iii. Number of schools days; and
- iv. The daily hours in session;

2. Staffing information, including:

i. A staff roster, including, but not limited to, names, job titles, salaries, hours worked, certification(s), degree(s) and license(s) held;

3. An affidavit that the program meets the standards of, and is conducted in full compliance with the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and Title II and III of the Americans with Disabilities Act, P.L. 101-336, N.J.S.A. 18A:46-1 et seq., this subchapter, and N.J.A.C. 6A:14; and

4. An affidavit that the owners/operators of the program are aware of the non-allowable costs contained in N.J.A.C. 6A:23A-18.5 and that such costs charged as allowable costs in the private school for students with disabilities tuition rate are consistent with the individualized education program of a disabled student and shall be reasonable, that is, ordinary and necessary and not in excess of the cost which would be incurred by an ordinarily prudent person in the administration of public funds.

(b) Annually, the Department shall publish a Private School for Students with Disabilities Comparative Spending Guide.

(c) An approved private school for students with disabilities shall have a copy of the board of director's minutes, or for a partnership, the minutes of the partners meetings available upon request by the Department.

**6A:23A-18.15 Failure to comply with Department directives**

The Department may place an approved private school for students with disabilities on conditional approval status when the school fails to comply with Department directives, such as, but not limited to, failure to refund tuition funds as a result of a Department tuition audit.

**6A:23A-18.16 Sale of assets of an approved private school for students with disabilities**

In the event of the sale of the assets from one approved private school for students with disabilities to either a new approved private school for students with disabilities or an existing approved private school for students with disabilities, the selling school must provide the Department with a copy of the sale agreement, copy of the allocation of purchase price as defined in Section 1060 of the Internal Revenue Code (Internal Revenue Service Form 8594) and the selling school must provide a final financial report within 90 days of the sale showing the disposition of its assets and any corresponding refunds to the sending districts based on the sale of assets (books, supplies, desks, computers, equipment under \$2,000, depreciable equipment, etc) other than Class VI or VII as defined in the IRC cited above (goodwill, going concern, etc).

**SUBCHAPTER 19. EMERGENCY STATE AID AND RESIDENCY DETERMINATION**

**6A:23A-19.1 Emergency aid**

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

(b) A district board of education may request emergency aid pursuant to N.J.S.A. 18A:58-11 as follows:

1. The district board of education shall submit to the executive county superintendent as follows:

i. A resolution that indicates the specific requested amount of emergency aid and identifies the emergency condition that exists within the school district;

ii. A detailed statement about the emergency condition, which indicates the reason why the condition was unforeseeable and/or why the costs associated with the condition were unforeseeable;

iii. The board secretary's latest monthly financial report, accompanied by a statement showing the projected end of the year general fund free balance, a detailed accounting of how the emergency aid will be expended; and

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

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

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

(d) The executive county superintendent shall submit a recommendation regarding a request for emergency aid and all of the information submitted by the district board of education making the request to the Division of Finance to determine whether to recommend to the Commissioner that a request be sent to the State Board of Education for approval.

1. In determining whether a recommendation for emergency aid will be sent to the State Board of Education, the Department will consider the extent the district board of education budgeted an adequate level of surplus for unexpected expenditures.

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

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

#### **6A:23A-19.2 Method of determining the district of residence**

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

1. The "present district of residence" of a child in a residential state facility defined in N.J.S.A. 18A:7F-45 and referred to in the first paragraph of N.J.S.A. 18A:7B-12b means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.

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

3. If the State becomes the child's legal guardian after the date of the child's initial placement by a State agency, the State will assume financial responsibility for the child's educational costs in subsequent school years.

(b) The "present district of residence" or "district of residence" referred to in N.J.S.A. 18A:7B-12b shall be determined by the Commissioner or his or her designee based upon the address submitted by the Department of Corrections, the Department of Human Services or the Juvenile Justice Commission on forms prepared by the Department of Education.

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

(d) A district board of education contesting the Department's determination of district of residence shall submit a written notification of a dispute to the Division of Finance,

within 30 days of the receipt of a final notice that a child was determined to be a resident of the district for purposes of State funding. As part of this written notice, the following information shall be submitted:

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

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

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

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

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

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

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

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

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

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

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

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

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

## **SUBCHAPTER 20. PURCHASE AND LOAN OF TEXTBOOKS**

### **6A:23A-20.1 Eligibility**

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

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

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

### **6A:23A-20.2 Responsibility of the district board of education**

A district board of education shall distribute to all students on an equitable basis existing book stocks and newly purchased textbooks purchased pursuant to N.J.S.A. 18A:58-37.1 et seq. A district board of education shall not discriminate against students in either public or nonpublic schools.

**6A:23A-20.3 Individual requests**

(a) Individual written requests signed by the parent(s) or legal guardian(s) of nonpublic school students for the loan of textbooks are addressed to the district board of education in which the nonpublic school is located.

(b) Individual requests are submitted directly to the district board of education in which the nonpublic school is located or to the nonpublic school. In the latter case, the nonpublic school official shall forward such requests collectively to the district board of education.

(c) Individual requests are due on or before March 1 preceding the school year.

(d) A district board of education shall purchase textbooks in accordance with district board of education policy and purchasing practices.

(e) Students attending public schools are not required to submit such requests.

**6A:23A-20.4 Ownership and storage of textbooks**

(a) All textbooks purchased under the provisions of N.J.S.A. 18A:58-37.1 et seq. remain the property of the district board of education, which shall indicate such ownership in each book by a label.

(b) The district board of education shall be responsible for the receipt of the textbooks from the vendor and inventory of such textbooks.

(c) The district board of education may require that the textbooks be returned to the district board of education at the end of the school year, or may enter into agreements with the nonpublic schools to store such books. In the event of such an agreement, the district board of education shall not pay storage charges of any kind to a nonpublic school for this service.

#### **6A:23A-20.5 Accounting entries**

(a) Expenditures for the purchase of textbooks may include the cost of freight or postage for transporting such books from the vendor to the district board of education.

(b) The district board of education shall enter the cost of textbooks for students enrolled in the public schools in the general current expense fund in the account designated in the minimum chart of accounts.

(c) The district board of education shall enter the cost of textbooks for nonpublic school students in the special revenue fund in the account designated in the minimum chart of accounts. The district board of education shall record state aid received pursuant to N.J.S.A. 18A:58-37.1 et seq. separately in the special revenue fund as State aid.

#### **6A:23A-20.6 Charge for textbook loss or damage**

(a) Each district board of education shall make reasonable rules and regulations governing the loan of textbooks, which may contain requirements for reimbursement by students to the district board of education for damage, loss or destruction of the loaned textbooks.

(b) Such rules and regulations are applicable to both public and nonpublic school students.

## **SUBCHAPTER 21. MANAGEMENT OF PUBLIC SCHOOL CONTRACTS**

### **6A:23A-21.1 Change orders and open-end contracts**

(a) Changes in quantities, work performed, services rendered, materials, supplies or equipment delivered or provided shall not be authorized, permitted or accepted, except by the procedures established in this section. All change orders are subject to N.J.A.C. 5:30-11 as applicable, and the following:

1. Each change order shall be in writing and shall be numbered consecutively (beginning with the number one) for each project or contract;

2. Change orders which result in payment reduction below the originally contracted price may be made by locally established procedure, provided that any change orders increasing costs on the same contract shall include reference to such reductions;

3. Quantities of items or work shall not be changed in such a manner as to nullify the effect of the competitive determination of lowest responsible price which was made at the time of contract award, provided that at said time the changes could have been reasonably foreseen; and

4. Responsibility required by this section to be exercised specifically by the district board of education or charter board of trustees may not be delegated. In those instances in which authority is to be exercised by some school official, the authority, responsibility and required procedures should be clearly spelled out in advance, by resolution.

(b) Orders placed under open-end contracts are not considered change orders for purposes of this section.

(c) Change orders for capital project contracts are governed by N.J.A.C. 6A:26-4.9.

(d) Change orders for contracts for materials, supplies and equipment that are not part a capital project contract are governed by the following:

1. Change orders may be used to change the number of units or items originally advertised and contract for, provided that:

i. Unit prices were sought at the time of advertising and included in the contract; and

ii. The advertising and the contract included a provision that the unit prices could be so used.

2. Change orders may not be used to substantially change the quality or character of the items to be provided, inasmuch as such factors would have been a factor in the original bidding.

3. Such changes shall not cause the originally awarded contract price to be exceed cumulatively by more than 20 percent net.

4. Availability of funds shall be certified by the school business administrator/board secretary prior to authorizing any change orders that increase costs.

5. Changes may be effectuated by the school official authorized to serve as purchasing agent, subject to such contracts or approval requirements as the district board of education or charter school board of trustees may lawfully impose.

6. Change orders may be authorized by the purchasing agent for price adjustment for petroleum products, provided:

i. There has been a determination by the school board attorney that such a price adjustment is authorized by law;

ii. That the original bidding specifications and contract so authorize;

iii. That an objective price benchmark not under the direct control of the supplier is utilized to establish the price changes, and that the changes are not for the purpose of correcting asserted bidding errors; and

iv. That adequate funds have been certified as being available.

(e) Change orders for professional and extraordinary unspecified services (EUS) contracts are governed by the following:

1. Changes shall be within the scope of activities of the original contract, and not for the purpose of undertaking new or different work or projects. Changes in payments for activities within the scope of activities of the contract shall be in accordance with a schedule of specific charges or rates contained in the contract and shall be effectuated by a written change order authorized by the appropriate school official. If such a schedule is not included in the contract, the contract shall be amended to provide for same.

2. If the change is not within the scope of activities of the original contract:

i. If the contract was awarded without competitive bidding being required by law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:18A-5a(2)), any change beyond the original scope of activities may be made by amendatory contract; and

ii. If the consulting contract was not a professional service and was required to be subject to competitive bidding, any change beyond the original scope of activity shall be by new contract based on new bidding.

3. The school business administrator/board secretary shall certify the availability of funds and that all required approvals have been received pursuant to N.J.A.C. 6A:23A-13 prior to authorizing any change order that increases costs.

4. An amendatory contract may be effectuated by the same method required for the authorization of the original contract.

(f) The issuance of purchase orders pursuant to an open-end contract is considered to be the carrying out of the contract and not a change order. The following requirements apply:

1. A district board of education or charter school board of trustees shall not use orders under open-end contracts for purposes such as changing the quality or character of items to be provided, nor to exceed the maximum number(s) of items or units provided for in the original specifications and contract. Such changes would constitute a change order;

2. The district board of education or charter school board of trustees shall execute such contract for a period not to exceed the requirements of N.J.S.A. 18A:18A-1 et seq., the Public School Contracts Law, unless specifically authorized by law;

3. The district board of education or charter school board of trustees shall execute a certificate of availability of funds each time an order is placed covering the amount of the order, unless the district board of education or charter school board of trustees wishes to commit and certify the full amount of the open-end contract at the outset. The certificate must be executed before the district board of education or charter school board of trustees incurs a contractual liability on its part; and

4. The school official authorized to serve as purchasing agent pursuant to N.J.S.A. 18A:18A-2 shall place such orders subject to such controls or approval requirements as the district board of education or charter school board of trustees may lawfully impose.

**6A:23A-21.2 Acceptance of bonds under the Public School Contracts Law**

(a) A district board of education or charter school board of trustees may require the following bonds, as authorized by N.J.S.A. 18A:18A-23 to 25:

1. A performance bond;
2. A bid bond; and/or
3. A labor and material bond.

(b) A district board of education or charter school board of trustees may require in the notice to bidders or in the specifications that bidders guarantee that they will enter into a contract with the district board of education or charter school board of trustees and will furnish any prescribed performance bond or other security required as a guarantee or indemnification. The guarantee may be given, at the option of the bidder, by certified check, cashier's check or bid bond. When the guarantee is given in the form of a bid bond, the district board of education or charter school board of trustees shall ensure that such bid bond:

1. Be given by a responsible surety or insurance company licensed to operate in New Jersey. A district board of education or charter school board of trustees is prohibited from requiring that bidders submit a bid bond from a particular surety or insurance company; or

2. Be given by a responsible individual residing in New Jersey. The district board of education or charter school board of trustees may reject such individual bid bond if it is not satisfied with the sufficiency of the individual surety offered.

(c) The district board of education or charter school board of trustees shall ensure that the bond is in the form of a certificate, identifying the bidder whose acts are guaranteed, the name of the surety company, insurance company or individual surety and the district board of education or charter school board of trustees in whose favor the bonds are given.

(d) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds is expressed in words and figures as a specific number of dollars and not as a percentage of the bid.

(e) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds is in the amount of 100 percent of the contract price.

### **6A:23A-21.3 Public sale of bonds**

(a) A district board of education may accept a financial surety bond in lieu of a certified, cashier's or treasurer's check as a bid deposit pursuant to N.J.S.A. 18A:24-41a, and in accordance with the rule adopted by the Local Finance Board at N.J.A.C. 5:30-2.10.

(b) A district board of education may choose to conduct the public sale of bonds through the submission of electronic bids or proposals, as authorized at N.J.S.A. 18A:24-

36a, and in accordance with the rules adopted by the Department of Community Affairs at N.J.A.C. 5:32-9 and 10.

**6A:23A-21.4 Contracts for behind-the-wheel driver education**

(a) A district board of education or charter school board of trustees shall negotiate or award by resolution at a public meeting contracts with private driver education schools providing behind-the-wheel driver education for any term not exceeding in the aggregate three years, pursuant to N.J.S.A. 18A:18A-42i, without public advertising for bids. The district board of education or charter school board of trustees shall indicate in such resolution that the private driver education school is required to provide behind-the-wheel driver education that is substantially equivalent to that provided by the district board of education or charter school board of trustees at less cost than current or other proposed programs.

(b) A district board of education or charter school board of trustees shall negotiate or award such contracts with approved private driver education schools. A driver education school holding a current license or certificate of approval issued by the Chief Administrator of the Motor Vehicle Commission is considered approved by the Commissioner of Education for the purpose of providing behind-the-wheel driver education. The district board of education or charter school board of trustees shall obtain from the private driver education school a copy of such current license or certificate of approval and maintain the copy on file with the contract.

**6A:23A-21.5 Joint purchasing systems**

A district board of education or charter school board of trustees may by resolution establish joint purchasing systems pursuant to N.J.S.A. 40A:11-11. Such joint purchasing system is effective only upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

#### **6A:23A-21.6 Multi-year leasing**

A district board of education or charter school board of trustees shall execute multi-year leases only as authorized by the Public School Contracts Law at N.J.S.A. 18A:18A-42f and in accordance with rules promulgated by the Department of Community Affairs at N.J.A.C. 5:34-3.

### **SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS**

#### **6A:23A-22.1 Definitions**

The words and terms as used in this subchapter are defined in subchapter 6A:23A-15.1.

#### **6A:23A-22.2 Bookkeeping and accounting for charter schools**

A charter school board of trustees shall comply with GAAP and other requirements and provisions as set forth in N.J.A.C. 6A:23A-16.

#### **6A:23A-22.3 Certification**

A charter school board of trustees shall employ or contract with a person who holds a New Jersey standard or provisional school business administrator certificate in accordance with N.J.A.C. 6A: 9-12.7 to oversee fiscal operations of the charter school.

#### **6A:23A-22.4 Financial requirements**

(a) A charter school board of trustees may incur debt for a period no greater than 12 months except:

1. During the first year that the charter school is approved when the debt is incurred by the charter school board of trustees for a period no longer than January 15 of the preceding school year to June 30 of the first school year of the charter; and

2. For all other years that the charter school is approved when the debt incurred by the charter school board of trustees for a period of 12 months or greater is:

i. Fully secured by the value of the real property or other asset, so that the total value of all such debt does not exceed the total appraised value of the property or asset by which the debt is secured; and

ii. Non-recourse to the charter school.

(b) A charter school board of trustees may acquire real property by a lease or a lease with an option to purchase for use as a school facility providing that the charter school board of trustees shall ensure:

1. The term of the lease does not exceed the length of the charter;

2. The lease contains a provision terminating the obligation to pay rent upon the denial, revocation, non-renewal or surrender of the charter; and

3. The lease does not contain a provision accelerating the obligation to pay rent in the event of default.

(c) A district board of education shall only transmit State and local public funds to a charter school after the final granting of the charter by the Commissioner has occurred. If funds are withheld pending the final granting of the charter, the district board of

education shall pay all withheld funds to the charter school with the first scheduled payment after the effective date of the charter.

(d) A charter school shall be subject to monitoring by the Commissioner to ensure that the percentage of school funds spent in the classroom is at least comparable to the average percentage of school funds spent in the classroom in all other public schools in the State. The calculation for this percentage in both the annual budget and the Comprehensive Annual Financial Report is based on National Center for Educational Statistics as published by the U.S. Department of Education.

(e) After completion of the school year, the district board of education may petition the Commissioner for a lower rate for the charter school's per pupil amount for the specific grade level if the charter school spends significantly less than budgeted and has accumulated a sizable surplus.

1. The Commissioner may reduce the rate based on a determination of excessive surplus. The criteria for excess surplus is determined by the Commissioner pursuant to N.J.S.A. 18A:7F-7.

2. A charter school may submit comments to the Commissioner regarding the petition for a lower rate for the charter school's budget amount per pupil for the specific grade level from the district of residence of the charter school or non-resident district(s).

(f) If, at any time, the Commissioner denies, revokes or does not renew a school's charter, or a charter school board of trustees surrenders its charter or becomes insolvent, all assets of the charter school board of trustees, after satisfaction of all outstanding claims by creditors, are subject to equitable distribution by the Commissioner among the participating district of residence and nonresident district(s). A charter school board of

trustees shall include a provision in its bylaws concerning distribution of assets upon denial, revocation, non-renewal or surrender of its charter or insolvency of the charter school that is consistent with this rule.

**6A:23A-22.5 Public school contracts law**

(a) A charter school board of trustees shall be subject to the provisions of the public school contracts law, N.J.S.A. 18A:18A-1 et seq.

(b) Any agency, corporation, person or entity that enters into a contract or agreement on behalf of a charter school board of trustees to provide administrative, educational or other services shall be subject to the provisions of the public school contracts law, N.J.S.A. 18A:18A-1 et seq.

**6A:23A-22.6 Public relations and professional services; board policies; efficiency**

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

1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined in N.J.A.C. 6A:23A-9.3(c)14, and each type of professional service, with appropriate notification to the board of trustees if it becomes necessary to exceed the maximum. Upon such notification, the board of trustees may adopt a dollar increase in the maximum amount through formal board action;

2. Establishment of procedures to ensure the prudent use of legal services by employees and board of trustees' members and the tracking of the use of those services.

3. Charter Schools with legal costs that exceed 130 percent of the statewide average charter school per pupil amount should establish the following procedures and if not established, provide evidence that such procedures would not result in a reduction of costs:

i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;

ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in charter school materials such as policies, administrative regulations or guidance available through professional source materials;

iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the business office and a process to determine whether the request warrants legal advice or if legal advice is necessary, and

iv. A provision to maintain a log of all legal counsel contact including name of legal counsel contacted, date of contact, issue discussed and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved;

4. A provision that requires that contracts for legal services comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:

- i. Advance payments shall be prohibited;
- ii. Services to be provided shall be described in detail in the contract;
- iii. Invoices for payment shall itemize the services provided for the billing period; and
- iv. Payment shall only be for services actually provided;

5. Professional services contracts are issued in a deliberative and efficient manner that ensures the charter school receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process; and

6. Professional services contracts are limited to non-recurring or specialized work for which the charter school does not possess adequate in-house resources or in-house expertise to conduct.

- i. Charter schools are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or cause of action on behalf of charter school administrators and/or any individual board members for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the charter school as a whole.

- ii. Charter school publications shall be produced and distributed in the most cost-efficient manner possible that will enable the charter school to inform and educate the target community. The use of expensive materials or production techniques where

lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, is prohibited.

iii. Public relations activities, such as booths at Statewide conferences, marketing activities and celebrations for opening schools and community events, and TV productions that are not part of the instructional program or do not provide, in a cost-effective way, information about charter school or board operations to the public, that are excessive in nature are prohibited. All activities involving promotional efforts to advance a particular position on elections or any referenda are prohibited.

iv. Nothing in this section shall preclude boards of trustees from accepting donations or volunteer services from community members, local private education foundations and local business owners to conduct or assist in public relations services. Examples include, but are not limited to:

(1) Providing charter school flyers, newsletters or other materials containing charter school related information of public concern to local businesses, public meeting places or other local organizations to display or make available for dissemination;

(2) Making charter school related information of public concern available to local newspapers to publish related articles; and

(3) Utilizing volunteered services of local community members, charter school employees, members of parent organizations or local businesses with expertise in related areas such as printing, advertising, publishing or journalism.

**6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance (OFAC) investigation report**

(a) Any charter school that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) shall discuss the findings of the audit or investigation at a public meeting of the charter school board of trustees no later than 30 days after receipt of the findings.

(b) Within 30 days of the public meeting required in (a) above, the charter school board of trustees shall adopt a resolution certifying that the findings were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings. This resolution shall be submitted to OFAC within 10 days of adoption by the board of trustees.

**6A:23A-22.8 Verification of payroll check distribution**

(a) Beginning with the 2009-2010 school year, at least once every three years, between the months of September through May, charter schools shall require each charter school employee to report to a central location(s) and produce picture identification and sign for release of his or her paycheck or direct deposit voucher. The district may exclude per diem substitutes from the required verification.

(b) Picture identification shall be in the form of a charter school issued identification card, valid drivers' license, official passport or other picture identification issued by a state, county or other local government agency.

(c) The Chief School Administrator/Lead Person shall designate an appropriately qualified staff member to match the picture identification to the employee roster

maintained by the office of personnel or human resources prior to release of the pay check or direct deposit voucher.

(d) Where no appropriate identification can be produced, the school business administrator shall withhold paychecks or stop direct deposits until such time that the payee/charter school employee can produce appropriate identification or until an investigation and corrective action is concluded, as appropriate to the circumstances.

(e) Upon completion of the payroll check distribution verification procedures set forth in this section, the chief school administrator/lead person shall submit a certification of compliance, in a form prescribed by the Department, to the executive county superintendent. Verification of the charter school's compliance with the provisions of this section will be required as part of the annual audit.

**6A:23A-22.9 Board of trustees expenditures for non-employee activities, meals and refreshments**

(a) The words and terms used in this section shall have the following meanings, unless the context clearly indicates otherwise:

1. "Activities" means events or functions provided or held for the benefit of students, dignitaries, and other "non-charter school" employees (for example, parents) which are paid from public funds.

2. "Dignitary" means a notable or prominent public figure; a high level official; or one who holds a position of honor. A dignitary, for purposes of this section, is not a charter school employee or board of trustees member.

(b) Allowable expenditures for non-employee charter school board of trustees activities shall include:

1. All reasonable costs, including light meals and refreshments, directly related to activities that benefit students and are part of the instructional program including expenditures for field trips and extracurricular programs that are not solely for entertainment. Nothing in this subsection shall preclude boards of trustees from using student activity funds or accepting donations to support student activities that are solely for student entertainment;

2. All reasonable costs directly related to activities of dignitaries and other “non-charter school” employees (for example, parents), including light meals and refreshments and any other directly related expense. It is expected that expenditures for this purpose will be minimal and infrequent;

3. All reasonable costs of commencement and convocation activities for students;  
and

4. Expenditures related to charter school employees to the extent such employees are essential to the conduct of the activity.

(c) A charter school board shall, at a minimum, take actions regarding student activities as follows:

1. Pre-approve field trip destinations;

2. Establish dollar thresholds for awards to recognize special accomplishments;

and

3. Establish a budget supported by general fund revenues for each category of activity in a non-discriminatory manner (e.g. football, boys soccer, girls soccer, photography club). Student activity funds are excluded.

(d) Pursuant to N.J.S.A. 18A:11-12 and State of New Jersey Department of Treasury, Office of Management and Budget Circular 08-19-OMB and 06-14-OMB, the following costs shall not be permitted using public funding:

1. Receptions, dinners or other social functions held for or honoring any employee or group of employees of the charter school (for example, breakfast, luncheon, dinner, or reception for retirees or award recipients). This does not prohibit districts from honoring employees without a social function or using public funds to support reasonable costs of employee recognition awards (for example, teach of the year awards, years of service awards). Use of public funds for reasonable costs of employee awards is a local discretionary expenditure;

2. Meals or refreshments served to guests at any athletic event or other games or contests; and

3. Expenses for alcoholic beverages.

(e) Documentation required to support activities, meals and refreshments at charter school events shall be:

1. A description of the activity;

2. The purpose/justification of the activity, expressed in terms of the goal(s) or objective(s) of the charter school;

3. The make-up of the group participating in the activity; and

4. The names and titles of board members or employees included in the group.

**6A:23A-22.10 Nepotism policy**

(a) As a condition of receiving Charter school aid, charter school board of trustees shall implement the nepotism policy established by this subsection by October 1, 2009.

The nepotism policy shall include the following:

1. A definition of “relative” that is consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2 and a definition of “immediate family member” that is consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;

2. A provision prohibiting any relative of a board member, lead person or chief school administrator from being employed in an office or position in that charter school except that (a) a person employed or to be promoted by the charter school on the effective date of the policy or the date a relative becomes a board member or chief school administrator shall not be prohibited from continuing to be employed or to be promoted in the school, and (b) a charter school may employ a relative of a board member, lead person, or chief school administrator provided that the charter school has obtained approval from the executive county superintendent of schools. Such approval shall be granted only upon demonstration by the school district that it conducted a thorough search for candidates and that the proposed candidate is the only qualified and available person for the position;

3. A provision prohibiting the chief school administrator/lead person from recommending to the board pursuant to N.J.S.A. 18A:12-21-34 any relative of a board member or chief school administrator/lead person unless the person is subject to the exception of (a) (2) above;

4. A provision prohibiting a charter school administrator from exercising direct or indirect authority, supervision or control, over a relative of the administrator. Where it is not feasible to eliminate such a direct or indirect supervisory relationship, appropriate screens and/or alternative supervision and reporting mechanisms must be in place;

5. A provision prohibiting a charter school administrator or board member who has a relative who is a member of the bargaining unit from discussing or voting on the proposed collective bargaining agreement with that unit or from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team; nor should that charter school administrator be present with the school board in closed session when negotiation strategies are being discussed; provided, however, that the administrator may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the charter school can provide such information; and

6. A provision prohibiting a charter school administrator who has an immediate family member who is a member of the same Statewide union in another school district or charter school from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team or being present with the board in closed sessions when negotiation strategies are being discussed, prior to the board attaining a tentative memorandum of agreement with the bargaining unit; that includes a salary guide and total compensation package; once the tentative memorandum of agreement is established, a charter school administrator with an immediate family member who is a member of the same Statewide union in another school district or charter school may fully participate in the process, absent other conflicts. Notwithstanding the above, a

district administrator who has an immediate family member who is a member of the same Statewide union in another district may service as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the district can provide such information.

(b) A charter school may exclude per diem substitutes and student employment from its board nepotism policy.

**6A:23A-22.11 Contributions to board members and contract awards**

(a) As a condition of receiving Charter school aid, charter schools shall have policies that comply with the provisions of this section to ensure that the charter school shall maintain honest and ethical relations with vendors and shall guard against favoritism, improvidence, extravagance and corruption in its contracting processes and practices. Such policies shall be adopted by the school charter school and implemented by October 1, 2009. The terms “business entity” and “interest” as used below are defined as set forth in P.L. 2004, c. 19.

1. No board will vote upon or award any contract in the amount of \$17,500 or greater to any business entity which has made a contribution reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to a member of the charter school board of trustees during the preceding one-year period.

2. Contributions reportable by the recipient under P.L. 1973, c. 83 (N.J.S.A. 19:44A-1 et seq.) to any member of the school board from any business entity doing business with the charter school are prohibited during the term of a contract.

3. When a business entity referred to in (a)2 above is a natural person, a contribution by that person's spouse or child that resides therewith shall be deemed to be a contribution by the business entity. Where a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.

4. The disclosure requirement set forth in section 2 of P.L. 2005, c. 271 (N.J.S.A. 19:44A-20.26) also shall apply when the contract is required by law to be publicly advertised for bids.

5. This subsection shall not apply to a contract when a charter school emergency requires the immediate delivery of goods or services.

6. With the exception of charter schools previously subject to the requirements of N.J.A.C. 6A:10-2.1(e), this subsection shall not apply to contributions made prior to the effective date of these rules.

#### **6A:23A-22.12 Internal controls**

(a) As a condition of receiving Charter school aid, each charter school shall establish specific policies and procedures on internal controls to promote operational efficiency and effectiveness, provide reliable financial information, safeguard assets and records, encourage adherence to prescribed policies and comply with law and regulation.

(b) The specific internal controls shall be in accordance with auditing standards generally accepted in the United States under Generally Accepted Accounting Principles (GAAP), standards contained in Government Auditing Standards (GAS) issued by the Comptroller General of the United States, established together with other internal

controls contained in N.J.A.C. 6A and other law and regulations, required by professional standards and as deemed necessary and appropriate by charter school management.

(c) The Commissioner shall establish guidelines and procedures regarding appropriate internal controls, as appropriate.

**6A:23A-22.13 Segregation of duties; organization structure**

(a) All charter schools shall evaluate business processes annually and allocate available resources appropriately in an effort to establish a strong control environment.

(b) The SBA shall identify processes that when performed by the same individuals are a violation of sound segregation of duties. The SBA shall segregate the duties of all such processes among business office staff based on available charter school resources, assessed vulnerability and the associated cost-benefit.

**6A:23A-22.14 Standard operating procedures (SOPs) for business functions**

(a) By July 1, 2010, each charter school shall establish SOPs for each task or function of the business operations of the charter school.

(b) An SOP manual shall include sections on each routine task or function of the following areas:

1. Accounting including general ledger, accounts payable, accounts receivable, payroll and fixed assets and year-end procedures for each;

2. Cash management;

3. Budget development and administration including tasks such as authorization of transfers and overtime;

4. Position control;
5. Purchasing including such tasks as preparation of requisitions, approval of purchase orders and encumbering of funds, bid and quote requirements; and verification of receipt of goods and services;
6. Facilities including administration of work and health and safety;
7. Security;
8. Emergency preparedness;
9. Risk management;
10. Transportation;
11. Food service;
12. Technology systems; and
13. Information management

(c) An SOP shall be established that ensures office supplies are ordered in appropriate quantities, maintained in appropriate storage facilities and monitored to keep track of inventory.

**6A:23A-22.15 Approval of amounts paid in excess of approved purchase orders; board policy**

(a) A charter school board shall adopt a policy establishing the approval process for any remittance of payment for invoice amounts greater than the approved purchase order. The policy shall require the SBA to identify, and investigate if necessary, the reason for any increase to a purchase order. If it is found that such an increase is warranted, the SBA shall either approve a revision to the original purchase order with the

reason noted, approve the issuance of a supplemental purchase order for the difference, or cancel the original purchase order and issue a new purchase order. If it is found that such an increase is not warranted, the purchase order shall be canceled and the goods returned. In no instance shall an adjustment be made to a purchase order that changes the purpose or vendor of the original purchase order or a bid award.

(b) Financial systems shall be programmed to:

1. Limit system access so that only appropriate business office staff may make purchase order adjustments;
2. Reject adjustments in excess of any established approval thresholds;
3. Prevent unauthorized changes to be processed;
4. Reject payments where the sum of the invoice amount plus any previous invoices charged to the purchase order exceeds the sum of the original purchase order amount plus any authorized adjustments;
5. Reject duplicate purchase order numbers;
6. Reject duplicate invoice numbers; and
7. Prepare an edit/change report listing all payments made in excess of the originally approved purchase order amount.

(c) The SBA shall review on a monthly basis edit/change reports listing all payments made in excess of the originally approved purchase order amount to ensure that all payments made are properly authorized.