

EDUCATION

STATE BOARD OF EDUCATION

Charter Schools

Fiscal Accountability, Efficiency, and Budgeting Procedures

Educational Facilities

Proposed Amendments: N.J.A.C. 6A:11-1.2, 2.1, 2.2, 2.3, 2.4, 2.6, 4.6, 4.9, 4.11 and 5.1;

6A:23A-16.8, 16.10, 22.4, 22.6, and 22.15; and 6A:26-7.5

Proposed New Rules: N.J.A.C. 6A:11-4.5, 4.16, and 4.17

Authorized By: New Jersey State Board of Education, Kimberley Harrington, Acting Secretary and Acting Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-38, 18A:7G-26, 18A:23-1 et seq., 18A:26-2.10, and 18A:36A-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-036.

Submit written comments by May 5, 2017, to:

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The agency proposal follows:

Summary

In November 2015, Governor Christie met with State and national charter operators to discuss the state of public charter schools in New Jersey. During this discussion, many charter operators explained that New Jersey's regulatory environment is a major impediment to growth of the charter sector in the State.

During the last several months, the Department of Education (Department) has worked with charter leaders in New Jersey and national charter experts to develop recommendations to offer school operators increased autonomy and opportunities for innovation in exchange for accountability for student outcomes.

The proposed regulatory changes will ensure charter schools have increased flexibility, autonomy, and time to innovate and produce strong educational outcomes for all students. In addition, the proposed changes will incentivize operators both in-State and out-of-State to invest in New Jersey.

The Department proposes to add, amend, delete, and recodify rules in three chapters of Title 6A of the New Jersey Administrative Code to achieve the following:

- Permit a weighted lottery for charter school enrollment;
- Establish an expedited renewal process for high-performing charters;
- Permit single-purpose charter schools;
- Ease the way for charter schools to secure facilities and capital funding;
- Streamline procedures around budgetary controls and fund monitoring; and

- Enact other regulatory changes.

The following summarizes, by subchapter, the proposed amendments, deletions, recodifications, and new rules.

Chapter 11. Charter Schools

Subchapter 1. General Provisions

N.J.A.C. 6A:11-1.2 Definitions

This section defines the terms used in the chapter.

The Department proposes a definition for “construction” to mean the building of a wholly new school facility.

The Department proposes a definition for “expansion” to mean an addition to an existing school facility characterized by an increase in the school facility’s square footage.

The Department proposes a definition for “expedited renewal” to mean the granting, on an accelerated basis, of a charter’s continuation for a five-year period by the Commissioner, which will be reserved for high-performing charter schools with no major fiscal or compliance issues.

The Department proposes a definition for “high-performing charter school” to mean a charter school that earns a Tier Rank 1, which is the highest possible rank, based on the metrics set forth in the Academic Performance Framework.

The Department proposes amendments to the definition of “norm-referenced achievement test,” which means the California Achievement Test (CAT); Metropolitan Achievement Test (MAT); Stanford Achievement Test (SAT); or the Comprehensive Test of Basic Skills (CTBS) or one of the tests within the CTBS. The Department proposes to add “any

assessment that compares test takers' results to an average in order to distinguish between high and low performances. Examples include:" to provide a more broad explanation of the term, rather than a list of examples.

The Department proposes amendments to the definition of "Performance Framework," to update and more clearly outline the criteria the Department uses to evaluate the academic, financial, and organizational performance of each charter school. The current definition, for example, cites New Jersey Assessment of Skills and Knowledge (NJASK) measures of proficiency and Federal No Child Left Behind (NCLB) requirements, which have been or will be replaced by Partnership for Assessment of Readiness for College and Careers (PARCC) assessment measures of grade-level expectations and Every Student Succeeds Act (ESSA) accountability requirements, respectively. The Department proposes the definition of "Performance Framework" to mean the accountability system the Department must use to evaluate the academic, financial, and organizational performance of each charter school. The Performance Framework shall be shared with all charter schools and posted on the Department's website. The academic component includes, but is not limited to, measures of: student growth, student achievement, high school graduation rate, leading indicators of school success, such as attendance, and State and Federal accountability requirements. Measures of student growth, student achievement, graduation rate, and leading indicators are evaluated relative to: Statewide results, primary sending district results, and results of similar schools. Additionally, each charter school will be responsible for unique mission-specific goals included in their charter agreement. Criteria for the organizational component consist of, but are not limited to, compliance with statutory requirements in N.J.S.A. 18A:36A-1 et seq. and all applicable statutes in Title 18A, and regulatory requirements that ensure equitable access, pursuant to N.J.A.C. 6A:7, Managing for

Equality and Equity in Education, and 6A:11-4.12, Equity in education; and safe and secure learning environments, pursuant to N.J.A.C. 6A:16, Programs to Support Student Services. Criteria for the financial component include, but are not limited to: the generally accepted accounting principles set forth in N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency, and Budgeting Procedures, and indicators of near- and long-term viability.

The Department proposes a definition for “planning year” to mean a one-year period between a charter school’s application approval and the final granting of its charter to prepare for the charter school’s opening.

The Department proposes a definition for “rehabilitation” to mean as defined in N.J.A.C. 6A:26-1.2.

The Department proposes amendments to the definition of “satellite campus,” which means a school facility, located within a school district with a priority school or a former Abbott District as of July 1, 2012, operated by a charter school under the school’s charter that is in addition to the facility identified in the charter school application or charter, if subsequently amended. The Department proposes to delete “located within a district with a priority school or a former Abbott District as of July 1, 2012,” and “under the school’s charter” to clarify charter schools in any school district can operate in multiple facilities, as long as the charter schools gain approval through the amendment process.

The Department proposes to amend the definition of “school year,” which means July 1 to June 30 of any given academic year. If operating with an extended school year, this term means an alternate fiscal school year beginning no later than September 1 and ending no later than August 31 of any given academic year. The Department proposes to delete the second

sentence in the definition because the fiscal year for a charter school does not change, regardless of whether it operates with an extended school year.

The Department proposes a definition for “weighted lottery” to mean a random selection process that provides additional weight or increased chances to individual students who are identified as part of a specified set of educationally disadvantaged students, but does not reserve or set aside seats for individual students or sets of students.

Subchapter 2. Application and Approval; Reporting; Renewal; Probation and Revocation; Appeal; Amendment and Conversion Processes

N.J.A.C. 6A:11-2.1 Application and Approval Process

This section outlines the processes for application submission and evaluation and notification of approval or denial of a charter by the Commissioner.

The Department proposes new N.J.A.C. 6A:11-2.1(b)5 and 6 to explicitly allow single-purpose charter schools that serve educationally disadvantaged or traditionally underserved students and students of a single gender. N.J.A.C. 6A:11-2.1(b)5 will require an application for a charter school seeking to limit enrollment to a specific population of educationally disadvantaged or traditionally underserved students to demonstrate a compelling need and to ensure compliance with State and Federal laws. N.J.A.C. 6A:11-2.1(b)6 will require an application for a charter school seeking to limit admission on the basis of gender to demonstrate a compelling educational reason for limiting enrollment on the basis of gender and to ensure compliance with State and Federal laws.

The Department proposes new N.J.A.C. 6A:11-2.1(m) to permit a charter school applicant that receives application approval but is not prepared to open in the subsequent school

year to request a planning year. The proposed rule also will allow the Commissioner to grant or deny a planning year based upon information submitted by the applicant.

The Department proposes new N.J.A.C. 6A:11-2.1(m)1 to allow the Commissioner to grant a planning year to an applicant that demonstrates a legitimate need for more time to meet the preparedness requirements pursuant to N.J.A.C. 6A:11-2.1(i). The Department proposes N.J.A.C. 6A:11-2.1(m)2 to allow the Commissioner to grant a second planning year based upon an applicant's showing of good cause and to allow a charter school to receive no more than two planning years after application approval to prepare for opening. The proposed rule will codify an existing practice reserved for approved charter schools that the Commissioner determines would benefit from additional time to prepare for the school's opening.

N.J.A.C. 6A:11-2.2 Reporting

This section outlines the format for submission of the annual report and other reporting requirements.

The Department proposes an amendment at N.J.A.C. 6A:11-2.2(b), which requires a charter school board of trustees to submit specific documentation annually to the Commissioner for approval prior to the opening of school on dates specified by and in a format prescribed by the Commissioner, to delete "for approval" after "Commissioner" to clarify the documentation submitted annually by the charter school board of trustees does not require formal approval.

The Department proposes new N.J.A.C. 6A:11-2.2(d) to require the Department to publicly report on each charter school's academic performance based on the Performance Framework. The proposed rule will increase transparency and provide charter schools and the general public with information about how charter schools are performing.

N.J.A.C. 6A:11-2.3 Renewal of Charter

This section outlines conditions for granting or denying the renewal of a school's charter by the Commissioner.

The Department proposes to amend N.J.A.C. 6A:11-2.3(b)2, which requires the Commissioner to grant or deny a charter's renewal based upon the comprehensive review based, in part, on if the charter school failed to meet any standards set forth in its charter agreement or the Performance Framework in its charter. The Department proposes to replace the rule with "[a] review of the charter school based on its charter agreement and the Performance Framework" for better alignment with the lead-in text at N.J.A.C. 6A:11-2.3(b).

The Department proposes new N.J.A.C. 6A:11-2.3(b)12 to include as part of the Commissioner's comprehensive review of a charter school, a review of whether the charter school established an escrow account or posted a surety bond of no less than \$75,000 to pay for legal and audit expenses and any outstanding pension benefit(s) that would be associated with dissolution, if it occurs. Proposed new N.J.A.C. 6A:11-2.3(b)12 will codify language that is included in the charter agreement between the charter school and the Department and aligned to national best practices for charter school closure.

The Department proposes new N.J.A.C. 6A:11-2.3(c) to state charter schools that have been deemed high performing, based upon the criteria outlined in the Academic Performance Framework, for three consecutive years during the most recent charter term, and have had no major fiscal or compliance issues, shall be eligible for an expedited renewal review process. The proposed rule also states the Department will notify charter schools prior to October 1 whether they qualify for the expedited review process. Within the Performance Framework, the academic section carries the most weight in high-stakes decision making, including renewal. Therefore, creating an expedited review for charter schools based largely on academic performance aligns

with how charter schools are evaluated and streamlines the process for charter schools that have demonstrated strong academic performance.

Proposed new N.J.A.C. 6A:11-2.3(c)1 will require the expedited review process to include the elements set forth in N.J.A.C. 6A:11-2.3(b) and will allow the process to be conducted in an abbreviated format established by the Commissioner. Proposed new N.J.A.C. 6A:11-2.3(c)2 will require the Commissioner to notify, within 75 days of the renewal application submission, the charter school of whether it has been granted renewal of its charter. The proposed amendments will ensure high-performing charter schools are given a comprehensive review but in a more streamlined fashion. For example, the Department may conduct an abbreviated visit to a charter school or perform a desk audit, rather than spending a full day at the charter school. Additionally, high-performing charter schools will be notified of the renewal decision before other charter schools.

The Department proposes an amendment at recodified N.J.A.C. 6A:11-2.3(d), which requires the Commissioner to notify a charter school regarding the granting or denial of the renewal on or before February 28 of the last school year of the current charter, or on a date prescribed by the Commissioner, to change the renewal decision date to February 1 to better align with school district budgetary timelines.

N.J.A.C. 6A:11-2.4 Probation and Revocation of Charter

This section delineates the process whereby the Commissioner may place a charter school on probation. If it is determined a charter school is not operating in compliance with its charter or if findings from a review of a renewal application so warrant, the Commissioner can place a charter school on probation to allow the school to implement a remedial program to correct the deficiencies that caused the probation status. Following probation, the Commissioner can remove

a charter school from probation or revoke its charter. The Commissioner can also summarily revoke a school's charter.

The Department proposes new N.J.A.C. 6A:11-2.4(c)2iv to allow the Commissioner to rescind approval of the appointed independent trustee if he or she is not adequately performing the required duties. The proposed rule also will allow the Commissioner to appoint an independent trustee if the charter school board of trustees fails to appoint one pursuant to the comprehensive closure plan. The proposed rule will codify the Commissioner's ultimate decision-making authority in instances of charter school dissolution.

The Department proposes new N.J.A.C. 6A:11-2.4(c)2v to require a charter school board of trustees to pass a resolution officially dissolving within 30 days of school closure. The proposed rule will ensure an existing charter school board of trustees cannot block necessary closure activities.

N.J.A.C. 6A:11-2.6 Amendment of Charter

This section provides instructions on how a charter school can apply to the Commissioner to amend its approved charter, examples of amendments that can be sought, applicable timelines, and criteria by which requested amendments will be evaluated.

The Department proposes new N.J.A.C. 6A:11-2.6(a)1v to add establishing weighted lotteries to the list of examples of possible charter amendment requests. The proposed rule will establish a process for gaining Commissioner approval and implementing the weighted lottery, which is proposed in new N.J.A.C. 6A:11-4.5.

Subchapter 4. Program Implementation

N.J.A.C. 6A:11-4.5 Lottery

The Department proposes new N.J.A.C. 6A:11-4.5(a) through (e) to state the necessity for a random selection process for enrollment and the enrollment preferences guaranteed for students who reside in the charter school's district of residence and students who were enrolled in the charter school in the preceding school year. The proposed rule also permits charter schools to give enrollment priority to siblings and requires charter schools to seek to enroll a cross-section of the community's school age population, including racial and academic factors. N.J.A.C. 6A:11-4.5(a) through (e) provide the necessary context for proposed N.J.A.C. 6A:11-4.4(f).

The Department proposes new N.J.A.C. 6A:11-4.4(f) to permit charter schools to seek Commissioner approval to establish weighted lotteries that favor educationally disadvantaged students, including, but not limited to, students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, or homeless students, in an effort to better represent a cross-section of the community's school-age population.

N.J.A.C. 6A: 11-4.6 Age Eligibility for Kindergarten

This section requires a charter school to accept kindergarten students under the same eligible minimum age of five years as the school district(s) in which the students reside.

The Department proposes new N.J.A.C. 6A:11-4.7(b) to allow charter schools to enroll preschool students if the district has a State-funded preschool program and to guarantee the preschool students a seat in the charter school's kindergarten as returning students without re-entering the admission lottery.

N.J.A.C. 6A:11-4.9 Home Instruction for Students

This section outlines the requirements of a charter school to provide home instruction for students.

The Department proposes amendments to recodified N.J.A.C. 6A:11-4.10, which requires a charter school to provide home instruction due to temporary illness or injury for an enrolled student in accordance with N.J.A.C. 6A:16-10.1. The Department proposes to delete “due to temporary illness or injury for an enrolled student” and add a reference to N.J.A.C. 6A:16-10.2 to clarify home instruction is required for temporary illness or injury and also for other reasons, which are outlined in N.J.A.C. 6A:16-10.2.

N.J.A.C. 6A:11-4.11 Board of Trustees and Open Public Meetings Act

This section delineates the requirements for the establishment of a charter school board of trustees and for its operation under the Open Public Meetings Act.

The Department proposes amendments at N.J.A.C. 6A:11-4.12(c), which requires the board of trustees to send a copy of all meeting notices and meeting minutes to the respective executive county superintendent, to instead require the charter school board of trustees to post a copy of all meeting notices and minutes on the school’s website rather than sending them to the executive county superintendent, who does not review the documents.

N.J.A.C. 6A:11-4.16 Sports Programs

The Department proposes new N.J.A.C. 6A:11-4.16 to allow a secondary charter school student to participate in a sport at his or her school of residence, upon the agreement of both principals, if the charter school he or she attends does not offer the particular sport in which the full-time student wishes to participate, regardless of the number of sports programs offered at the charter school.

Charter school statute and rules are currently silent about charter eligibility and access to extracurricular and interscholastic activities. However, the New Jersey State Interscholastic Athletic Association (NJSIAA) constitution states: “If a secondary Charter School does not offer the particular sport in which one of its full time students wishes to participate, that student may participate in that sport at his/her school of residence upon agreement of both principals, regardless of the number of sports programs offered at the Charter School.” Proposed N.J.A.C. 6A:11-4.16 will codify the language in the NJSIAA constitution.

N.J.A.C. 6A:11-4.17 Facilities

The Department proposes new N.J.A.C. 6A:11-4.17(a) to prohibit a charter school from constructing a facility with public funds, other than Federal funds, and to allow a charter school to use State and local funds for the rehabilitation or expansion of a facility, provided the charter school submits to the Department a statement assuring adequate funds are allocated to the classroom pursuant to N.J.A.C. 6A:23A-22.4(d). Pursuant to N.J.S.A. 18A:36C-10, a charter school cannot construct a facility with public funds other than Federal funds. The definition of “construct” has not been clearly defined in statute, so proposed new N.J.A.C. 6A:11-4.17(a) will provide clarity in terms of allowing public funds to be utilized for facility rehabilitation and expansion.

The Department proposes new N.J.A.C. 6A:11-4.17(b) to allow a charter school to operate in more than one satellite campus in its district or region of residence, subject to charter amendment approval, pursuant to N.J.A.C. 6A:11-2.6. Proposed new N.J.A.C. 6A:11-4.17(b) is meant to codify existing practice, whereby charter schools in any school district can have multiple facilities, as long as the charter school gains approval through the amendment process.

Subchapter 5. Certification Requirements for Staff

N.J.A.C. 6A:11-5.1 Certification

This section sets forth the certification requirements for all classroom teachers, principals, and professional support staff employed by charter school boards of trustees, and the employment requirements for a charter school lead person and school business administrator.

The Department proposes an amendment at N.J.A.C. 6A:11-5.1(b)2, which requires a charter school board of trustees to 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:9B-11.7 and 6A:23A to oversee fiscal operations of the charter school. The Department proposes to replace the cross-reference to “N.J.A.C. 6A:9B-11.7,” which establishes certification requirements for driver education, with “N.J.A.C. 6A:9B-12.7,” which contains school business administrator certification requirements.

Chapter 23A. Fiscal Accountability, Efficiency, and Budgeting Procedures

Subchapter 16. Double Entry Bookkeeping and GAAP Accounting

N.J.A.C. 6A:23A-16.8 Petty Cash Fund

This section sets forth the rules for a district board of education or charter school to establish and maintain a petty cash fund and for the final disposition of the funds, pursuant to N.J.S.A. 18A:19-13.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.8(a), which allows a district board of education or charter school to 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, to replace “on July 1 of each year, or as needed,” with “policies for the annual allocation of.” The proposed amendment will remove the necessity for a district board of education or charter school board of trustees to approve a petty cash fund on July 1 of each year.

Instead, the district board of education or charter school board of trustees will be able to create petty cash fund policies and implement them on an annual basis. The proposed amendments will impact both district boards of education and charter school boards of trustees.

N.J.A.C. 6A:23A-16.10 Budgetary Controls and Overexpenditure of Funds

This section requires a district board of education or charter school board of trustees to implement controls over budgeted appropriations. The section also sets forth guidelines, reporting requirements, and sanctions to be imposed when there are projected overexpenditures, pursuant to N.J.S.A. 18A:7F-1 et seq.

The Department proposes amendments at N.J.A.C. 6A:23A-16.10(b)1, 3, 4, and 5, which dictate how a district board of education or charter school board of trustees must proceed when incurring or projecting a year-end deficit. The Department proposes to add “or the Department in the case of charter schools,” after “executive county superintendent” to clarify that a charter school board of trustees must direct the lead person to notify the Department, and not the executive county superintendent, of a budget deficit, since oversight duties rest with the Office of Charter and Renaissance Schools.

The Department proposes amendments at N.J.A.C. 6A:23A-16.10(c)4iii, which requires certain district boards of education or charter school boards of trustees at the Commissioner's discretion to provide, within 60 days of month-end, 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 and as required pursuant to N.J.S.A. 18A:17-9 and 18A:17-36 to the executive county superintendent, to delete “or charter school boards of trustees at the Commissioner's discretion” and “or charter school boards of trustees.”

The proposed amendments will provide clarity, as N.J.A.C. 6A:23A-16.10(c)4v specifically states the requirements for charter schools.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.10(c)4v, which requires every charter school board of trustees to provide to the executive county superintendent, within 60 days of the September, December, and March month end, a copy of the monthly financial reports submitted to the charter school board of trustees, to replace “executive county superintendent” with “Department.” The proposed amendment will clarify the Office of Charter and Renaissance Schools collects quarterly financial reports, and not the executive county superintendent.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.10(c)4vi, which requires a school business administrator/board secretary that is more than two months behind in submitting the financial report to a district board of education or charter school board of trustees to immediately report the noncompliance to the executive county superintendent, to delete “or charter school board of trustees.” The proposed amendment will clarify the executive county superintendent does not need to be notified, as the Office of Charter and Renaissance Schools already monitors for compliance.

The Department proposes amendments at N.J.A.C. 6A:23A-16.10(d), which requires the executive county superintendent to report to the Commissioner by August 15, or for charter schools, 45 days after the end of the year, all fund overexpenditures as shown on the school business administrator/board secretary’s June report and establishes related requirements, to remove references to charter schools and charter school boards of trustees. The requirement to notify the executive county superintendence of a deficit that is not being remediated is an unnecessary step since oversight duties rest with the Office of Charter and Renaissance Schools.

Subchapter 22. Financial Operations of Charter Schools

N.J.A.C. 6A:23A-22.4 Financial Requirements

This section sets forth financial requirements for charter schools in the areas of debt, property acquisition, charter school aid, and monitoring.

The Department proposes to delete N.J.A.C. 6A:23A-22.4(b)1, which requires the term of a charter school facility's lease to not exceed the length of the charter. The proposed deletion will provide charter schools more flexibility to negotiate favorable terms without term restrictions.

The Department proposes amendments at N.J.A.C. 6A:23A-22.4(d), which requires a charter school to be subject to monitoring by the Commissioner to ensure 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, to instead to require the Commissioner to monitor whether adequate funds are allocated to the classroom. The Department also proposes to delete the statement that 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. The proposed amendment will offer charter schools more budgetary latitude, with the understanding the Department monitors their budgets and performance.

N.J.A.C. 6A:23A-22.6 Public Relations and Professional Services; Board Policies;

Efficiency

This section requires charter school boards of trustees to develop policies and strategies to minimize the expenditures for public relations and professional services.

The Department proposes amendments at N.J.A.C. 6A:23A-22.6(a)3, which requires charter schools with legal costs that exceed 130 percent of the Statewide average charter school per pupil amount to establish stipulated procedures and, if not established, to provide evidence the procedures would not result in a reduction of costs. The current threshold of 130 percent of the Statewide average of charter school per pupil amount is unclear and unnecessary since charter schools have no incentive to overspend on legal fees. Moreover, the threshold language has the potential to hamper a charter school's ability to obtain quality legal advice. Therefore, the Department proposes to replace the current rule with "[c]harter schools shall establish procedures to effectively manage legal costs. Procedures may include:."

**N.J.A.C. 6A:23A-22.15 Approval of Amounts Paid in Excess of Approved Purchase Orders;
Board Policy**

The section requires charter schools to adopt a policy establishing the approval process for any remittance of payment for invoice amounts greater than the approved purchase order and establishes the program requirements for financial systems.

The Department proposes amendments at N.J.A.C. 6A:23A-22.15(a), which requires, in part, a charter school board of trustees to adopt a policy establishing the approval process for any remittance of payment for invoice amounts greater than the approved purchase order, to add "or assistant school business administrator" after the two mentions of "school business administrator" to allow the school business administrator to designate another qualified individual to manage the review and approval process of change orders.

Chapter 26. Educational Facilities

Subchapter 7. Land Acquisition, School Closing, and Land Disposal

N.J.A.C. 6A:26-7.5 Approval for the Closing of a School Facility

The section establishes procedures for approval of closing school facilities, including a statement that the closing is consistent with the school district's long-range facilities plans and the reassignment of students will not produce, sustain, or contribute to unlawful segregation of students.

The Department proposes new N.J.A.C. 6A:26-7.5(e) to require the Division of Executive Services, starting in August 2017, to maintain a list of closed, unused, or unoccupied school facilities, consistent with N.J.A.C. 6A:26-2.2, and to make it available on the Department's website. The proposed rule will provide transparency and assist charter schools in locating viable facilities.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments and new rules will positively impact charter schools and their constituents, including students, teachers, staff, board of trustee members, and families. With increased operational autonomy and streamlined procedures in place, charter schools will have the opportunity to innovate and make school-level decisions that improve student achievement.

Economic Impact

The proposed amendments and new rules will have a positive economic impact on charter schools by allowing them to access public funds for the expansion and rehabilitation of

facilities. Rather than diverting substantial portions of their operating revenue into facilities, charter schools will be able to direct spending toward educating students.

Federal Standards Statement

There are no Federal standards or requirements applicable to the proposed amendments and new rules; therefore, a Federal standards analysis is not required.

Jobs Impact

The proposed amendments and new rules may encourage more charter school operators to come to New Jersey, thereby creating jobs.

Agriculture Industry Impact

The proposed amendments and new rules will have no impact on the agricultural industry.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and new rules do not impose reporting, recordkeeping, or other compliance requirements on small

businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rules apply only to charter schools.

Housing Affordability Impact Analysis

The proposed amendments and new rules will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the proposed amendments and new rules would evoke a change in the average costs associated with housing because the proposed amendments and new rules govern charter schools.

Smart Growth Development Impact Analysis

The proposed amendments and new rules will have an insignificant impact on smart growth. There is an extreme unlikelihood the proposed amendments and new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments and new rules govern charter schools.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 11

CHARTER SCHOOLS

SUBCHAPTER 1. GENERAL PROVISIONS

6A:11-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise.

...

“Construction” means the building of a wholly new school facility.

...

“Expansion” means an addition to an existing school facility characterized by an increase in the school facility’s gross square footage.

...

“Expedited renewal” means the granting on an accelerated basis of a charter’s continuation for a five-year period by the Commissioner, which is reserved for high-performing charter schools with no major fiscal or compliance issues that meet the standards set forth in N.J.A.C. 6A:11-2.3.

...

“High-performing charter school” means a charter school that earns a Tier Rank 1, which is the highest possible rank, based on the metrics set forth in the Academic Performance Framework.

...

"Norm-referenced achievement test" means any assessment that compares test takers’ results to an average to distinguish between high and low performances. Examples include: the California Achievement Test (CAT)[;], Metropolitan Achievement Test (MAT)[;], Stanford Achievement Test (SAT)[;], or the Comprehensive Test of Basic Skills (CTBS) or one of the

tests within the CTBS.

“Performance Framework” means the [standards] **accountability system** that shall be used by the Department to evaluate the **academic, financial, and organizational** performance of each charter school [that has signed a charter agreement]. The Performance Framework shall be [included in every] **shared with all** charter [agreement] **schools** and posted on the Department’s website. The academic [performance section of the Performance Framework is aligned with the New Jersey Department of Education accountability measures as defined in the February, 2012 No Child Left Behind waiver of Adequate Yearly Progress measures granted by the United States Department of Education. Academic performance assessments] **component** includes, but [are] **is** not limited to, [measurement] **measures of: student growth;** student achievement; [data] **high school graduation rate; leading indicators of** [in absolute terms based on Proficiency and Advanced Proficiency scoring in both Language Arts Literacy (LAL) and Math, in comparative terms against the LAL and Math scores of the district of residence and demographically similar (peer) schools, in terms of student achievement progress over time (individual student achievement over time as compared to similar scoring students), in terms of school-wide growth percentiles and subgroup growth percentiles based on standardized test scores over time, post-secondary readiness, including performance on and participation in national standardized tests and post-secondary enrollment,] **school success, such as attendance;** and all State and Federal accountability requirements. **Measures of student growth, student achievement, graduation rate, and leading indicators are evaluated relative to: Statewide results, primary sending district results, and results of similar schools.** Additionally, each charter school will be responsible for unique mission-specific goals included in their charter agreement. Criteria for the [operations] **organizational** component consist of, but are not limited

to, compliance with statutory requirements [set forth] in N.J.S.A. [18A:36C-1] **18A:36A-1** et seq. and all applicable statutes in Title 18A, and regulatory requirements that ensure equitable access, pursuant to N.J.A.C. 6A:7, Managing for Equality and Equity in Education, and 6A:11-4.12, Equity in education; **and** safe and secure learning environments, pursuant to N.J.A.C. 6A:16, Programs to Support Student Services. [The standards for the fiscal management section of the Performance Framework] **Criteria for the financial component include, but are not limited to:** the generally accepted accounting principles set forth in N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency and Budgeting **Procedures**, and [contain near-term] indicators [that include debt to asset ratio, total margin and cash flow measures, and sustainability indicators that include current ratio, unrestricted days cash on hand, enrollment variance and default on loans measures] **of near- and long-term viability.**

“Planning year” means a one-year period between a charter school’s application approval and the final granting of its charter to prepare for the charter school’s opening.

...

“Rehabilitation” means as defined in N.J.A.C. 6A:26-1.2.

...

“Satellite campus” means a school facility[, located within a district with a priority school or a former Abbott District as of July 1, 2012,] operated by a charter school [under the school’s charter] that is in addition to the facility identified in the charter school application or charter, if subsequently amended.

...

"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.]

...

“Weighted lottery” means a random selection process that provides additional weight or increased chances to individual students who are identified as part of a specified set of educationally disadvantaged students but does not reserve or set aside seats for individual students or sets of students.

SUBCHAPTER 2. APPLICATION AND APPROVAL, REPORTING, RENEWAL,
PROBATION AND REVOCATION, APPEAL, AMENDMENT, AND CONVERSION
PROCESSES

6A:11-2.1 Application and approval process

(a) (No change.)

(b) An eligible applicant for a charter school shall:

1. - 4. (No change.)

5. If seeking to open a single-purpose charter school that will limit enrollment to a specific population of educationally disadvantaged or traditionally underserved students, the charter school’s application shall demonstrate a compelling need and shall ensure compliance with State and Federal laws.

6. If seeking to operate a single-purpose charter school that will limit admission on the basis of gender, the charter school’s application shall demonstrate a compelling educational reason for limiting enrollment on the basis of gender and shall ensure compliance with State and Federal laws.

[5.] **7.** (No change in text.)

(c) – (l) (No change.)

(m) A charter school applicant that receives application approval, but is not prepared to open in the subsequent school year may request a planning year. The Commissioner may grant or deny a planning year based upon the information submitted by the applicant.

1. The Commissioner may grant a planning year to an applicant that demonstrates a legitimate need for more time to meet the preparedness requirements pursuant to (i) above.

2. The Commissioner may grant a second planning year based upon an applicant’s showing of good cause. A charter school may receive no more than two planning years after application approval.

6A:11-2.2 Reporting

(a) (No change.)

(b) The board of trustees of a charter school shall submit documentation annually to the Commissioner [for approval] prior to the opening of school on dates specified by and in a format prescribed by the Commissioner. The documentation shall include, but is not limited to, copies of:

1. – 7. (No change.)

(c) (No change.)

(d) On an annual basis, the Department shall publicly report on each charter school’s academic performance based on the Performance Framework.

6A:11-2.3 Renewal of charter

- (a) (No change.)
- (b) The Commissioner shall grant or deny the renewal of a charter upon the comprehensive review of the school including, but not limited to:
1. (No change.)
 2. [If] **A review of** the charter school [failed to meet any standards set forth in] **based on** its charter agreement [or] **and** the Performance Framework [in a school’s charter];
 3. -9. (No change.)
 10. A structured interview with the Commissioner or designee(s) with:
 - i.-iii. (No change.)
 - iv. A parent or other representative of the charter school; [and]
 11. The review of the charter school’s educator evaluation system[.]; **and**
 12. **A review to ensure the charter school has established an escrow account or posted a surety bond of no less than \$75,000 to pay for legal and audit expenses and any outstanding pension benefit(s) that would be associated with dissolution if it occurs.**
- (c) **Charter schools that have been deemed high performing, based upon the criteria outlined in the Academic Performance Framework, for three consecutive years during the most recent charter term, and have had no major fiscal or compliance issues, shall be eligible for an expedited renewal review process. The Department will notify charter schools prior to October 1 whether they qualify for an expedited review process.**
1. **The expedited review process shall include the elements set forth in (b) above but may be conducted in an abbreviated format established by the Commissioner.**
 2. **Within 75 days of the renewal application submission, the Commissioner shall notify the charter school of whether it has been granted renewal of its charter.**

[(c)] (d) The Commissioner shall notify a charter school regarding the granting or denial of the renewal on or before February [28] 1 of the last school year of the current charter, or on a date prescribed by the Commissioner. The notification to a charter school that is not granted a renewal shall include reasons for the denial.

6A:11-2.4 Probation and revocation of charter

(a) – (b) (No change.)

(c) Upon the decision of the Commissioner to revoke or not renew a school’s charter, or upon the decision of the board of trustees to surrender a charter, the board of trustees must implement school closure protocols including, at a minimum:

1. (No change.)

2. The board of trustees shall implement a comprehensive closure plan:

i. (No change.)

ii. Provide for appropriate enrollment:

(1) (No change.)

(2) The charter school shall make all reasonable efforts to ensure that students enrolled at the time of the receipt of the closure notification have taken action to enroll in another school; [and]

iii. Ensure transfer of student records:

(1)-(2) (No change.)

(3) School districts receiving transferred students shall provide to the appropriate county office of education printed name(s) and signature(s) of representative(s) of the district(s) certifying receipt of the student records[.];

iv. The Commissioner may rescind approval of the appointed independent trustee if the Commissioner determines the trustee is not adequately performing the required duties set forth in (c)2 above. In addition, the Commissioner may appoint an independent trustee if the board of trustees fails to appoint one pursuant to the comprehensive closure plan; and

v. Within 30 days of school closure, the board of trustees shall pass a resolution officially dissolving the board.

6A:11-2.6 Amendment to charter

(a) A charter school may apply to the Commissioner for an amendment to the charter following the final granting of the charter.

1. Examples of what a charter school may seek an amendment for include, but are not limited to, the following:

- i. – ii. (No change.)
- iii. Changing or adding a district or region of residence; [or]
- iv. Opening a new satellite campus[.]; **or**
- v. **Establishing a weighted lottery.**

2. (No change.)

(b) – (d) (No change.)

SUBCHAPTER 4. PROGRAM IMPLEMENTATION

6A:11-4.5 Lottery

(a) Pursuant to N.J.S.A. 18A:36A-8, preference for enrollment in a charter school shall

be given to students who reside in the school district in which the charter school is located.

If there are more applications to enroll in the charter school than spaces available, the charter school shall select students to attend using a random selection process. A charter school shall not charge tuition to students who reside in the school district.

(b) A charter school shall allow any student who was enrolled in the school in the immediately preceding school year to enroll in the charter school in the appropriate grade, unless the appropriate grade is not offered at the charter school.

(c) A charter school may give enrollment priority to a sibling of a student enrolled in the charter school.

(d) If available space permits, a charter school may enroll non-resident students. The terms and condition of the enrollment shall be outlined in the school's charter and approved by the Commissioner.

(e) The charter school's admission policy shall seek, to the maximum extent practicable, the enrollment of a cross-section of the community's school-age population, including racial and academic factors.

(f) A charter school may seek approval from the Commissioner to establish a weighted lottery that favors educationally disadvantaged students, including, but not limited to, students who are economically disadvantaged, students with disabilities, migrant students, limited English proficient students, neglected or delinquent students, or homeless students, in an effort to better represent a cross-section of the community's school-age population.

6A:11-[4.5]4.6 (No change in text.)

6A:11-[4.6]4.7 Age eligibility for kindergarten

(a) (No change.)

(b) **A charter school may enroll students in preschool if the district has a State-funded preschool program. Preschool students shall enroll in kindergarten at the school as returning students and shall not re-enter the lottery.**

Recodify existing 6A:11-4.7 and 4.8 as **4.8 and 4.9** (No change in text.)

6A:11-[4.9]4.10 Home instruction for students

A charter school shall provide home instruction [due to temporary illness or injury for an enrolled student] in accordance with N.J.A.C. 6A:16-10.1 **and 10.2.**

6A:11-[4.10]4.11 (No change in text.)

6A:11-[4.11]4.12 Board of trustees and Open Public Meetings Act

(a) – (b) (No change.)

(c) The board of trustees shall [send] **post** a copy of all meeting notices and meeting minutes to the [respective executive county superintendent of schools] **school's website.**

(d) (No change.)

Recodify existing 6A:11-4.12, 4.13, and 4.14 as **4.13, 4.14, and 4.15** (No change in text.)

6A:11-4.16 Sports programs

If a secondary charter school does not offer the particular sport in which one of its full-time students wishes to participate, the student may participate in the sport at his or her school of residence upon agreement of both principals, regardless of the number of sports programs offered at the charter school.

6A:11-4.17 Facilities

(a) Pursuant to N.J.S.A. 18A:36A-10, a charter school shall not use public funds other than Federal funds for the construction of a facility. However, a charter school may use State and local funds for the rehabilitation or expansion of a facility, provided the charter school submits to the Department a statement assuring adequate funds are allocated to the classroom, pursuant to N.J.A.C. 6A:23A-22.4(d).

(b) A charter school may operate more than one satellite campus in its district or region of residence, subject to charter amendment approval, pursuant to N.J.A.C. 6A:11-2.6.

SUBCHAPTER 5. CERTIFICATION REQUIREMENTS FOR STAFF

6A:11-5.1 Certification

(a) (No change.)

(b) The board of trustees of a charter school shall employ or contract with:

1. (No change.)

2. A person who holds a New Jersey standard or provisional school business administrator certificate in accordance with N.J.A.C. 6A:9B-[11.7]12.7 and 6A:23A to oversee fiscal operations of the charter school.

CHAPTER 23A

FISCAL ACCOUNTABILITY, EFFICIENCY, AND BUDGETING PROCEDURES

SUBCHAPTER 16. DOUBLE-ENTRY BOOKKEEPING AND GAAP ACCOUNTING

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,] **policies for the annual allocation of** a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.

(b) – (c) (No change.)

6A:23A-16.10 Budgetary controls and overexpenditure of funds

(a) (No change.)

(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], **or the Department in the case of charter schools**, within two working days, of the following:

i. -ii. (No change.)

2. (No change.)

3. The executive county superintendent, **or the Department in the case of charter schools**, 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, **or the Department in the case of charter schools**, 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 **or the Department**, 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, **or the Department in the case of charter schools**, 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. – 3. (No change.)

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. – ii. (No change.)

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-6.b, district boards of education that satisfy less than 80 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. (No change.)

v. Within 60 days of the September, December and March month end, every charter school board of trustees shall provide **to the Department** 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) – (f) (No change.)

SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

6A:23A-22.4 Financial requirements

(a) (No change.)

(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;]

Recodified existing 2. and 3. as **1. and 2.** (No change in text.)

(c) (No change.)

(d) A charter school shall be subject to monitoring by the Commissioner to ensure [that the percentage of school] **adequate** funds [spent in] **are allocated to** 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) (No change.)

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. – 2. (No change.)

3. Charter schools [with] **shall establish procedures to effectively manage** 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] **Procedures may include:**

i. – iv. (No change.)

4. – 6. (No change.)

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 school business administrator, **or assistant school business administrator**, 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 school business administrator, **or assistant school business administrator**, 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) – (c) (No change.)

CHAPTER 26

EDUCATIONAL FACILITIES

SUBCHAPTER 7. LAND ACQUISITION, SCHOOL CLOSING, AND LAND DISPOSAL

6A:26-7.5 Approval for the closing of a school facility

(a) – (d) (No change.)

(e) Starting in August 2017, the Division of Executive Services shall maintain a list of closed, unused, or unoccupied school facilities, consistent with N.J.A.C. 6A:26-2.2, and make it available on the Department’s website.