

**EDUCATION**

**STATE BOARD OF EDUCATION**

**Fiscal Accountability, Efficiency, and Budgeting**

**Tuition for Private Schools for Students with Disabilities**

**Proposed Amendments: N.J.A.C. 6A:23A-18**

**Proposed New Rules: N.J.A.C. 6A:23A-18.1, 18.12, and 18.19 through 18.23**

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

Authority: N.J.S.A. 18A:46-21.

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

Proposal Number: PRN 2017-037.

Submit written comments by May 5, 2017, to:

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The agency proposal follows:

**Summary**

The Department of Education (Department) proposes to amend Subchapter 18 of N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency, and Budgeting Procedures.

The rules in this subchapter provide the methodology for calculation of tuition charged by approved private schools for students with disabilities (APSSD). The rules also establish non-allowable costs, audit and budgeting requirements, new school application information, and additional fiscal requirements.

The amendments proposed for Subchapter 18 are intended to set the rules for annual tuition rates for APSSDs by containing administrative costs, salary increases, costs associated with the use, lease, or purchase of vehicles, travel, and the provision of meals to students. Moreover, many of the proposed amendments will assist in ensuring appropriate accounting and use of funds, as well as streamlining the APSSD's interactions with the Department. The Department anticipates the proposed amendments will result in cost containment, thereby reducing the financial burden placed upon sending school districts.

Throughout the subchapter, the Department proposes amendments to reference "the Commissioner, or his or her designee," where the rules currently designate the Commissioner or the Assistant Commissioner, Division of Finance, or make no designation of a Department official. The Department anticipates the amendments will provide flexibility and continuity if future organizational changes occur in the Department.

Amendments to this subchapter will be in effect immediately upon adoption as detailed in the rules.

Unless otherwise noted below, all proposed amendments are for clarity, stylistic or grammatical improvement, or to correct Administrative Code cross-references.

## **Subchapter 18. Tuition for Private Schools for Students with Disabilities**

### **Proposed New N.J.A.C. 6A:23A-18.1 Purpose and Scope**

The Department proposes new N.J.A.C. 6A:23A-18.1 to establish the subchapter's purpose and scope. The subchapter's rules establish requirements for accounting, financial reporting, and tuition rate setting by APSSDs. The rules also set forth processes and procedures, including, but not limited to, new school applications, non-allowable costs, and audit requirements. The proposed section also states the subchapter's rules will become effective immediately, unless otherwise indicated.

The Department proposes to recodify N.J.A.C. 6A:23A-18.1 through 18.16 to N.J.A.C. 6A:23A-18.2 through 18.17, respectively, to accommodate new N.J.A.C. 6A:23A-18.1.

### **N.J.A.C. 6A:23A-18.1 Definitions**

This section defines the terms used specifically in the subchapter.

The Department proposes a definition for "approved private school for students with disabilities" or "APSSD" to correspond with the definition in N.J.A.C. 6A:14, Special Education.

The Department proposes an amendment to the definition of "advertising costs," which means the costs incurred for cable television, videos, open houses, marketing, and public relations. The definition specifically excludes the cost of a website, the printing of descriptive brochures, newspaper advertising, and advertising in a telephone book. The Department proposes amendments to the definition to replace "incurred for, but not limited to, the following: cable television, videos, open houses, marketing and public relations" with "associated with promoting,

marketing, or public relations for the APSSD's programs and/or services as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7."

The Department also proposes to expand the definition's scope by deleting the exceptions. The proposed amendments will clarify the definition's meaning without limiting the scope to the identified types of media.

The Department proposes a definition for "APSSD official" to mean a member of the APSSD's board of directors or trustees; anyone with an ownership interest; an officer, employee, administrator, or supervisor; or anyone responsible for making recommendations regarding hiring or the purchase or acquisition of property or services. The proposed definition corresponds with proposed requirements in recodified N.J.A.C. 6A:23A-18.19 that will require APSSD management to submit, on a Commissioner-prepared form, certain disclosures relating to employees, vendors, and other business transactions.

The Department proposes to replace the definition of "assistant director," which 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 definition also requires the holder of this job title to hold a bachelor's degree from an accredited institution but not a school certification. The Department proposes to the definition as "means the same as 'director.'" The proposed amendment is for purposes of organization.

The Department proposes amendments to the definition of “bonus,” which means any payment to an employee that is not part of the employee’s executed contracted salary or the employee’s salary base in the subsequent school year, is arbitrary and not based on any specific criteria or qualifications, and is paid solely at management’s discretion. The Department proposes to replace “any payment to an employee which” with “payment to an employee that meets any of the following.” The Department also proposes to replace “and” in the third item with “or.” The proposed amendments will expand the definition so that any one of the four circumstances indicated would constitute a bonus, which will result in cost containment.

The Department proposes amendments to the definition of “business manager” to modify the educational and/or certification requirements needed to hold the position. Specifically, beginning on July 1, 2017, a business manager will be required to hold a master’s degree in business, accounting, finance, economics, or a related field from an accredited institution, a standard school business administrator’s certificate, or a certified public accountant certificate. The proposed amendment seeks to ensure APSSDs are staffed by qualified individuals. The proposed definition also will exempt from the proposed requirements business managers employed by an APSSD or otherwise serving as a business manager with an APSSD prior to July 1, 2017. Business managers employed by or serving in an APSSD prior to July 1, 2017, will be required to meet the current requirements of holding a bachelor’s degree in the stipulated fields or a standard school business administrator’s certificate.

The Department proposes an amendment to “certified actual cost per student” to replace “the average daily enrollment” with “ADE” as that term is defined and abbreviated earlier in this section. The Department also proposes to add “as determined by an independent school auditor” to clarify that an independent school auditor determines the certified actual cost per student.

The Department proposes an amendment to “conditional approval status,” which means when an APSSD is precluded from accepting new students. The Department proposes to add “and/or enrolling” to clarify that APSSDs are precluded from accepting and/or enrolling new students while on conditional approval. The Department also proposes to add “from the date the Department placed the APSSD on conditional approval,” to specifically identify the timeframe during which the APSSD is precluded from accepting and/or enrolling students.

The Department proposes an amendment to “director” to modify the educational and/or certifications required to hold the position. Currently, a director must possess a bachelor’s degree from an accredited institution. The proposed amendment will require, after July 1, 2017, all directors, except those employed as, or otherwise serving as, director for the APSSD prior to July 1, 2017, to hold a master’s degree from an accredited institution but not a certification pursuant to N.J.A.C. 6A:9B. The proposed amendment seeks to ensure that APSSDs are staffed by qualified individuals.

The Department proposes an amendment to “extraordinary service” to add “, or a one-to-one nurse,” after “a one-to-one aide” and to add “as required by the student’s individualized education program (IEP)” after “for a student.” The proposed amendments will clarify the current practice of including one-to-one nursing as an extraordinary service and ensure the services are required by the student’s IEP.

The Department proposes a definition for “full time” for the purposes of determining maximum salaries as detailed in recodified N.J.A.C. 6A:23A-18.3(o), (p), and (q) and “full-time equivalent” to mean 35 hours or more per week over the term outlined in the employment contract.

The Department proposes a definition for “full-time equivalent” or “FTE” to mean the ratio of the total number of paid hours during a period divided by the number of full-time working hours in that period; one FTE is equivalent to one employee working full time.

The Department proposes a definition for “independent school auditor” to mean an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who holds a valid registration license as a public school accountant of New Jersey and conducts an APSSD’s annual audit in accordance with recodified N.J.A.C. 6A:23A-18.10.

The Department proposes a definition for “meals” to mean the provision of breakfast and/or lunch to students.

The Department proposes a definition for “passenger vehicle” to mean a vehicle originally designed by a manufacturer with a seating capacity of 10 or fewer persons, including the driver.

The Department proposes to relocate the last sentence of the definition of “private placement student,” which requires, for tuition-rate purposes for a private placement student, the APSSD to charge not less than the audited cost per student or to finance with other means the costs that exceed the tuition rate charged, as proposed N.J.A.C. 6A:23A-18.3(u) since the section regarding tuition rate procedures is the more appropriate location for the provision.

The Department proposes a definition for “sending district board of education” to mean the New Jersey public school district, charter school, or renaissance school, or State agency sending a student to an APSSD.

## **N.J.A.C. 6A:23A-18.2 Tuition Rate Procedures**

This section provides the methodology for calculation of tuition rates charged by APSSDs. Currently, the Department sets a tentative tuition rate for APSSDs based on audited costs of the preceding school fiscal year and then adjusts the rate based on a reconciliation of the allowable spending of each APSSD. Tuition is based on actual allowable costs plus a percentage profit (for profit APSSDs) or percentage increase in working capital (nonprofit APSSDs). The Department notifies APSSDs and school districts of a maximum tentative tuition rate for the ensuing school year. Further, this section allows APSSDs to charge one tuition rate per school location or separate tuition rates by class type and by school location. If the APSSD charges a rate by class type, it must maintain bookkeeping and accounting records by class type and school location.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(a), which requires the board of directors of an APSSD located in New Jersey to determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student and to identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department, to include “as determined by an independent school auditor” after “certified actual cost per student.” The proposed amendment will clarify the tuition rate setting process by assuring the final rate charged is not higher than the certified rate that is calculated by an independent school auditor.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(a)1v, which requires an APSSD board of directors to ensure costs are based on goods actually received and placed in service in the fiscal year they are expensed,” to include “and/or services rendered” after “placed in service.” The proposed amendment will clarify the items and/or costs an APSSD’s board of directors must assure are actual allowable costs for the educational program.



The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.3(a)2 and (a)2i, which require an APSSD to notify the Commissioner and sending school districts if it proposes to charge the sending school district a final tuition rate more than 10 percent above the tentative tuition rate charged during the course of a school year and the reason for the increase. The rules also establish the dates for notification, require the determination of the increased tuition rate to be based on completion of the required quarterly financial report, and allow the APSSD to charge an increase of up to 10 percent if the sending district board of education and Commissioner are not notified about the increased rate by the established dates. The Department proposes to replace “[i]f 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” with “[i]f during any quarter of the school year, the APSSD’s financial report, completed pursuant to N.J.A.C. 6A:23A-18.5(a)11, demonstrates the year-to-date per diem rate exceeds the tentative tuition rate for the year by more than 10 percent.” The Department also proposes new N.J.A.C. 6A:23A-18.3(a)2ii to require the notification to contain a detailed statement outlining the changing costs and/or enrollment, reasons for the changes, including management’s response to them, and the reason(s) the changes are not offset by decreases in costs. The proposed rule also will allow the Commissioner, or his or her designee, to prohibit an APSSD from charging an increase above 10 percent if the notification does not include the detailed statement. The proposed amendments and new rule will allow the Department to understand the basis behind the potential increase in tuition, which will assist the Department in its regulatory functions.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.3(a)3i, which requires costs for programs at APSSDs to include minimum instructional costs of 55 percent and maximum administrative costs of 25 percent, as defined in the chart of accounts, for the 2006-

2007 school year and thereafter. The Department proposes to amend N.J.A.C. 6A:23A-18.3(a)3i to replace “2006-2007 school year and thereafter” with “2016-2017.” To ensure APSSDs focus more of their expenses on student instruction, the Department further proposes new N.J.A.C. 6A:23A-18.3(a)3ii through vi to adjust the administrative and instructional costs limits over the course of five school years. The proposed rules will adjust the administrative and instructional cost limits as follows:

- For the 2017-2018 school year, minimum instructional costs of 55.5 percent and maximum administrative costs of 24.5 percent;
- For the 2018-2019 school year, minimum instructional costs of 56 percent and maximum administrative costs of 24 percent;
- For the 2019-2020 school year, minimum instructional costs of 56.5 percent and maximum administrative costs of 23.5 percent;
- For the 2020-2021 school year, minimum instructional costs of 57 percent and maximum administrative costs of 23 percent; and
- For the 2021-2022 school year and thereafter, minimum instructional costs of 57.5 percent and maximum administrative costs of 22.5 percent.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(a)4, which requires the APSSD to charge one tentative tuition rate, charge one final tuition rate, and calculate one certified actual cost per student for the school year unless otherwise determined pursuant to recodified N.J.A.C. 6A:23A-18.3(b), to add “as published by the Department” after “one tentative tuition rate.” The Department also proposes to add “determined by the APSSD” after “charge one final tuition rate” and “that must be approved by the Commissioner, or his or her designee” after “for the school year,” respectively. The proposed amendments will clarify the tuition rate setting

process by stating the Department publishes the tentative tuition rate, the APSSD determines the final tuition rate, and the certified rate is approved by the Commissioner.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(a)5, which requires the APSSD to, except for extraordinary services, not bill the sending district board of education separately for related services that are required by a student's initial or subsequent IEP, to add "provide required related services in the scope of service rendered pursuant to the tuition contract" to clarify that related services may not be charged separately from tuition. The Department also proposes to add that "If the related service required by an IEP is beyond what is typically provided during the school day, or the nature of the related services requires that it be provided beyond the school day/operating hours, the APSSD may address the costs and provision of such related services through a separate agreement with the sending district. However, if such related services beyond that typically provided during the school day or beyond the school day/operating hours are not in the scope of services rendered under the tuition contract, nothing in this section shall prevent a sending district board of education from providing those services itself or separately contracting for those services with an approved service provider other than the APSSD." The proposed amendments will clarify the exceptions to the requirement that the APSSD not bill the sending district board of education separately for related services, and ensure the rules and Department guidance are consistent.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(b), which allows an APSSD to charge one tuition rate per school location or separate tuition rates by class type and by school location. The rule also establishes requirements for APSSDs that choose to charge tuition rates by class type. The Department proposes to add "[p]rior to June 30, 2017, the Commissioner, or his or her designee, may approve APSSDs to charge" before "separate tuition

rates.” The Department further proposes to prohibit APSSDs that have not received written approval to charge separate tuition rates by class type and by school location prior to July 1, 2017, from doing so for the school year beginning July 1, 2017, and thereafter. The Department also proposes to maintain the requirements for APSSDs that charge tuition rates by class type but only if the APSSD is approved prior to June 30, 2017. The proposed amendments will streamline the tuition rate setting process.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(b)4ii, which provides one of three options for how an APSSD may determine the individual share of a particular allowable cost item for a class type, to replace “and” with “or” to clarify an APSSD can request approval for one of three options and not all three.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(d), which allows an APSSD to create, at the end of the fiscal year, indirect cost pools for allocation of costs to the APSSD program that are incurred for a common or joint purpose. The Department proposes to replace “between common or joint purposes” with “to the APSSD.” The Department also proposes new N.J.A.C. 6A:23A-18.3(d)1 to allow an APSSD to charge for expenditures in the indirect cost pool that are related to the APSSD’s function(s), operation(s), and/or program(s). The Department proposes new N.J.A.C. 6A:23A-18.3(d)2 to allow an APSSD to include salary expenditures and associated fringe benefits included in an indirect cost pool that are for individuals who are assigned, pursuant to a contract and/or job description, to perform work related to the APSSD’s function(s), operation(s), and/or program(s). The proposed amendments will ensure costs included in certified actual costs per student relate to the services provided and/or received by the public placement student.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(e)2, which allows an entity that operates only as an APSSD with one or more tuition programs at one or more locations to charge its costs indirectly in accordance with an equitable allocation plan approved by the Commissioner or in accordance with either of two ratios. The Department proposes to relocate the reference to an equitable allocation plan approved by the Commissioner to new N.J.A.C. 6A:23A-18.3(e)2i. The proposed amendments will clarify there are three methods by which an APSSD can calculate indirect costs: an equitable allocation plan approved in writing by the Commissioner, ratio of direct costs for each program, or the ratio of ADE for each program to total ADE.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.3(f)3, which requires an entity that operates other programs in addition to an APSSD at one or more locations to charge allowable indirect costs 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 two ratios. The Department proposes to relocate the reference to an equitable allocation plan approved by the Commissioner to new N.J.A.C. 6A:23A-18.3(f)3i. The proposed amendments will clarify there are three methods by which an APSSD can calculate indirect costs: an equitable allocation plan approved in writing by the Commissioner, ratio of direct costs for each program, or the ratio of ADE for each program to total ADE.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.3(g), which requires APSSDs to charge the direct and indirect costs associated with facilities and operations used for unrelated activities and/or enterprises by related or unrelated parties according to the associated activities and/or enterprises they benefit. The Department proposes to replace “the associated activities and/or enterprises which they benefit” with “the ratio of the square footage of

the portion of the facility used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the square footage of the total facility.” The Department also proposes new N.J.A.C. 6A:23A-18.3(g)1 to require APSSDs to charge the direct and indirect costs associated with facilities and operations used for unrelated activities and/or enterprises by related or unrelated parties according to the “ratio of the time used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the total time the facility is used for any purpose.” The Department also proposes to replace the current requirement that indirect costs be distributed in accordance with an equitable allocation plan approved by the Commissioner with a prohibition on indirect costs for using the APSSD’s facilities in any other manner from being included in the certified actual cost per student. The proposed amendments will ensure costs for facility use unrelated to the education of APSSD students are not included in the certified actual cost per student.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(i)1, which details how the tentative tuition rate is calculated by the Department. Specifically, the maximum tentative tuition rate per student is the product of the audited actual cost per student for the school year prior to the current school inflated by twice the spending growth limitation of 2.5 percent and any applicable change to the greater of the percentage identified in statute or the consumer price index (CPI). The Department proposes to replace “spending growth limitation of 2.5 percent” with “tax levy growth limitation of two percent.” The proposed amendments will replace the statutory citation for N.J.S.A. 18A:7F-5.d, which is no longer effective, with N.J.S.A. 18A:7F-38. The Department also proposes to add “as defined in N.J.S.A. 18A:7F-45” after “CPI” to update the inflation calculation to be consistent with current statutory requirements of the tax levy growth limitation.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(j), which details the requirements/process by which the Commissioner may approve a higher tentative tuition rate. The proposed amendment will replace “maximum tentative tuition rate for the year” with “maximum tentative tuition rate for the ensuing fiscal year” to clarify the date relating to the tentative rate for which the increase is sought.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.3(j)1ii, which requires the APSSD seeking a higher tentative tuition rate to provide a detailed explanation of the need for increases in excess of increases already provided in the tentative tuition rate. The Department proposes to replace “explanation of” with “narrative prepared by the APSSD’s administration and/or management demonstrating.” The Department also proposes an amendment at N.J.A.C. 6A:23A-18.3(j)1iii, which requires the APSSDs to provide a properly completed financial report in a Commissioner-prescribed format for the six months of operations ending December 31 immediately preceding the school year, to add “interim” before “financial report.” The proposed amendments will allow the Department to review the basis for the increase, which will assist the Department with its regulatory functions. The Department further proposes to delete the Department’s address indicating from which division the form can be obtained because the forms are submitted electronically.

The Department proposes to delete N.J.A.C. 6A:23A-18.2(j)2, which allows the Commissioner to approve a higher tentative tuition rate when a student’s IEP team determines the need for extraordinary services. Historically, the Department has not utilized this provision and its basis is unclear. Accordingly, the proposed amendment will align the rule to current practice.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.3(k), which indicates the Commissioner will issue notification certifying the final tuition rates charged by

APSSDs are based on the certified actual cost per student pursuant to recodified N.J.A.C. 6A:23A-18.3(a). The proposed amendments will add “[f]ollowing a satisfactory compliance review of an independent auditor’s certified actual cost per student” before “[t]he Commissioner” and replace “notification of certifying” with “an approval.” The proposed amendments will clarify the process for the Commissioner’s approval of final tuition rates charged by APSSDs.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.3(l), which details the requirements surrounding an APSSD’s obligation to refund a sending school district the difference between the tentative tuition rate charged and the final calculated tuition rate. The proposed amendments will replace “by written contractual agreement” with “pursuant to (i) and (j) above,” which will clarify how the tentative rates are established. Additionally, the Department proposes to add “independent auditor-certified” before “tuition rate charged” and replace “received from” with “approved by.” The amendments are proposed for clarity.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.3(m), which details the requirements if an APSSD chooses to charge sending district boards of education for the difference between the tentative tuition rate and a higher final tuition rate for a given school year. The Department proposes to clarify the timing of the payment depends on the year of approval of the certified cost per student by the Commissioner, or his or her designee.

The Department proposes new N.J.A.C. 6A:23A-18.3(o)1 to require, effective July 1, 2017, through June 30, 2024, maximum allowable salaries to be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year, with certain exceptions. The proposed rule states the calculation of maximum salaries that can be charged by an APSSD for staff other than administration. The proposed rule will ensure fiscal responsibility and will contain tuition and related costs for sending district boards of education.



The Department proposes N.J.A.C. 6A:23A-18.3(o)1i to require, beginning July 1, 2017, the job titles of occupational therapist, physical therapist, and speech and language specialist to increase annually from the 2016-2017 published list of maximum allowable salaries by CPI. The proposed rule balances the need to maintain competitive salaries for the stipulated job titles with the need to ensure fiscal responsibility and to contain tuition and related costs for sending district boards of education.

The Department proposes new N.J.A.C. 6A:23A-18.3(o)1ii to require, beginning July 1, 2017, the Commissioner to publish a maximum allowable salaries list that contains the total maximum hourly rate for occupational therapists, physical therapists, and speech and language specialists contracted by APSSDs as purchased service providers or independent contractors. The proposed rule will also require the published hourly rates for the purchased service providers or independent contractors to include an allowance of 35 percent more than the maximum allowable salary rate calculated and published pursuant to proposed N.J.A.C. 6A:23A-18.3(o)1i for the same job titles. The proposed rule further will make the total maximum hourly rates applicable only to contracted service providers. The proposed rule balances the need to maintain competitive salaries for the stipulated job titles with the need to ensure fiscal responsibility and to contain tuition and related costs for sending district boards of education.

The Department proposes new N.J.A.C. 6A:23A-18.3(o)iii to allow, beginning July 1, 2017, an APSSD to contract with an approved clinic and agency pursuant to N.J.A.C. 6A:14-5.1(c) and 5.2, and to pay the approved clinic or agency for the contracted services at a rate above the maximum allowable salary published rate, so long as the APSSD acquires quotes from three approved clinics or agencies prior to contracting with the approved clinic or agency and provides those quotes to the Department upon request. The Department further proposes to require the

APSSD to contract with the approved clinic or agency with the lowest quote if any of the quotes are from a related party. The proposed regulation balances the need to maintain competitive salaries for the stipulated job titles with the need to ensure fiscal responsibility and to contain tuition and related costs for sending district boards of education.

The Department proposes new N.J.A.C. 6A:23A-18.3(o)2 to require proposed N.J.A.C. 6A:23A-18.3(o)1i and ii to sunset on June 30, 2024, and for the Commissioner, or his or her designee, to resume use and publication of a list of maximum allowable salaries calculated pursuant to recodified N.J.A.C. 6A:23A-18.3(o). The proposed regulation will provide consistency and clarity regarding the determination of maximum allowable salaries.

The Department proposes new N.J.A.C. 6A:23A-18.3(o)3 to require, beginning with the 2021-2022 fiscal year, the Department to initiate a study examining the maximum allowable salary structure. The proposed regulation also will allow, as part of the study, the Department to seek and/or include input from an APSSD representative(s). The proposed regulation further will require the study to include a data-driven review of maximum salaries and recommendations, if any, for changes to the maximum allowable salary calculation formula.

The Department proposes new N.J.A.C. 6A:23A-18.3(p)1 to require, effective July 1, 2017, through June 30, 2024, the maximum allowable salaries to be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year. The proposed regulation states the calculation of maximum salaries can be charged by an APSSD for administrative staff. The proposed regulation will ensure fiscal responsibility and will contain tuition and related costs for sending district boards of education.

The Department proposes new N.J.A.C. 6A:23A-18.3(p)2 to require N.J.A.C. 6A:23A-18.3(p)1 to sunset on July 1, 2024, and for the Commissioner, or his or her designee, to resume

use and publication of a list of maximum allowable salaries calculated pursuant to N.J.A.C. 6A:23A-18.3(p). The proposed regulation will provide consistency and clarity regarding the determination of maximum allowable salaries.

The Department proposes to delete N.J.A.C. 6A:23A-18.2(q), which requires, for the 2006-2007 school year and thereafter, a staff member whose salary is greater than the maximum allowable salary provided by existing N.J.A.C. 6A:23A-18.2(o) and (p), to be frozen at the 2005-2006 salary level or until the maximum allowable salary exceeds the 2006-2007 salary level. Additionally, the regulation requires, for the 2006-2007 school year and thereafter, the maximum allowable salary to be applied to staff members whose salary is less than the maximum salary amounts or those who are newly hired after the 2006-2007 school year. The regulation is no longer necessary due to the passage of time and the Department is not aware of any current APSSD staff members earning above the maximum approved salary levels.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.3(q), which requires APSSDs to use the recognized position title list to hire staff whose positions require certification or a bachelor's degree, to add "or master's" before "degree." The proposed amendment will align the regulation with the requirements for being employed as a director, assistant director, or business administrator at recodified N.J.A.C. 6A:23A-18.2 that require a master's degree in certain circumstances.

The Department proposes new N.J.A.C. 6A:23A-18.3(r) to allow the Commissioner, or his or her designee, to approve, for individual APSSD employees, salaries higher than the maximum allowable salary under recodified N.J.A.C. 6A:23A-18.3(o), (p), and (q). The proposed regulation also will allow approval to be given for no more than two APSSD employees in any fiscal year in which the APSSD demonstrates, to the Commissioner's, or his or her designee's, satisfaction, the

maximum allowable salary is inadequate and would cause a hardship to the APSSD. The proposed regulation further stipulates the hardship exception will be granted in limited circumstances and only if the Commissioner, or his or her designee, determines the APSSD has demonstrated an exception is warranted. Proposed new N.J.A.C. 6A:23A-18.3(r)1 will require the APSSD to submit an application to the Commissioner, or his or her designee, postmarked no later than May 1 preceding the applicable school year. The proposed regulation also will require the APSSD to submit the application with appropriate documentation that must include, but not be limited to, the following:

- Detailed information on the staff member for whom the increase is sought, including, but not limited to, job title and related description, experience and credentials, hire date, previous salary information and new salary sought, accomplishments/achievements of note, publications or the like, and, if applicable, the same detailed information for all staff employed under the same job title;
- A detailed budget demonstrating the impact the increased salary would have on the projected total expenditures, ADE, and budgeted tuition rate, if any;
- Detailed explanation of the need for a salary above the maximum allowable rate; and
- An outline of the educational impact of the employee.

The proposed regulation also provides that applications solely based on the length of service of the employee or familiarity with the school will not be granted.

Proposed new N.J.A.C. 6A:23A-18.3(r)2 will require the Commissioner, or his or her designee, to review the application and respond to the APSSD in writing by June 30 of the school year preceding the applicable school year for which the increase above the maximum salary is

sought. The proposed exception process will provide a mechanism whereby the Department can consider unanticipated circumstances.

The Department proposes new N.J.A.C. 6A:23A-18.3(u) as discussed above.

### **N.J.A.C. 6A:23A-18.3 New Approved Private Schools for Students with Disabilities**

This section provides the framework for establishing a new APSSD and includes requirements on the minimum number of public school placement students for new schools and previously approved APSSDs.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.4(a)1, which states that a current APSSD that is expanding a program to another location, or is opening a new program, is considered a new APSSD subject to N.J.A.C. 6A:23A-18.4. The proposed amendments will replace “expanding a program” with “adding additional classrooms to an existing approved educational program.” The proposed amendments also will replace “to another location” with “at a new location.” The proposed amendments will clarify the factual circumstances under which a new APSSD is created.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.4(a)2, which prohibits a current APSSD that is expanding a program or adding a new class type(s) to be housed in another building at the current location from being considered a new APSSD and requires the expanding APSSD to charge its current tuition rate as the tentative tuition rate. The proposed amendments will replace “expanding a program” with “adding additional classrooms to an existing approved educational program” and to replace “to be housed” with “either of which will be housed.” The proposed amendments will clarify the factual circumstances under which the Department will not consider the changes to result in a new APSSD.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.4(c)1i, which requires an APSSD applicant meeting the minimum ADE of 24 public school placement students by the end of the second school year to receive new school approval, to add “if it meets all other Department requirements” after “approval.” The proposed amendment will clarify approval of an APSSD is not contingent upon only successfully meeting the ADE requirements.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.4(c)1iii, which requires any previously approved APSSD that falls below the previous minimum ADE of 16 public school placement students to have its status as an approved school rescinded and be considered preliminarily approved. The Department proposes to amend the rule to add “prior to the 2004-2005 fiscal year,” to clarify this provision applies only to schools approved before that the 2004-2005 fiscal year and to clarify the year by which the APSSD must attain a minimum ADE before its approval is rescinded.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.4(c)1iv, which requires an APSSD approved in 2004-2005, or thereafter, that falls below an ADE of 24 public school placement students in a subsequent school year to be considered preliminarily approved. The regulation also requires the school to 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 will be rescinded and it will no longer be considered an APSSD. The proposed amendment replaces “in 2004-05” with “to operate during the 2004-2005 fiscal year” to clarify the timeframe for which the section is applicable.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.4(d), which requires an APSSD to amortize start-up costs, if any, over a 60-month period. The proposed

amendment will add “straight line” before “amortize” to clarify the type of amortization method the Department requires APSSDs to use in this situation.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.4(e), which, in part, requires an APSSD during its first two years of operation to submit its proposed budget on a Commissioner-prepared form, to add “and/or electronic system” after “on a form” to allow the Department to institute new technology platforms for the collection of information. The Department also proposes an amendment at recodified N.J.A.C. 6A:23A-18.4(e)6, which requires the proposed budget submission to include a statement of assurance, to add “as required by the Office of Special Education Programs” at the end, to clarify the nature of the required statement of assurance.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.4(f), which requires sending school districts to pay the Commissioner-approved tentative tuition charges to a new APSSD based upon the approved estimated costs per student for the first two years of operation, to replace “charged” with “calculated pursuant to (e) above” to clarify how the rate is calculated.

The Department proposes to delete N.J.A.C. 6A:23A-18.3(h), which requires new APSSDs to be regulated in accordance with existing N.J.A.C. 6A:23A-18.3, because it is clear APSSDs must comply with the subchapter.

The Department proposes new N.J.A.C. 6A:23A-18.4(h) to prohibit an APSSD approved as a new school from beginning operations before July 1 of the school year immediately following the school year in which the APSSD received approval to operate, except for an APSSD operating in and affiliated with a public school district. The proposed regulation will clarify APSSD opening dates and avoid disruption in the middle of a fiscal year.

## **N.J.A.C. 6A:23A-18.4 Bookkeeping and accounting**

This section establishes requirements for accounting and financial reporting by APSSDs. The section also specifies recordkeeping and requires APSSDs to prepare quarterly financial reports in a Commissioner-prescribed format and to submit the reports to the APSSD governing body for acceptance. The section also establishes criteria for when APSSDs may provide merit- or contingent-pay increases. This section further sets rules on how APSSDs account for the costs of retirement plans or the timing of compensation increases.

The Department proposes to amend recodified N.J.A.C. 6A:23A-18.5(a)1, which requires an APSSD to maintain accounts in accordance with generally accepted accounting principles (GAAP) as defined by the American Institute of Certified Public Accountants except as modified in the chapter, to replace “defined” with “established by the Financial Accounting Standards Board (FASB) and recognized as authoritative.”

The Department proposes to recodify N.J.A.C. 6A:23A-18.5(a)4, which requires an APSSD to capitalize leasehold improvements and depreciate the improvements using the straight-line method and a useful life equal to that of the lease but not less than five years, as N.J.A.C. 6A:23A-18.5(a)4 and (a)4i. The proposed amendments will ensure fiscal accountability and appropriate use of public funds.

The Department also proposes amendments at new N.J.A.C. 6A:23A-18.5(a)4i to add “made to an existing structure leased by the APSSD” after “capitalize leasehold improvements” and to replace “to that of the lease” with “to the lease’s remaining term and any extension(s).” The Department also proposes new N.J.A.C. 6A:23A-18.5(a)4ii to require an APSSD to depreciate any leasehold improvement(s) to which a related party(ies) is the lessor using the straight-line method



and a useful life equal to the lease's remaining term and any extension(s), but not less than 10 years.

The Department proposes new N.J.A.C. 6A:23A-18.5(a)4iii to prohibit an APSSD from depreciating a leasehold improvement(s) made to a structure for any month(s) the structure is not in service as an APSSD, or in excess of amounts determined under N.J.A.C. 6A:23A-18.5(a)4i or ii for any fiscal year.

The Department proposes new N.J.A.C. 6A:23A-18.5(a)4iv to prohibit an APSSD from depreciating a leasehold improvement(s) made to a structure that does not directly benefit public school placement students being educated or that is in excess of amounts determined pursuant to N.J.A.C. 6A:23A-18.5(a)4i, ii, or iii.

The Department proposes to amend recodified N.J.A.C. 6A:23A-18.5(a)5, which requires an APSSD to maintain asset, liability, fund balance, expenditure, and revenue account, to replace "fund balance" with "net asset." The proposed amendment will update terminology to reflect current GAAP as set by FASB standards.

The Department proposes to amend recodified N.J.A.C. 6A:23A-18.5(a)7, which requires each APSSD to maintain a chart of account issued by the Commissioner and, effective July 1, 2002, to use for financial reporting to the Department a uniform minimum chart of accounts consistent with Financial Accounting for Local and State School Systems 2003, to delete "July 1, 2002," since the date has passed and to replace "2003" with "2014" to reflect the current financial accounting system. The Department also proposes to delete the regulation's provision that allows the Commissioner to approve the use of an alternative chart of accounts by entities that operate other programs and if the total APSSD tuition expenses are less than 51 percent of the entity's total expenses and requires the APSSD to provide evidence the chart of accounts may be cross-walked

to the prescribed chart of accounts. Instead, the Department proposes to add language stating, effective July 1, 2017, it will not consider requests for approval to use an alternative chart of accounts and allowing APSSDs that received approval prior to July 1, 2017, to use an alternative chart of accounts to continue to do so. Since data on costs is collected electronically, it is essential that all APSSDs follow the Department's classification of revenue and expenses.

The Department proposes new N.J.A.C. 6A:23A-18.5(a)7i to require, effective July 1, 2018, the first \$15,000 of costs per litigation and per fiscal year of costs incurred by an APSSD to be included within the administrative cost category limits identified in N.J.A.C. 6A:23A-18.3(a)3. The proposed rule will also require costs for litigation above the first \$15,000 per litigation and per fiscal year to be outside the total cost category assignment as indicated in the Department's chart of accounts pursuant to N.J.A.C. 6A:23A-18.5(a)7. The Department proposes new N.J.A.C. 6A:23A-18.5(a)7ii to stipulate, for purposes of N.J.A.C. 6A:23A-18.5(a)7i, litigation means a suit brought by or against an APSSD for which a court of law or agency of the State or Federal government assigns a docket or other form of tracking number. The Department anticipates the proposed rules will contain litigation costs that are included within the certified actual cost per student.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(a)9, which requires an APSSD to maintain documentation to verify all amounts recorded in the general ledger. The current regulation also requires the following: purchase orders to be prepared in detail to document all payments for goods and services; invoices or cash register receipts to be attached to their related purchase orders to support all purchases of goods and services; detailed vouchers signed by the payee to 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. The Department proposes to add to the above by requiring that all documentation be subject to audit by the Department and requiring all expenses to be charged by the APSSD in its audited financial statements. The proposed amendment will ensure the Department is able to obtain the necessary information to properly exercise its regulatory functions.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(a)10, which requires an APSSD to prepare payroll for all employees 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 a minimum semi-monthly, to also allow APSSDs to use an electronic time record system in lieu of the Commissioner-prescribed format upon written approval from the Commissioner. The proposed amendment also will continue Commissioner approval unless and until an APSSD alters the system or engages the services of a new provider for the electronic time record system. The proposed amendment will allow APSSDs to reduce the administrative burden of paper time records.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.5(a)12, which requires an APSSD to maintain acceptable internal control practices, including the separation of duties such as the recording and authorizing of checks and purchase approvals. The Department proposes amendments to replace “acceptable” with “effective” to clarify the type of controls required. The Department also proposes to replace “which include” with “including, but not limited to,” to expand the example of an effective control.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.5(a)14, which requires an APSSD that incurs contingent pay increases to have in place an employee contract that

contains the criteria by which the increase will be paid and requires the plan to be submitted to the Commissioner for approval prior to implementation. The regulation further requires the APSSD to make payment of the contingent pay increase upon achievement of the contractual contingencies as set forth in the approved plan and prohibits the payment from being at management's discretion. The Department proposes to add language prohibiting the APSSD employee's salary plus the contingent pay increase to exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q). The Department further proposes to add "be based upon measurable criteria" after "payment." The proposed amendments will ensure APSSDs and the Department have a clear understanding that contingent pay increases are prohibited from causing salaries to rise above the maximum rates established in N.J.A.C. 6A:23A-18.3(o), (p), or (q).

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.5(a)15, which requires an APSSD that incurs merit pay increases to adopt a formal board policy that outlines the criteria of the merit pay plans and requires the plan(s) to be submitted to the Commissioner for approval prior to implementation. The existing regulation further requires the APSSD to make payment of merit pay increases upon achievement of the plan's criteria, but no later than the following January 31 and prohibits the payment from being made at management's discretion. The Department proposes to prohibit the APSSD employee's salary plus the merit pay increase from exceeding the maximum allowable salary determined pursuant to recodified N.J.A.C. 6A:23A-18.3(o), (p), or (q). The Department further proposes to require the APSSD to accrue the merit pay and any resultant employer payroll tax expense in the fiscal year in which the merit pay is awarded. The proposed amendments will ensure APSSDs and the Department have a clear understanding that merit pay increases are prohibited from causing salaries to rise above the maximum rates established in N.J.A.C. 6A:23A-18.3(o), (p), or (q).

The Department proposes amendments to recodified N.J.A.C. 6A:23A-18.5(a)16, which requires a petty cash fund to be approved by the APSSD's governing body and supported by documentation and prohibits the fund balance from exceeding \$1,500 or disbursements from exceeding \$150.00, except in an emergency, to replace "[a] petty cash fund" with "[a]n imprest balance petty cash fund" and to replace "approved" with "maintained upon annual approval in the minutes." The Department also proposes to replace "and supported with documentation" with "[r]eplenishment and reimbursements shall be supported by documentation." The Department further proposes to add language to require undocumented outflows from petty cash to be classified as a non-allowable cost. Finally, the Department proposes to replace "fund" with "imprest fund balance"; "disbursements" with "individual disbursements made"; and "emergency" with "emergent condition." The proposed amendments will clarify the APSSDs' use of petty cash.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(a)18, which, in part, allows vehicle costs to include, but not be limited to, depreciation, lease costs, gas, oil, repairs and maintenance, insurance, and car phone, to delete "car phone" because it is obsolete.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(a)19i, which requires a nonprofit APSSD to submit a copy of its IRS tax return upon request from the Commissioner, to add "for any fiscal year requested" after "(IRS) tax return" to ensure the Department can exercise its regulatory functions since the IRS and APSSDS have different fiscal years. The same amendment is proposed at recodified N.J.A.C. 6A:23A-18.5(a)19ii.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(a)20, which requires an APSSD to maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the audit. The Department proposes to replace "audit" with "annual audited financial statement, or until the Commissioner, or his or her designee, issues approval or

adjustment to an independent–auditor-certified tuition rate.” The proposed amendment will ensure records are maintained if the Commissioner’s certification of the rate is not completed after seven years has passed since submission of the audited financial statement. The proposed amendment will assist the Department in executing its regulatory functions.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(a)21, which requires a nonprofit entity that has chosen to cease operations as a nonprofit APSSD to distribute accumulated public school placement restricted working capital fund to each sending district that has enrolled students during the APSSD’s last five years of operation. The Department proposes to allow an APSSD to retain its public school placement restricted working capital if the APSSD reconfigures its operations and continues to serve a majority of the same sending district boards of education from the last five years of operation. The proposed amendment will ensure continuity of services for students by preventing an adverse impact to APSSDs that continue to serve the same population.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(a)21i, which requires the distribution of accumulated public school placement restricted working capital fund to be based on each district board of education’s total ADE in the APSSD for the last five years of operation to the APSSD’s total ADE for the same period, to add “the ratio of” after “based on” for clarity.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(a)22, which requires an APSSD to ensure school staff, outside consultants, and subcontractors, including members of a management company, hold the proper school certification, license, or bachelor’s degree required to provide the services being rendered, to add “and anyone working with students” after “management company” to reflect compliance with current law and practice.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(b), which requires an APSSD that receives a refund(s) from a current or prior-year expenditure, or that cancels an accounts payable, to apply the refund or accounts payable as a reduction to the general expenditure account charged to reduce the current-year expenditure account. The existing regulation further requires, if the original expenditure was not incurred in the current school year, such amounts are to be used to reduce total expenditures in the current year and must be applied as a reduction in the current year. The Department proposes to delete “such amount(s) shall be used to reduce total expenditures in the current year” because it contradicts the preceding requirement for a refund to be charged to reduce the original account charged.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(c), which annually requires APSSD’s to execute employment contracts with each school employee whose position requires a certificate, license, or bachelor’s degree, to delete “whose position requires a certificate, license or bachelor’s degree.” The proposed amendment will require employment contracts for all staff members, regardless of certification and will provide uniformity to APSSD contracts.

The Department also proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(c)3, which requires the contract to contain the employee’s work hours, to add “/durational term of employment” after “hours” to clarify the detail required in an employment contract. The Department proposes new N.J.A.C. 6A:23A-18.5(c)5 to require the contract to include certification(s) required for the job title. The Department also proposes new N.J.A.C. 6A:23A-18.5(c)8 to require of the contract to include all fringe benefits. The proposed regulations will ensure employment contracts contain all relevant information.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.5(d), which requires an APSSD to request Department approval to purchase or rent, in a related party transaction, an administrative or business office at a location outside of the APSSD. The Department proposes to add “that operates its educational program outside of a public school district” after “APSSD,” to delete “in a related party transaction” and to add “educational facility” at the end of the sentence. The Department further proposes to add additional language stating, once received, an approval shall not require renewal, unless and until the APSSD changes the location of its educational or administrative facility. The proposed amendments will expand the approval requirement to ensure all purchases or rentals of space for administrative or business offices, aside from APSSDs operating in school district, require approval. The proposed amendments also will ensure APSSDs operate facilities with efficiency and fiscal prudence.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(f), which requires, in part, an APSSD to establish, maintain, and distribute an employee handbook to all staff and for the handbook to outline all employee fringe benefits, to replace “and distribute an employee handbook to all staff” with “an employee handbook that shall be distributed to all staff each school year and made available to the Department upon request.” The proposed amendment will ensure APSSD staff are aware of all employee policies and procedures and the Department has access to the document as necessary to fulfill its regulatory responsibility.

The Department proposes to amend recodified N.J.A.C. 6A:23A-18.5(f)1, which allows the cost of health insurance coverage, including dental and vision, to be included as an allowable cost in the certified actual cost per student. The Department proposes to add “that complies with Federal and State laws and regulations, including payments to employees for a complete waiver of health insurance coverage that comply with the following:” at the end of the regulation. The



Department proposes new N.J.A.C. 6A:23A-18.5(f)1i and ii to allow APSSDs to include payments to employees for waivers of health insurance coverage as part of allowable costs, as long as the waiver incentive does not exceed \$5,000 per fiscal year and the employee provides documented evidence he or she had other valid health insurance coverage during the fiscal year and the APSSD keeps the documentation on file. The proposed amendments will reduce regulation and effectuate cost-saving measures.

The Department proposes new N.J.A.C. 6A:23A-18.5(f)12 to allow APSSDs to include the following as part of allowable costs: health savings accounts (HSA); medical savings accounts (MSAs); health flexible spending arrangements (FSAs); and health reimbursement arrangements (HRAs) established and maintained within applicable law and regulations. The proposed amendments will provide APSSDs flexibility in offering fringe benefits to employees that could result in cost savings to the APSSD.

The Department proposes amendments to the first sentence of recodified N.J.A.C. 6A:23A-18.5(h), which requires a nonprofit APSSD 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 to submit within 60 days after the third fiscal year's end, a corrective action plan to reduce the net deficit fund balance, to add "but reports" before "a net deficit" and "unrestricted" after "a net deficit." The Department also proposes to delete "in all other fund balances (restricted and unrestricted)" and to add "overall" before "deficit fund balance." The proposed amendments will clarify the deficit must be eliminated and not just reduced.

The Department proposes amendments to the third sentence of recodified N.J.A.C. 6A:23A-18.5(h), which requires a nonprofit APSSD that fails to decrease its deficit within three

years to be placed on conditional approval status until the deficit decreases, to replace “decrease the deficit within three years” with “eliminate the deficit by the end of year three” and to replace “until such time that the deficit decreases” with “the deficit unrestricted fund balance is eliminated.” The proposed amendments will ensure an APSSD eliminates the fund balance deficit, and not simply reduces it, by placing the APSSD on conditional status if it fails to eliminate the deficit within the prescribed timeframe.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.5(i), which requires an APSSD that accumulates sick and/or vacation leave to do so in accordance with Financial Accounting Standards Board Statement No. 71 incorporated into the regulation by reference and to include the costs in program expenses only when the compensation is actually paid, to replace “No. 71” with “No. 43 Accounting for Compensated Absences” and to add “and as amended and supplemented” after “by reference.” The proposed amendments will correct the reference to the Financial Accounting Standards Board (FASB) statement regarding compensated absences and to incorporate future FASB statements that amend or supersede FASB 43. The Department also proposes to replace “accumulates employee sick and/or vacation leave” with “allows employees to accumulate and carryover from year to year unused sick and/or vacation leave.” The Department further proposes to replace “shall include these costs in program expenses only when the compensation is actually paid” with “shall include the costs in program expenses in the appropriate cost category only in the year of payment.” These amendments are proposed to provide an APSSD with regulatory guidance on the appropriate accounting standards necessary for carryover of sick and/or vacation leave, as well as to ensure that the carryover leave is recorded in the proper category and fiscal year.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.5(k), which restricts an APSSD's ability to issue compensation increases after the start of a fiscal year. The proposed amendments will replace "shall issue" with "shall limit" and replace "only" after "fiscal year" with "to specific instances." The proposed amendments will clarify to the regulation's application.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.5(k)5, which requires an APSSD to allow a compensation increase after the beginning of a fiscal year if the increase has been approved by the Department after review of a formal written request documenting the facts supporting the increase and if N.J.A.C. 6A:23A-18.5(k)1 through 4 do not apply. The proposed amendment will delete "if none of the above applies" because it is redundant due to "or" at the end of N.J.A.C. 6A:23A-18.5(k)4.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.5(l), which requires APSSDs to ensure employees who are new to the positions of director, assistant or executive director, and business manager on or after July 1, 2006, possess the appropriate bachelor's degree. The existing rule also requires APSSDs to ensure employees functioning in the same positions on or before July 1, 2006, either currently possess the appropriate bachelor's degree or will obtain it by June 30, 2006, or be removed from the position. The Department proposes to replace the first reference to "July 1, 2006," with "July 1, 2017," the first reference to "June 30, 2006," with "June 30, 2017," and the second reference to "June 30, 2006," with "July 1, 2017." The Department also proposes amendments to align the regulation with amendments proposed at recodified N.J.A.C. 6A:23A-18.2 to the definitions of "director," "assistant director," "executive director," and "business manager." As proposed, APSSDs will be required to ensure individuals

who are newly employed or new to the four positions on or after July 1, 2017, possess the appropriate master's degree or other required degree or certification.

#### **N.J.A.C. 6A:23A-18.5 Non-Allowable Costs**

This section provides a lengthy, yet non-exhaustive list, of 68 types of non-allowable costs. Non-allowable costs play a crucial part in the current reconciliation process between the tentative tuition rate and the certified actual cost per student. Essentially, if a cost is deemed non-allowable, an APSSD cannot include the cost in its expenditures, which forms the basis for the certified actual cost per student and, therefore, is directly related to the tuition rates paid by the sending district boards of education.

The Department proposes to amend recodified N.J.A.C. 6A:23A-18.6(a)6, which makes 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 or a bachelor's degree non-allowable in the calculation of the certified actual cost per student. The Department proposes to add "or is contracted to perform the duties of," before "a position requiring." The Department also proposes to add "or master's" before "degree" in this regulation and at recodified N.J.A.C. 6A:23A-18.6(a)8. The proposed amendments will clarify the requirement for staff working with students to have the proper credentials.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)7, which includes the salary and fringe benefits of staff members for time not expended and/or services not performed as a non-allowable cost. The Department proposes to add "or any payment(s) to a purchased service provider," after "staff member." The proposed amendment will expand the application of the non-allowable provision to any payment(s) to a purchased service provider to

ensure an APSSD expends funds prudently and only for services actually rendered by an employee or service provider.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)10, which prohibits the cost of a fringe benefits based upon a non-allowable salary from being included in the certified actual cost per student, to add “and/or associated with” after “based on” to broaden the scope of application.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.6(a)12, which includes as non-allowable costs certain consultant fees for services, to add “that fail to meet the following standards” after “for services.” The Department also proposes to recodify N.J.A.C. 6A:23A-18.6(a)12i, which includes as non-allowable costs consultant fees for services 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, as N.J.A.C. 6A:23A-18.6(a)12i and i(1), (5), and (6). The Department also proposes at N.J.A.C. 6A:23A-18.6(a)12i to replace “[t]hat are not detailed” with “[t]he work of the consultant shall be detailed” and to add “signed by both parties” after “contract.” The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)12i(1), which requires the contract to include a list of the nature of the services provided, to replace “a list” with “[a] detailed description.” The Department further proposes new N.J.A.C. 6A:23A-18.6(a)12i(2) through (4) to add the contract’s duration, detailed fee information, and a fee payment schedule(s) as required elements of consultant contracts. The Department also proposes amendments at recodified N.J.A.C. 6A:23A-18.6(a)12i(5), which requires the contract to include the approximate number of days to complete the work and the charge per day, to delete “the charge per day.” The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.6(a)12i(6), which requires

the contract to include the product or outcome of the consultation, to add “anticipated” before “product” and to replace “consultation” with “work.” The proposed amendments will ensure contracts contain all relevant information.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)13, which limits to \$1,500 the allowable amount of total contributions, donations, awards, and scholarships that can be included in the certified actual cost per student, to replace “\$1,500” with “\$750.00.” The proposed amendment will be a cost saving measure.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)14iv, which limits the depreciation costs that can be included in the certified actual cost per student, to replace “and” at the end with “or.” The proposed amendments will make the provisions of N.J.A.C. 6A:23A-18.6(a)14i through iv disjunctive.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.6(a)15, which includes as non-allowable costs, the yearly cost of a lease for a vehicle that is not used for transporting students or supplies if the lease is in excess of the maximum depreciation allowed in any given year without regard to special deductions allowed under Internal Revenue Code (IRC), including the amortization of the lease down payment over the term of the lease, to replace the current provisions with the following: “Depreciation associated with the purchase and ownership of any passenger vehicle not used for transporting students or supplies purchased on or after July 1, 2017, if:.” The Department also proposes to recodify the majority of the regulation as N.J.A.C. 6A:23A-18.6(a)15i. The Department proposes new N.J.A.C. 6A:23A-18.6(a)15i(1) through (3) to stipulate the cost of depreciation associated with the purchase and ownership of any vehicle is non-allowable if: the depreciable basis upon which depreciation is calculated exceeds \$30,000; the depreciation expensed exceeds allowable depreciation calculated on the straight-line basis over a

period of not less than five years; or the depreciation expensed is attributable to a passenger vehicle that has been assigned to, or used on a regular basis by, an APSSD staff member who is not the APSSD executive director, director, and/or owner. The Department further proposes new N.J.A.C. 6A:23A-18.6(a)15ii to include as non-allowable costs vehicle lease payments made pursuant to the lease agreement entered into on or after July 1, 2017, when the annual lease payment exceeds the annual depreciation allowable on an owned passenger vehicle with a maximum depreciable basis of \$30,000 or the lease payments are for a leased passenger vehicle that has been assigned to, or used on a regular basis by, an APSSD staff member who is not the APSSD executive director, director, and/or owner. The proposed amendments and new rules will ensure vehicle costs deemed “luxury” or excessive are not included in the certified actual cost per student.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)17, which includes as non-allowable costs entertainment expenses in excess of \$1,000, be reduced from “\$1,000” to “\$500.00.” The existing rule is less restrictive than those applicable to public school districts because it currently allows APSSDs to include in tuition costs up to \$1,000 for entertainment expenses. Regulations for school districts prohibit the reimbursement of any amount for entertainment costs, with minimal exceptions pursuant to N.J.A.C. 6A:23A-7.12. The proposed amendment modifies the amount permitted to be used on entertainment costs in order to reduce these types of expenditures, so that costs are more consistent with those of a public school district.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)18, which includes as non-allowable costs the total cost for food/beverages for 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, to replace “\$3,000” with “\$1,500.” The proposed amendment will ensure efficient expenditure of funds.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.6(a)20, which includes as non-allowable costs, the cost of meals under certain conditions, by replacing the existing regulation with “Meals in excess of the limits set forth in N.J.A.C. 6A:23A-18.23.” The proposed amendment will reflect the addition of new N.J.A.C. 6A:23A-18.23, discussed below.

The Department proposes to delete N.J.A.C. 6A:23A-18.5(a)20i through iv, which include as non-allowable costs the cost of meals for students when the meals do not meet the nutritional requirements of the Child Nutrition Program (CNP) as administered by the New Jersey Department of Agriculture; effective July 1, 2007, for students when a nonprofit APSSD has not applied for and received funding from the CNP except when the APSSD has received from a majority of the district boards of education that send students to the school stating resolutions the district boards of education do not require the APSSD to apply for and receive funding from the CNP; effective July 1, 2007, for students when the APSSD has not charged students for paid and reduced meals in accordance with the income eligibility criteria established by the CNP except when the APSSD receives resolutions stating sending district boards of education do not require the APSSD to charge students for a reduced and/or paid meal; and for staff, except as allowable in accordance with current N.J.A.C. 6A:23A-18.5(a)18. The proposed deletion is necessary because child nutrition requirements are addressed in detail at proposed new N.J.A.C. 6A:23A-18.19.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.6(a)26, which includes the following interest costs on loans as non-allowable costs: interest is in excess of the general prevailing rate at the time the loan was taken; the loan is a less-than-arm's length/related party transaction that has not been previously approved by the Department and has not been repaid in accordance with the Department's approval letter; and the loan is not exclusively used to meet program needs. The Department proposes an amendment at recodified N.J.A.C. 6A:23A-



18.6(a)26ii to replace “and” with “or” to ensure that it is clear that non-allowable costs include interest cost on loans when any of the conditions is present and not just all three. The Department also proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)26iii to insert “educational” before “program needs” to clarify “program” is intended to apply to the educational program and not other programs run by APSSDs. The proposed amendments will ensure efficient expenditure of public funds by preventing APSSDs from including such costs in its certified tuition rate.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)27, which makes non-allowable interest costs on long-term loans under the following conditions: the loan is used for other than financing of fixed assets; the loan is not secured by the fixed asset being financed; and 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. The Department proposes to replace “and” with “or” to correct an obvious error; the conditions listed are mutually exclusive. The proposed amendment will ensure efficient expenditure of public funds by preventing APSSDs from including such costs in its certified tuition rate.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)29, which includes as non-allowable costs, the write-off of uncollected accounts receivable (bad debts) before three years has elapsed and before a reasonable effort has been made to collect the accounts receivable. The Department proposes to recodify the second part of recodified N.J.A.C. 6A:23A-18.6(a)29 as (a)29i. The Department also proposes new N.J.A.C. 6A:23A-18.6(a)29ii to include uncollected accounts receivable that arise out of the APSSD’s provision of extraordinary services, services to students placed by an out-of-State agency, or services to private placement students. The proposed amendments will ensure the efficient expenditure of public funds by limiting the

type of debt that may be written off by an APSSD to only those costs that are included in the calculation of certified actual allowable costs.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)31iii, which includes as non-allowable costs retirement plan costs that are for a defined contribution plan in excess of the maximum percentage and maximum dollar amount as the lesser of 100 percent of the employee's compensation or \$44,000. The Department proposes to replace "\$44,000" with "\$53,000 as adjusted annually in IRC." The proposed amendment will adjust the amount annually in accordance with the Internal Revenue Code (IRC).

The Department proposes to delete N.J.A.C. 6A:23A-18.5(a)32, which includes as a non-allowable cost the cost associated with a conference, meeting, or seminar held in countries not contiguous to the United States. The rule is no longer applicable in light of the travel cost section at proposed new N.J.A.C. 6A:23A-18.21.

The Department proposes to delete N.J.A.C. 6A:23A-18.5(a)34, which includes as non-allowable the cost of travel involving the difference between first-class air accommodations and less than first-class air accommodations unless less than first-class accommodations are not reasonably available. The Department proposes to delete N.J.A.C. 6A:23A-18.5(a)35, which includes as non-allowable the cost for meals and hotel accommodations associated with daily or overnight travel in excess of the costs contained in NJOMB Circular Letter 98-03 OMB as amended and supplemented. The rules proposed for deletion are no longer necessary because of the travel cost section at proposed new N.J.A.C. 6A:23A-18.21.

The Department proposes to separate recodified N.J.A.C. 6A:23A-18.6(a)45, which includes as non-allowable the 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 the information for review and audit during normal business hours, into N.J.A.C. 6A:23A-18.6(a)45 and (a)45i. The Department also proposes to add “and/or the APSSD, as applicable,” before “does not.” The Department also proposes to recodify N.J.A.C. 6A:23A-18.6(a)45i and ii as (a)45i(1) and (2). The Department further proposes at recodified N.J.A.C. 6A:23A-18.6(a)45i(2), which requires the submitted documentation to include the related parties’ paid bills and canceled checks concerning the transaction, to instead require the documentation to include the related parties' invoices received, payroll and payroll tax records, bills and canceled checks, or electronic transfer records concerning the transaction. The Department also proposes new N.J.A.C. 6A:23A-18.6(a)45i(3) to require the documentation to include any other document(s) requested by the Department. The proposed amendments and recodifications will clarify the types of documents that will substantiate the actual costs in a related party transaction and to ensure the Department is able to seek and review appropriate documents in a related party transaction.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)45ii to include related party transactions as a non-allowable cost if an APSSD does not disclose the related party relationship on the applicable Commissioner-prepared forms. The proposed rule will ensure APSSDs provide appropriate disclosure of related party transactions.

The Department proposes to separate recodified N.J.A.C. 6A:23A-18.6(a)47, which includes as non-allowable indirect and direct costs associated with unrelated activities or enterprises, into N.J.A.C. 6A:23A-18.6(a)47 and (a)47i. The Department also proposes new N.J.A.C. 6A:23A-18.6(a)47ii to include as non-allowable indirect and direct costs unrelated to the function, operations, and/or program of an APSSD. This proposed regulation will ensure costs

appropriate to the special education program of the APSSD are included in the certified actual cost per student.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)52, which makes non-allowable the cost of a pension plan and/or medical benefits for current or retired members of the board of directors/trustees. The proposed amendment will add “contribution made on behalf of” to clarify the restriction applies to contributions made to the pension plan on behalf of a certain individual.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.6(a)63, which includes as non-allowable, the legal costs for an APSSD and/or for an APSSD representative, including an APSSD owner, employee, or agent who pleads guilty and/or is found guilty or liable in a case involving the misuse of funds or fraud (civil or criminal). The Department proposes an amendment to add “or endangerment or abuse of a child(ren)” at the end. The proposed amendment will ensure tuition and fees paid by sending school districts are not spent on legal representation of any individual found guilty or liable of endangering or abusing a child.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)66 to add as non-allowable, the cost(s) of payments made to an individual employee(s) for earned unused sick benefit that is in excess of one percent of the individual employee’s contracted salary amount during the fiscal year in which the payment is made. The proposed regulation will ensure efficient expenditure of public funds.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)67 to add as non-allowable, the proportional costs of salary and fringe benefits for any administrative staff member, with the exception of principal and unrecognized position titles in the administrative category, that are in excess of a total of 3.0 FTE administrative positions per APSSD, per fiscal year. The proposed

regulation will also state that the disallowed amount will be apportioned equally across all of the positions if the combined administrative positions exceed 3.0 FTE. The proposed regulation will ensure the certified actual cost per student is for efficient, effective, and fiscally prudent operations.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)68 to add as non-allowable, the costs associated with travel that exceed .0025 of the total actual allowable costs, less travel costs, in a fiscal year for an APSSD, or \$20,000, whichever is less; and/or violate the provisions of N.J.A.C. 6A:23A-18.21(g). The proposed regulation will ensure the certified actual cost per student is for efficient, effective, and fiscally prudent operations of the APSSD.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)69 to add as non-allowable, the costs associated with waiver of health insurance coverage that violate the provisions of N.J.A.C. 6A:23A-18.5(f)1. The proposed regulation will ensure the certified actual cost per student is for efficient, effective, and fiscally prudent operations of the APSSD.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)70 to add as non-allowable, the costs associated with depreciation of leasehold improvements that violate N.J.A.C. 6A:23A-18.5(a)4. The proposed regulation will ensure the certified actual cost per student is for efficient, effective, and fiscally prudent operations of the APSSD.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)71 to add as non-allowable, the costs of the salary, benefits, or other compensation provided to an APSSD employee or contractor/consultant who is receiving retirement benefits as a result of his or her retirement from the APSSD after two calendar years has expired since the individual began retirement. The proposed regulation will ensure the certified actual cost per student is for efficient, effective, and fiscally prudent operations of the APSSD.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)72 to add as non-allowable, the costs associated with undocumented outflows from petty cash pursuant to N.J.A.C. 6A:23A-18.5(a)16. The proposed regulation will ensure the certified actual cost per student is for efficient, effective, and fiscally prudent operations of the APSSD.

The Department proposes new N.J.A.C. 6A:23A-18.6(a)73 to add as non-allowable, the costs associated with the failure to comply with the requirements of N.J.A.C. 6A:23A-18.5(d). The proposed regulation will ensure the certified actual cost per student is for efficient, effective, and fiscally prudent operations of the APSSD.

#### **N.J.A.C. 6A:23A-18.6 Surcharge**

This section allows “for-profit” PSSDs to charge costs plus an annual surcharge up to 2.5 percent of the APSSD’s allowable actual costs, which serves as a restricted profit.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.7(c), which allows profit-making schools to include a surcharge on only the Federal, State, and local income tax liability on public school placement tuition income and all allowable and non-allowable APSSD expenses that are allowable tax deductions on the school’s Federal, State, and local income tax returns. The Department proposes to replace “tax liability” with “tax payment” to align the language to the referenced regulation.

The Department proposes to delete existing N.J.A.C. 6A:23A-18.6(d), which requires 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 to be netted against or if applicable added to the total allowable costs to determine the certified actual cost per student, as the provisions are addressed in new N.J.A.C. 6A:23A-18.18(b).

#### **N.J.A.C. 6A:23A-18.7 Public School Placement Restricted Working Capital Fund**

This section allows “nonprofit” APSSDs to establish a working capital fund amount and prohibits the balance from exceeding 2.5 percent of the school's actual allowable costs.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.8(a), which allows a nonprofit APSSD’s tuition rate to include an amount that will permit the APSSD to establish a public school placement restricted working capital fund of up to 15 percent of the APSSD’s allowable actual costs, for the 2006-2007 through 2007-2008 school year. The regulation also prohibits the APSSD from including in the certified actual cost per student, an amount in excess of 2.5 percent of the APSSD’s allowable actual costs per year. The Department proposes to delete “for the 2006-2007 through 2007-2008 school year” because the time period has ended. The Department also proposes to add “[t]he restricted working capital fund shall not exceed 15 percent of an APSSD’s actual annual allowable cost in a fiscal year.” The proposed amendments will provide clarity to the working capital calculation by expressly prohibiting the inclusion of funds exceeding 15 percent of an APSSD’s actual annual allowable cost in a fiscal year.

The Department proposes to delete existing N.J.A.C. 6A:23A-18.7(c), which requires 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 to be netted against or, if applicable, added to, the total allowable costs to determine the certified actual cost per student, as the provisions are addressed in new N.J.A.C. 6A:23A-18.18(b).

#### **N.J.A.C. 6A:23A-18.8 Calculation of Student Attendance**

This section prescribes student attendance recordkeeping and requires APSSDs to submit verification of ADE for the previous school year.

#### **N.J.A.C. 6A:23A-18.9 Audit requirements**

This section sets forth requirements for audits of annual financial statements by independent registered municipal accounts of New Jersey or an independent certified public accountant of New Jersey. The section also provides rules related to the audited tuition rate versus the tentative tuition rate.

The Department proposes to separately codify the provision in recodified N.J.A.C. 6A:23A-18.10(a)1 that requires APSSDs to ensure the auditor's independent status in accordance with the Code of Professional Ethics issued by, and available from, the American Institute of Certified Public Accountants (AICPA) as N.J.A.C. 6A:23A-18.10(a)2. The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.10(a)2 to replace "Code of Professional Ethics" with "Code of Professional Conduct and General Principles and Responsibilities" to reflect the current name of the AICPA standards.

The Department proposes to separately codify the provision in recodified N.J.A.C. 6A:23A-18.10(a)1 that prohibits, upon Department review, an accountant from being considered independent if he or she, or members of his or her firm, are engaged to perform services other than the year-end audit and tax return functions for the APSSD as N.J.A.C. 6A:23A-18.10(a)3. The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.10(a)3 to replace "accountant" with "auditor" or "independent auditor." The Department also proposes to add "if he or she may have been influenced by other parties, including, but not limited to, APSSD directors or other staff, or by conflicting interests such as" after "considered independent." The Department further proposes to add language permitting the Department to take any and all appropriate action, if the Department determines an independent auditor engaged to conduct the APSSD's annual audit has not acted independently. The proposed amendments will ensure the Department receives accurate audited financial statements.



The Department proposes amendments at N.J.A.C. 6A:23A-18.10(b), which requires the audit to 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), OMB Circular A-133; or NJOMB Circular Letter 98-07. The rule also requires APSSDs to ensure the use of the auditing guidelines as published and distributed by the Commissioner. The Department proposes to replace “1993” with “2015” to update the edition of the Codification of Statements on Auditing Standards and to add “by the Auditing Standards Board” After “set forth” to reference the entity that authorizes the standards. The Department further proposes to replace “OMB Circular A-133” with “the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Audit issued by the Federal Office of Management and Budget” and to replace NJOMB Circular letter "98-07" with "15-08.” NJOMB no longer publishes outdated circulars on its website.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.10(e), which requires APSSD management to develop a corrective action plan in response to recommendations contained in the year-end audit and to submit the plan for Commissioner review and approval, to also require the corrective action plan to be on a form prescribed by the Commissioner or designee. The proposed amendment is necessary to ensure uniformity and consistency in the development of the corrective action plan.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.10(g), which requires any adjustment resulting from Commissioner’s certified audit or tuition audit that is in excess of \$10.00 per sending district board of education to be paid in accordance with recodified N.J.A.C. 6A:23A-18.3(l) and (m). The proposed amendment will replace “certified audit or a

tuition audit” with “approval following a compliance review of the audited financial statements” to ensure consistency with recodified N.J.A.C. 6A:23A-18.3(l) and (m).

#### **N.J.A.C. 6A:23A-18.10 Appeals**

This section provides that decisions of the Commissioner’s designee regarding tentative tuition rates, conditional approval status, and certification can be appealed in accordance with N.J.A.C. 6A:3, Controversies and Disputes. This section also provides that Commissioner decisions regarding new PSSDs may be appealed to the State Board of Education.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.11(c), which states Commissioner decisions regarding new APSSDs 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, Appeals, to delete “to the State Board of Education” and “N.J.S.A. 18A:6-27 and.” Public Law 2008, c. 36 repealed the State Board’s appellate jurisdiction regarding appeals of Commissioner decisions regarding new APSSDs. The Department also proposes to add “[f]or purposes of this subchapter, a decision by the Commissioner’s designee shall not constitute final agency action” at the end of the rule for clarity regarding the appeals process.

#### **Proposed N.J.A.C. 6A:23A-18.12 Roundtable Work Group**

The Department proposes new N.J.A.C. 6A:23A-18.12 to allow the Commissioner, or his or her designee, to create a working group that consists of Department staff and representative(s) from the APSSD community. The proposed section also will require the working group’s purpose to include, but not be limited to, discussing issues that impact APSSDs. The proposed section is necessary to provide a venue whereby the both the Department and the APSSD community can discuss concerns and resolve issues before expending resources in litigation.

#### **N.J.A.C. 6A:23A-18.11 Out-of State Approved Private Schools for Students with Disabilities**

This section sets forth procedures for agreement of tuition rates when a student is sent to an out-of-State APSSD or to a facility approved by New Jersey Department of Human Services.

**N.J.A.C. 6A:23A-18.12 Inspection of Records**

This section requires financial and accounting records of an approved PSSD or records maintained by a related party that pertain to a transaction between the related party and the APSSD to be available for inspection. The section also requires auditor workpapers used in the audit of the year-end financial statements to be available for inspection.

**N.J.A.C. 6A:23A-18.13 Fiscal Monitoring of Approved Private Schools for Students with Disabilities and Corrective Action Plans**

This section requires the Commissioner, or his or her representative, to monitor APSSDs at least once every six years and requires a report to be written and sent to the APSSD, the executive county superintendent, and the APSSD's auditor. The section further requires an APSSD that receives a final report indicating noncompliance to develop and submit a corrective action plan. The section also sets forth possible action by the Commissioner when an APSSD is determined to be in noncompliance.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.15(d), which requires an APSSD that receives a final report indicating noncompliance to develop a corrective action plan and submit it to the Department for approval. The Department proposes to add "on a form prepared by the Commissioner, or his or her designee," after "submitted" and to add "within 30 days of the final report's receipt" after "approval." The proposed amendment will ensure compliance matters are addressed by APSSDs in both an effective and timely manner.

The Department proposes an amendment at recodified N.J.A.C. 6A:23A-18.15(g), which provides the actions of the Commissioner may be appealed according to N.J.A.C. 6A:3, to add

“and/or N.J.A.C. 6A:23A-18.11, as applicable” to appropriately reference the subchapter’s appeals provision.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.15(h), which requires the Department to annually publish the results of the on-site fiscal monitoring of APSSDs, to also require the Department to publish the audited financial statements and associated reports or documents. The proposed amendment will assure transparency in the expenditure of public funds.

#### **N.J.A.C. 6A:23A-18.14 Fiscal Information**

This section requires annual fiscal information to be submitted to the Department and establishes the format for the submission. This section also requires an affidavit by APSSD owners/operators that they are aware of the non-allowable costs in existing N.J.A.C. 6A:23A-18.5 and the costs charged are allowable and reasonable, that is, ordinary and necessary.

The Department proposes to add “and budget” to the section heading before “information” to more accurately reflect the section’s content.

The Department proposes an amendment to recodified N.J.A.C. 6A:23A-18.16(a), which requires an APSSD to annually submit certain fiscal and program information to the Department. The Department proposes to replace “[a]nnually” with “[i]n accordance with a timeline and format prescribed by the Commissioner, or his or her designee.” The proposed amendment will provide the Commissioner flexibility as to when it is most appropriate to collect the data.

The Department proposes new N.J.A.C. 6A:23A-18.16(a)1v to add revenues, appropriations, and supporting documents to the list of fiscal and program information that must be submitted. The proposed amendment will clarify the documentation APSSDs must submit to the Commissioner.

The Department proposes an amendment to recodified N.J.A.C. 6A:23A-18.16(b), which requires the Department to annually publish a Private School for Students with Disabilities Comparative Spending Guide. The Department proposes to replace the title with “Taxpayer’s Guide to Education Spending for APSSDs.” The proposed amendment will align the APSSD guide with the one published for local education agencies.

**N.J.A.C. 6A:23A-18.15 Failure to Comply with the Department Directives**

This section allows the Department to place an APSSD on conditional approval if the school fails to comply with Department directives such as failure to refund tuition as a result of a Department audit.

The Department proposes to add that it may place on conditional approval an APSSD that fails to provide requested documentation. The proposed amendment will ensure the Department can actively engage in its regulatory duties to determine whether tuition paid by sending district boards of education is fiscally prudent and appropriate.

**N.J.A.C. 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 APSSD to either a new or existing APSSD, the section requires the selling school to provide the Department with a copy of the sale agreement and the allocation of the purchase price as defined in IRC Section 1060. The section also requires the selling APSSD to provide a final financial report within 90 days of the sale showing the disposition of its assets and any corresponding refund to the sending school district 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.

The Department proposes amendments at recodified N.J.A.C. 6A:23A-18.18(a) to replace “the sale of the assets” with “the bulk sale or non-bulk sale of the capital assets.” The Department also proposes to replace either a new or existing APSSD as the buying party with “any individual or entity, including another APSSD.” The Department further proposes to replace “the selling school must” with “the selling APSSD shall:” to require both parties to carry out the directives in proposed new N.J.A.C. 6A:23A-18.18(a)1 through 6.

The Department proposes new N.J.A.C. 6A:23A-18.18(a)1 to require the selling APSSD to agree to an independent valuation of the acquired assets for the purpose of allocating the total purchase price to the various acquired capital assets.

The Department proposes new N.J.A.C. 6A:23A-18.18(a)2 to require the seller to enter into a written agreement of sale that references and incorporates the values presented in the independent valuation of the acquired capital assets. The proposed rule also establishes the required components of the written agreement.

The Department proposes amendments at newly codified N.J.A.C. 6A:23A-18.5(a)3, which requires the seller to provide the Department with a copy of the sale agreement and the allocation of the purchase price as defined in Internal Revenue Code (IRC) Section 1060 (Internal Revenue Service Form 8594), to require the APSSD to submit the documents within 30 days of the sale. The Department also proposes to add “the independent valuation of the capital assets,” after “sale agreement” and to replace “(Internal Revenue Service Form 8594)” with “and documented by Internal Revenue Service Form 8594 or successor form.”

The Department proposes amendments at newly codified N.J.A.C. 6A:23A-18.18(a)4, which requires the APSSD to provide a financial report within 90 days of the sale showing the disposition of its assets and any corresponding refunds to the sending district base on the sale of

certain assets, to replace the requirement for the APSSD to “provide a financial report within 90 days of the sale” with “the selling APSSD shall include in the annual financial statement as required by N.J.A.C. 6A:23A-18.10 in the year of sale, a separate schedule showing the sale.”

The Department proposes new N.J.A.C. 6A:23A-18.18(a)5 to require a buying entity that is a new or existing APSSD to establish the buying APSSD’s beginning book value for each acquired asset using the independent valuation and the written agreement of sale, except for as provided in N.J.A.C. 6A:23A-18.18(a)6.

The Department proposes new N.J.A.C. 6A:23A-18.18(a)6 to provide, if the buyer is an APSSD that is a less-than-arm’s-length buyer or a related party to the selling APSSD, the buying APSSD must carry forward the selling APSSD’s acquisition dates(s), historical cost(s) plus improvements, term and method of financial depreciation, accumulated depreciation, and book value of the acquired asset(s) for purposes of determining the allowable annual depreciation or amortization pursuant to the acquisition.

The Department proposes new N.J.A.C. 6A:23A-18.18(b) to provide, in the fiscal year of the sale or disposition, the gain or loss on the sale of capital or non-capital asset(s) cannot be included in the calculation of allowable costs used to determine the certified actual cost per student, the calculation of surcharge, or public school placement restricted working capital. The proposed rule will ensure the sale of assets will not impact the calculation of the certified actual cost per student, the surcharge, or the public school placement restricted working capital.

The Department proposes new N.J.A.C. 6A:23A-18.18(c)1 to prohibit the selling APSSD from being subject to N.J.A.C. 6A:23A-18.18(c)2 through 4, if the selling APSSD acquires real property placed in service for the express purpose of operating the APSSD using all of the proceeds from the sale of real property within 30 business days of the sale.

The Department proposes new N.J.A.C. 6A:23A-18.18(c)2 to require the selling APSSD to immediately deposit the proceeds received upon the sale of real property at settlement into a bank account maintained by the APSSD and credited to the retained earnings of the profit-making APSSD or the working capital from sale of real property account of the non-profit APSSD and to include the sale and treatment of the proceeds in a separate schedule in the APSSD's audited financial statement.

The Department proposes new N.J.A.C. 6A:23A-18.18(c)3 and 4 to require APSSDs to not withdraw the amounts deposited for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD. The Department also proposes to require APSSDs to distribute the proceeds not used to purchase such real property to sending school districts that paid tuition to the APSSD during the five years of operation prior to and including the year of sale, limited to the allowable accumulated depreciation of the property and based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's total ADE for the applicable five-year period. This ensures APSSDs may utilize proceeds from the sale of real property to purchase real property to acquire replacement real property and that districts are able to recapture allowable accumulated depreciation of the property if the APSSD retains the sale proceeds.

The Department proposes new N.J.A.C. 6A:23A-18.18(d) to address the sale of stock representing ownership of a profit-making APSSD, requiring that the new owner assumes the carryover book value of all assets and liabilities held by the profit-making APSSD, and that any gain or loss on the sale of stock shall not impact the calculation certified actual cost per student or the surcharge in the year of sale or disposition.

The proposed amendments and new rules will allow the Department to ensure only



appropriate expenses related to sales and transfers of APSSD assets are included within the certified actual cost per student and the appropriate treatment of the sale and purchase of real property.

#### **N.J.A.C. 6A:23A-18.19 Annual Disclosure Statement**

The Department proposes new N.J.A.C. 6A:23A-18.19(a) to annually require each APSSD to file a management disclosure of information statement with the Department on a form prescribed by the Commissioner, or his or her designee. The proposed rule also will require the statement to be signed by the director, owner, or president of the APSSD who is filing the statement. The proposed rule further states the signature shall constitute a representation of the accuracy of the statement's contents.

The Department proposes new N.J.A.C. 6A:23A-18.19(b) to require all disclosure statements filed to include, but not be limited to, salary, pension, and other information regarding staff members, related staff, related parties, vendors, and business interests.

The Department proposes new N.J.A.C. 6A:23A-18.19(c) to require annual disclosure statements to be filed on the first November 1 following enactment of the proposed rule and, thereafter, on or before November 1 of each subsequent calendar year.

The Department proposes new N.J.A.C. 6A:23A-18.19(d) to require all annual disclosure statements filed to be considered public records.

The Department proposes new N.J.A.C. 6A:23A-18.19(e) to require an APSSD that fails to file a statement, or files an annual disclosure statement containing information the statement filer knows to be false, to be subject to reporting to appropriate State agencies and/or be assessed non-allowable costs as applicable in the subchapter. The proposed rule also states nothing in the subsection shall be construed to prevent or limit criminal prosecution.

The proposed section will ensure the Department annually receives from APSSDs information on salary, pension, related party transactions, vendors, business interests of APSSD officials, and other information as deemed appropriate by the Commissioner. The proposed rules will ensure complete data collection and assist the Department in its review of audited financial statements and associated regulatory functions

**N.J.A.C. 6A:23A-18.20 Nepotism**

The Department proposes new N.J.A.C. 6A:23A-18.20(a) to require each APSSD to develop and implement a nepotism policy to be included in the employee handbook, pursuant to N.J.A.C. 6A:23A-18.5(f). Proposed new N.J.A.C. 6A:23A-18.20(a)1 will require the policy to include a definition of “relative” consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2, and a definition of “member of immediate family” consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2. Proposed new N.J.A.C. 6A:23A-18.20(a)2 will require the policy to include a provision prohibiting any relative of an APSSD official from being employed in an office or position at the APSSD, unless the relative is properly qualified, licensed, and the salary and fringe benefits are comparable to a person of like experience and education.

The Department proposes new N.J.A.C. 6A:23A-18.20(b) to require nepotism to be disclosed in the annual disclosure statement filed pursuant to N.J.A.C. 6A:23A-18.19. If the relative relationship is unknown at the time the disclosure form is filed, the proposed rule will require the APSSD to file an updated annual disclosure form immediately upon the statement filer obtaining knowledge of the relationship.

The proposed section will ensure APSSDs officials do not hire relatives who are not appropriately credentialed and qualified, and paid salaries and benefits not comparable to their colleagues.

## **N.J.A.C. 6A:23A-18.21 Travel**

The Department proposes new N.J.A.C. 6A:23A-18.21(a) to require each APSSD to ensure the effective and efficient use of funds by adopting and implementing policies and procedures related to the use of funds for travel by its employees and officials.

The Department proposes new N.J.A.C. 6A:23A-18.21(b) to define travel expenditures as the costs paid by the APSSD, whether directly by the APSSD or by employee reimbursement, for travel by APSSD employees to training and seminars, conventions and conferences, and APSSD-sponsored events or attendance at meetings or conferences. The proposed rule also will allow costs to include transportation, meals, lodging, and registration or conference fees directly related to participation in an event. The proposed rule will prohibit travel expenditures from including the cost of mileage reimbursement or tolls for travel carried out in the performance of regularly assigned job functions such as, but not limited to, travel between commonly owned APSSDs.

The Department proposes new N.J.A.C. 6A:23A-18.21(c) to require regular business travel expenditures to be educationally necessary and fiscally prudent and to be directly related to, and within the scope of, the employee's or APSSD's current responsibilities and/or professional development plan(s).

The Department proposes new N.J.A.C. 6A:23A-18.21(d) to require the amount of travel expenditures included within the certified actual cost per student each year to be the lesser of .25 percent of an APSSD's total actual allowable costs in the current fiscal year, not including travel expenditures, or \$20,000.

The Department proposes new N.J.A.C. 6A:23A-18.21(e) to allow APSSDs to apply for a waiver of the travel expenditure limitations in N.J.A.C. 6A:23A-18.21(d). The proposed rule will require waiver requests to be in writing and submitted to the Commissioner, or his or her designee,

prior to the end of the fiscal year for which the waiver is sought. The proposed rule further requires waivers to be submitted in advance of the travel event and will be approved only if the APSSD demonstrates that, due to the limitations in N.J.A.C. 6A:23A-18.21(d), APSSD staff attendance at a necessary or required professional development opportunity or training will result in non-allowable costs. The proposed rule also provides a list of minimum information that must be included in the request, including the name, location, and date(s) of the event supported by a copy of the agenda or program for the event; a statement justifying the necessity for each staff member(s) attendance, including the primary purpose of the event, the relevance of the event to the staff member's work duties, and how the event will improve instruction or the operation of the APSSD; and a detailed budget for the event, including, but not limited to, the travel method(s) and cost, identification of the hotel or other accommodation and the rate per night, total meal allowance, and the cost of registration.

The Department proposes new N.J.A.C. 6A:23A-18.21(f) to require any travel expenditure(s) that exceeds the limits in N.J.A.C. 6A:23A-18.21(d) without an approved waiver to be considered a non-allowable cost consistent with N.J.A.C. 6A:23A-18.6(a)70.

The Department proposes new N.J.A.C. 6A:23A-18.21(g) to make the following types of expenditures ineligible for inclusion in the certified actual cost per student:

1. Travel expenditures by employees whose duties are unrelated to the travel event's purpose or who are not required to attend to meet continuing education requirements or to comply with law or regulation;
2. Travel by spouses, civil union partners, domestic partners, immediate family members, or other relatives or unrelated persons who are not school employees;

3. Costs for employee attendance for coordinating other attendees accommodations at the travel event;
4. Lunch or refreshments for training sessions, professional development, and retreats held within the APSSD, including in-service days beyond the limitations at N.J.A.C. 6A:23A-18.6(a)18;
5. Training to maintain a certification that is not required as a condition of employment;
6. Charges for laundry, valet service, or entertainment;
7. Limousine services and chauffeuring costs to or during an event;
8. Alcoholic beverages;
9. Entertainment costs, including, but not limited to, amusement, diversion, and social activities, and any directly associated costs;
10. Gratuities or tips in excess of those permitted by the Federal per diem rates;
11. Hospitality rooms;
12. Souvenirs, memorabilia, promotional items, or gifts;
13. The cost associated with a conference, meeting, or seminar held in countries not contiguous to the United States; and
14. Other travel expenditures that are unnecessary and/or excessive.

To ensure APSSDs use funds derived from public placement tuition in an efficient and prudent manner, the proposed section will place limits on the amount APSSDs can spend on travel costs, and will detail certain prohibitions on travel costs. The proposed section is similar to the restrictions placed on local education agencies, while also providing APSSDs discretion as to the nature of the travel, accommodations, etc.

### **N.J.A.C. 6A:23A-18.22 Behavior Modification**

The Department proposes new N.J.A.C. 6A:23A-18.22(a) to require all APSSDS recording expenditures for behavior modification to adopt a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD's behavior modification program.

The Department proposes new N.J.A.C. 6A:23A-18.22(b) to prohibit certain behavior modification methods, including giving cash or checks to students, as well as the replacement of meals or components of meals on a regular basis outside of special achievements outlined in the required policy and high dollar value items such as personal electronics.

Students attending APSSDs commonly require behavioral interventions and many APSSDs use various systems of rewards, some of which require the expenditure of funds. The Department proposes the section to ensure APSSDs use funds derived from public placement tuition in an efficient and prudent manner.

### **N.J.A.C. 6A:23A-18.23 Child Nutrition**

The Department proposes N.J.A.C. 6A:23A-18.23 to provide guidance on child nutrition program(s) within APSSDs.

The Department proposes new N.J.A.C. 6A:23A-18.23(a) to allow APSSDs to provide meals to students that align to the Dietary Guidelines for Americans, using United States Department of Agriculture's meal patterns reviewed and/or approved by the New Jersey Department of Agriculture.

Proposed new N.J.A.C. 6A:23A-18.23(a)1 will allow the costs associated with providing meals to be included in the certified actual cost per student for a nonprofit APSSD, if its menu is approved by the New Jersey Department of Agriculture; the APSSD applies for and receives funding from the Child Nutrition Program; the APSSD charges students for a reduced and/or paid

meal; and total food service costs, net of the reimbursement and/or sales, do not exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture. Excess expenditures will be considered non-allowable costs under the proposed rule.

Proposed new N.J.A.C. 6A:23A-18.23(a)2 will establish the same rules for for-profit APSSDs, except for the requirement for the APSSD to apply for and receive funding from the Child Nutrition Program since for-profit schools are not eligible to participate in government-funded nutrition programs

The Department proposes new N.J.A.C. 6A:23A-18.23(b) to prohibit the cost of meals for staff from being included in the certified actual cost per student.

The proposed rules will ensure APSSDs that provide meals to students are doing so based upon New Jersey Department of Agriculture nutritional guidelines, while also ensuring the cost of providing meals is done in a fiscally prudent manner.

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 govern essential activities that support the educational process and enhance fiscal accountability. The proposed amendments and new rules will continue to protect the public interest by ensuring educational support activities for special education students will be conducted both in accordance with law and in a manner that benefits students and the general public. District boards of education are responsible for the educational

programming of special education students, and in doing so must seek to use public dollars efficiently. The proposed amendments and new rules are essential to promote sound administrative practices and provide for the proper expenditure of funds by the APSSDs. The proposed amendments and new rules will ensure district boards of education, charter school boards of trustees, and the public have access to necessary information to understand how APSSD tuition rates are calculated, and the services and programs supported by tuition.

### **Economic Impact**

The proposed amendments and new rules will have a positive impact on public schools, charter schools, and APSSDs through the rules' promotion of the proper expenditure of public funds by providing an orderly and efficient method for conducting essential education support activities within the APSSDs.

In the past, the rules have provided an orderly and efficient method for the conduct of essential fiscal operations and other administrative support activities of APSSDs. The proposed amendments and new rules will continue this process and create an overall positive economic impact in terms of the degree of protection and accountability the rules provide for the proper expenditure of public funds. The proposed amendments and new rules will not require the employment of additional personnel, and will not impose a negative economic impact on the State, school districts, charter schools, or APSSDs.

### **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 Statement**

The Department anticipates the proposed amendments and new rules will have no impact upon the generation or loss of jobs in the State. The proposed amendments and new rules concern the fiscal operations of APSSDs.

### **Agriculture Industry Impact**

The proposed amendments and new rules will have no impact upon the agriculture industry in the State. The proposed amendments and new rules concern the fiscal operations of APSSDs.

### **Regulatory Flexibility Statement**

APSSDs meet the definition of a small business as that term is defined under Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are currently approximately 170 approved APSSDs in New Jersey.

The proposed amendments do not impose additional reporting, recordkeeping, or other compliance requirements on APSSDs. The proposed amendments maintain several of the reporting and compliance requirements that currently are in place. Other proposed amendments

will remove compliance requirements by allowing APSSD's certain flexibility with regard to health insurance waivers, child nutrition requirements, and travel expenditures.

Professional services necessary to comply with the regulatory requirements can be included in the tuition rate charged to a district board of education and, therefore, do not impose a financial burden on the regulated APSSDs. There are no capital costs associated with the proposed amendments and new rules. As compliance requirements and costs are minimal, there should be no adverse impact on small businesses.

### **Housing Affordability Impact Analysis**

The proposed amendments and new rules will have no impact on the average cost of housing in the State or on the affordability of housing. The proposed amendments and new rules pertain to the fiscal operations of APSSDs.

### **Smart Growth Development Impact Analysis**

The proposed amendments and new rules will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan or on Smart Growth Development. The proposed amendments and new rules pertain to the fiscal operations of APSSDs.

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

## SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

### **N.J.A.C. 6A:23A-18.1 Scope and Purpose**

**The rules in this subchapter establish requirements for accounting, financial reporting, and tuition rate setting by approved private schools for students with disabilities. The rules also set forth processes and procedures, including, but not limited to, new school applications, non-allowable costs, and audit requirements. The rules in this subchapter shall become effective immediately, unless otherwise indicated.**

### **N.J.A.C. 6A:23A-[18.1]18.2 Definitions**

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

"Administrative costs" means [those] **the** 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]**18.5(a)7**.

"Advertising costs" means the costs [incurred for, but not limited to, the following: cable television, videos, open houses] **associated with promoting**, marketing, [and] **or** 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.)] **for the APSSD's programs and/or services, as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.**

**“Approved private school for students with disabilities” or “APSSD” means an incorporated entity approved by the Department according to N.J.A.C. 6A:14-7.1 through 7.3 to provide special education and related services to a student with disabilities placed in the APSSD by a parent/guardian, sending district board of education, or State agency responsible for providing the student's education through implementation of his or her individualized education program (IEP).**

**“APSSD official” means a member of the board of directors or board of trustees of an APSSD; anyone holding an ownership interest in the APSSD; an officer, employee, administrator, or supervisor of an APSSD; or anyone responsible for making recommendations regarding hiring or the purchase or acquisition of any property or service(s) by the APSSD.**

["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.]

**“Assistant director” shall mean the same as “director.”**

"Average daily enrollment (ADE)" means the sum of the days present and absent of all school students enrolled in the **APSSD** register(s) [of the school] divided by the number of days the [approved private school for students with disabilities] **APSSD** 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] **that meets any of the following:**

1. -2. (No change.)
3. Is arbitrary and not based on any specific criteria or qualifications; [and] **or**
4. (No change.)

"Business [Manager] **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] **Prior to June 30, 2017, 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] **shall not be** required to hold a school certification. **Effective July 1, 2017, all business managers, except those employed by the APSSD as a business manager or otherwise serving as business manager with the APSSD prior to July 1, 2017, shall hold a master's degree in business, accounting, finance, economics, or a related field from an accredited institution; a standard school business administrator's certificate issued pursuant to N.J.A.C. 6A:9B-12.7, as amended or supplemented; or a certified public accountant certificate.**

"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] **ADE** for the school year **as determined by an independent school auditor.**

...

"Conditional approval status" means the [approved private school for students with disabilities] **APSSD** is precluded from accepting **and/or enrolling** new students **from the date the Department placed the APSSD on conditional approval status.**

"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] **if** the [approved private school for students with disabilities] **APSSD** attains the predetermined [average daily

enrollment] **ADE** for the school year that was filed with and approved by the Commissioner, **or his or her designee.**

["Director" means the same as the Assistant Director above]

**“Director” means an individual whose job function includes a majority of the following: formulation of school goals, plans, policies, and budgets and recommendation of their approval to the school's board of directors; recommendations to the school's board of directors for all staff appointments and other personnel actions, such as terminations, suspensions, and compensation, including the appointment of the business manager; responsibility for school operations and programs, including administration, supervision, and evaluation of administrators, supervisors, and all other school staff. Prior to June 30, 2017, all individuals employed by the APSSD as director, or serving as director of an APSSD, shall hold a bachelor’s degree from an accredited institution, but shall not be required to hold a professional school license/certification pursuant to N.J.A.C. 6A:9B. After July 1, 2017, all directors, except those employed as or otherwise serving as director for the APSSD prior to July 1, 2017, shall hold a master’s degree from an accredited institution, but shall not be required to hold a certification pursuant to N.J.A.C. 6A:9B.**

"Entertainment expenses" means the cost of providing any type of food/beverage to [school] **APSSD** officers, [school] **APSSD** directors/trustees, consultants, and/or individuals providing services to the [school] **APSSD** at any time or to [school] **APSSD** employees after school hours.

"Executive [Director] **director**" means the same as the [Assistant] "Director [above]."

"Extraordinary service" means the services of a one-to-one aide, **or one-to-one nurse**, for a student **as required by the student's individualized education program (IEP)**.

"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)]**18.3(a)**.

**"Full time" for the purposes of the maximum salaries in N.J.A.C. 6A:23A-18.3(o), (p), and (q) and full-time equivalent means 35 hours or more per week over the term outlined in the employment contract pursuant to N.J.A.C. 6A:23A-18.5(c).**

**"Full-time equivalent" or "FTE" means the ratio of the total number of paid hours during a period divided by the number of full-time working hours in that period; one FTE is equivalent to one employee working full time.**

**"Independent school auditor" means an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who holds a valid registration license as a public school accountant of New Jersey and conducts an APSSD's annual audit in accordance with N.J.A.C. 6A:23A-18.10.**



"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]**18.5(a)7**.

"Internal Revenue Code" **or "IRC"** means any Federal tax code section indicated in this subchapter and as amended and supplemented.

...

**"Meals" means the provision of breakfast and/or lunch to students.**

"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 **or his or her designee**.

"New **approved** private school for students with disabilities" **or "new APSSD"** means an [approved private school for students with disabilities in] **APSSD during** the [first] **initial** two **fiscal** years of operation.

**"Passenger vehicle" means a vehicle originally designed by the manufacturer with a seating capacity of 10 or fewer persons, including the driver.**

"Private placement student" means a student placed in an [approved private school for students with disabilities] **APSSD** by **an entity or parent/guardian** other than a New Jersey [school] **sending district board of education, charter school or renaissance school board of trustees,** 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] **nonprofit APSSD'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] **APSSD** by a New Jersey [school] **sending district board of education, board of trustees of a charter or renaissance school,** or a New Jersey State agency.

...

"School year" means the time period [a school] **an APSSD** is in session either from July through June, August through June, or September through June.

**“Sending district board of education” or “sending school district” means the New Jersey public school district, charter school, renaissance school, or State agency sending a student to an APSSD.**

"Severance pay" means compensation in addition to regular salaries and wages that is paid by [a school] **an APSSD** to an employee whose employment is being terminated **by separation agreement or otherwise.**

"[Start up] **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] **an APSSD** for the nine-month period prior to receiving Department approval to operate as an [approved private school for students with disabilities] **APSSD**. A salary is not an allowable start-up cost.

"Surcharge" means the amount of profit that for-profit [schools] **APSSDs** 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 **or board of trustees for a charter or renaissance school** for the school year.

N.J.A.C. 6A:23A-[18.2]**18.3** Tuition rate procedures

(a) The board of directors of an [approved private school for students with disabilities] **APSSD** 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 **as determined by an independent school auditor**. 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]**18.10**.

1. When determining the actual allowable costs for the program, the board of directors shall ensure [that such] **the** costs are:
  - i. –ii. (No change.)
  - iii. Inclusive of all costs required to implement all students' IEPs and all related services, **except as set forth in (a)5 below;**
  - iv. Reasonable, that is, ordinary and necessary and not in excess of the cost [which] **that** 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 **and/or services rendered** in the fiscal year [they are] expensed.
2. If [the approved private school for students with disabilities proposes to charge a final] **any of the APSSD's quarterly financial reports, completed pursuant to N.J.A.C. 6A:23A-18.5(a)11, demonstrates the year-to-date per diem rate exceeds the tentative** tuition rate [in excess of] **for the year by more than 10** percent [above the tentative tuition rate charged], the [private school] **APSSD** shall notify each sending district board of education and the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, that such an

increase will be charged and the reason for the increase on or before the following dates: December 15[th] for the first quarter, March 15[th] for the second quarter, June 15[th] for the third quarter, and September 15[th] for the fourth quarter, or the next business day when applicable.

- i. If the sending district board of education and the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, are not notified on or before the dates noted in (a)2 above, the [approved private school for students with disabilities shall] **APSSD may charge an increase that shall not [to] exceed 10 percent of the tentative tuition rate charged.**
  - ii. **The notification required in (a)2 above shall contain a detailed statement outlining changing costs and/or enrollment, the reasons for the changes, including management’s response to same, and the reason(s) the changes are not offset by decreases in costs. If the notification does not include this statement, the Commissioner, or his or her designee, may prohibit an APSSD from charging an increase above 10 percent.**
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] **2016-2017** school year [and thereafter], minimum instructional costs of 55 percent and maximum administrative costs of 25 percent[.];
  - ii. **For the 2017-2018 school year, minimum instructional costs of 55.5 percent and maximum administrative costs of 24.5 percent;**

- iii. For the 2018-2019 school year, minimum instructional costs of 56 percent and maximum administrative costs of 24 percent;
  - iv. For the 2019-2020 school year, minimum instructional costs of 56.5 percent and maximum administrative costs of 23.5 percent;
  - v. For the 2020-2021 school year, minimum instructional costs of 57 percent and maximum administrative costs of 23 percent; and
  - vi. For the 2021-2022 school year and thereafter, minimum instructional costs of 57.5 percent and maximum administrative costs of 22.5 percent.
4. Unless otherwise determined pursuant to (b) below, the [approved private school for students with disabilities] **APSSD** shall charge one tentative tuition rate as **published by the Department**, charge one final tuition rate **determined by the APSSD**, and calculate one certified actual cost per student for the school year **that must be approved by the Commissioner, or his or her designee**.
- i. An [approved private school for students with disabilities] **APSSD** shall report all tuition rates on a per diem and [school year] **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] **APSSD** 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] **APSSD** shall **provide required related services in the scope of services rendered pursuant to the tuition contract and may not bill the sending district board of education separately for related services that are required by a student's initial or any subsequent IEP with limited exception. If the related service required by an IEP is beyond what is typically provided during the school day, or the nature of the related services requires that it be provided beyond the school day/operating hours, the APSSD may address the costs and provision of such related services through a separate agreement with the sending district. However, if such related services beyond that typically provided during the school day or beyond the school day/operating hours are not in the scope of services rendered under the tuition contract, nothing in this section shall prevent a sending district board of education from providing those services itself or separately contracting for those services with an approved service provider other than the APSSD.**
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] **APSSD** 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] **ADE** for students enrolled in [a program] **an APSSD** for a time period other than a full [day] or [a half-day] **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] **APSSD** shall report all costs and revenues in the prior fiscal year.
- (b) An [approved private school for students with disabilities] **APSSD** may charge one tuition rate per school location for the school year[, or]. **Prior to June 30, 2017, the Commissioner, or his or her designee, may approve APSSDs to charge** separate tuition rates by class type and by school location for the school year. [Approved private schools for students with disabilities] **APSSDs that have not received written approval to charge separate tuition rates by class type and by school location prior to July 1, 2017, shall not be permitted to do so for the school year beginning July 1, 2017, and thereafter. APSSDs that [choose to] are approved prior to June 30, 2017, to charge** by class type shall:
1. - 2. (No change.)
  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] **which will allow** the Commissioner to determine the tentative tuition rates in accordance with (i) below; and
  4. Determine, on a pro rata basis **and when it is not possible to charge the actual amount expended**, 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:

- i. Ratio of [average daily enrollment] **ADE** in each class type to the total [average daily enrollment] **ADE**;
- ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; [and] **or**
- iii. (No change.)

(c) An [approved private school for students with disabilities] **APSSD** shall record, **in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23A-18.5(a)8, all** 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] **that** are incurred for a common or joint purpose, [and] **but are** not readily assignable to [a] **an APSSD and/or its** program and/or a revenue source, an [approved private school for students with disabilities] **APSSD** may establish indirect cost pools as appropriate for allocation [between common or joint purposes] **to the APSSD** at the end of the fiscal year[.] **as follows:**

1. **The expenditures included in the indirect cost pool shall be related to the APSSD's function(s), operation(s), and/or program(s); and**
2. **Salary expenditures and associated fringe benefits included in an indirect cost pool shall be for individuals who are assigned, pursuant to a contract and/or job description, to perform work related to the APSSD's function(s), operation(s), and program(s).**

(e) An entity that operates only as an [approved private school for students with disabilities] **APSSD** and operates one or more tuition programs at one or more locations shall charge [their] costs as follows:

1. (No change.)
2. Indirect costs, [in accordance with an equitable allocation plan approved by the Commissioner, or] **as defined in (d) above, are calculated** in accordance with [either] **any** of the following [ratios]:
  - i. **An equitable allocation plan approved in writing by the Commissioner, or his or her designee;**
  - [i.] ii. [Direct] **Ratio of direct** costs for each program determined pursuant to (c) above to total direct costs; or
  - [ii.] iii. [Average daily enrollment] **Ratio of ADE** for each program to total [average daily enrollment] **ADE**.

(f) An entity that operates other programs in addition to an [approved private school for students with disabilities] **APSSD** program(s) at one or more locations shall charge their costs as follows:

1. (No change.)
2. Indirect cost centers established as follows:
  - i. A cost center[, which] **that** shall include indirect costs that are allowable costs in accordance with [N.J.A.C. 6A:23A-18] **this subchapter**; and
  - ii. A cost center[, which] **that** shall include indirect non-allowable costs in accordance with [N.J.A.C. 6A:23A-18] **this subchapter**.

3. Allowable indirect costs, [shall] **charged pursuant to (f)2i above, may be** included on a consistent basis in the respective actual cost per student in accordance with [an]:
  - i. **An** equitable allocation plan approved by the Commissioner, or [in accordance with either of the following ratios:] **his or her designee;**
  - [i.] ii. [Direct] **Ratio of direct** costs for each program determined pursuant to (c) above to total direct costs; or
  - [ii.] iii. [Average daily enrollment] **Ratio of ADE** for each [program] **APSSD** to total [average daily enrollment] **ADE.**
  
- (g) Whenever a facility used by an [approved private school for students with disabilities] **APSSD** is also used for unrelated activities and/or enterprises by related or unrelated parties, all **direct and indirect** costs[, direct or indirect,] associated with [such facilities] **the facility** and operations shall be charged according to the **ratio of the square footage of the portion of the facility used for activities** associated [activities and/or enterprises which they benefit] **with the APSSD program(s), operation(s), and/or function(s) to the square footage of the total facility.** Indirect costs **for using the APSSD's facilities in any other manner** shall **not** be [distributed] **included** in [accordance with an equitable allocation plan approved by the Commissioner] **the certified actual cost per student.**
  1. **If any facility or portion thereof as set forth in (g) above are jointly used by the APSSD for the APSSD program(s), operation(s), and/or function(s), and for unrelated activities and/or enterprises by related or unrelated parties, the direct and indirect costs associated with the facility and operations shall be**

**charged according to the ratio of the time used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the total time the facility is used for any purpose.**

- (h) A tentative tuition rate, **calculated in accordance with (i) and (j) below**, shall be established by written contractual agreement between the [approved private school for students with disabilities] **APSSD** and the sending district board of education. The tentative tuition rate charged shall [be an amount] not [in excess of] **exceed** the maximum tentative tuition rate, [established] **calculated** 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] **APSSD'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] **a student's** 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] **is** 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] **APSSD** 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] **APSSD** the

tentative tuition charge based on one of the following options as determined by the [approved private school for students with disabilities] **APSSD**. The [approved private school for students with disabilities] **APSSD** shall use the same option for all students enrolled in the [approved private school for students with disabilities] **APSSD**:

- i. Option 1: A sending district board of education shall pay the [approved private school for students with disabilities] **APSSD** no later than the first **day** of each month prior to the services being rendered.
  - (1) For a student already enrolled in the [approved private school for students with disabilities] **APSSD**, 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] **APSSD** calculated at the rate of one percent per month on the unpaid balance.
  - (2) For a student enrolled after the first **day** 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] **is** 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] **APSSD** 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] **APSSD** 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] **APSSD** calculated at the rate of one percent per month on the unpaid balance.

(i) The Commissioner, **or his or her designee**, will issue notification of the maximum tentative tuition rate for each [approved private school for students with disabilities] **APSSD** 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] **tax levy** growth limitation of [2.5] **two** percent and any applicable change to this percentage identified in N.J.S.A. 18A:7F-[5.d]**38**, or the **consumer price index (CPI) as defined in N.J.S.A. 18A:7F-45**, whichever is greater.
2. The maximum tentative tuition rate **shall** include[s]:
  - i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23A-[18.6]**18.7**; and

- ii. For [non-profit] **nonprofit** schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23A-[18.7]**18.8**.
- (j) The Commissioner, **or his or her designee**, may approve a higher tentative tuition rate for any year in which the [approved private school for students with disabilities] **APSSD** can [prove] **demonstrate**, to the **Commissioner's or designee's** satisfaction [of the Commissioner], that the maximum tentative tuition rate for the **ensuing fiscal** year is [not adequate] **inadequate** and would cause an undue financial hardship on the [private school] **APSSD**.
  - 1. In the event of such hardship claim, the [approved private school for students with disabilities] **APSSD** shall submit its request for a higher tentative tuition rate for the entire school year to the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, no later than January 31 preceding the beginning of the ensuing school year. The [approved private school for students with disabilities] **APSSD** shall submit [such] **the** request with appropriate documentation, which shall include, but may not be limited to, the following information:
    - i. (No change.)
    - ii. A detailed [explanation of] **narrative prepared by the APSSD's administration and/or management demonstrating** the need for increases in excess of [those] **increases** already provided in the tentative tuition rate calculation; and
    - iii. A **properly completed interim** financial report [which is properly completed and] in the format prescribed by the Commissioner, **or his or her designee**, 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] **Following a satisfactory compliance review of an independent auditor's certified actual cost per student, the** Commissioner will issue [notification of certifying] **an approval** that the final tuition rates charged are based on the certified actual cost per student pursuant to (a) above.
- (l) If the Commissioner, **or his or her designee**, determines [that] the tentative tuition rate for the school year established [by written contractual agreement] **pursuant to (i) and (j) above** is greater than the final tuition rate charged for the school year, the [approved private school for students with disabilities] **APSSD** 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 **independent-auditor-certified** tuition rate charged is [received from] **approved by** the Commissioner, **or his or her designee**, 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] **APSSD** 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 **certified** cost per student is [certified] **approved by the Commissioner, or his or her designee.**

- (n) The [approved private school for students with disabilities] **APSSD** 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 **Commissioner-prepared** forms [prepared by the Commissioner].
- (o) An [approved private school for students with disabilities] **APSSD** shall reference as guidance the **Commissioner-published** list of maximum allowable salaries by job title and county, according to the job titles contained in N.J.A.C. 6A:9B [which pertain to approved private schools for students with disabilities that is published by the Commissioner] **relevant to APSSDs.** 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] **The** 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] **APSSD** 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.

**1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries pursuant to (o) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year, with the following exceptions:**

- i. Beginning July 1, 2017, the maximum published salaries for the job titles of occupational therapist, physical therapist, and speech and language specialist shall increase annually from the 2016-2017 published list of maximum allowable salaries by CPI determined consistent with N.J.S.A. 18A:7F-45;**
- ii. Beginning July 1, 2017, the Commissioner, or his or her designee, shall publish a maximum allowable salaries list that contains the total maximum hourly rate for occupational therapists, physical therapists, and speech and language specialists contracted by APSSDs as purchased service providers or independent contractors. The published total hourly rates shall include an allowance of 35 percent more than the maximum allowable salary rate calculated and published pursuant to (o)1i above for the same job titles. The total maximum hourly rates shall be applicable only to contracted service providers.**
- iii. Beginning July 1, 2017, an APSSD may contract with an approved clinic and agency pursuant to N.J.A.C. 6A:14-5.1(c) and 5.2 and may**

**pay the approved clinic or agency for the contracted services at a rate above the maximum allowable salary published rate detailed in (o) above, so long as the APSSD:**

- (1) Acquires quotes for the contracted services from at least three approved clinics or agencies prior to contracting with an approved clinic or agency. If any of the three approved clinics or agencies are a related party, the APSSD shall contract with the lowest of the three quotes; and**
- (2) Provides documentation of the three quotes required by (o)1iii(1) above to the Department upon request.**

- 2. Subparagraphs (o)1i and ii above shall sunset on June 30, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (o) above.**
- 3. Beginning with the 2021-2022 fiscal year, the Department shall initiate a study examining the maximum allowable salary structure. In conducting the study, the Department may seek and/or include input from an APSSD representative(s). The study shall include a data-driven review of maximum salaries and recommendations, if any, for changes to the maximum allowable salary calculation formula contained in (o) above and (p) below.**

(p) An [approved private school for students with disabilities] **APSSD** shall reference as guidance [a] **the Commissioner-published** list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9B and 6A:23A-[18.1 which pertain to approved private schools for students with

disabilities that is published by the Commissioner] **18.2 relevant to APSSDs**. 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 commission[s] 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] **The** salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of the [private school] **APSSD** 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] **APSSD** 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.

- 1. Effective July 1, 2017 through June 30, 2024, maximum allowable salaries established pursuant to (p) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year;**
- 2. Paragraph (p)1 above shall sunset on July 1, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (p) 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)] (q) An [approved private school for students with disabilities] **APSSD** shall **use the recognized position title list published annually by the Commissioner, or his or her designee, to** employ staff [pursuant to the list of the recognized job titles] **whose position requires certification** in accordance with N.J.A.C. 6A:9B [that require certification and N.J.A.C. 6A:23A-18.1 that require] **or a bachelor's or master's degree,** [which is published by the Commissioner] **pursuant to N.J.A.C. 6A:23A-18.2.** An [approved private school for students with disabilities] **APSSD** shall [only] hire **only** staff or

consultants in job titles that require certification or a bachelor's **or master's** degree if [such] **the** titles are included on [this] **the recognized job titles** list, or if such titles are unrecognized job titles that are approved annually **by an executive county superintendent** in accordance with N.J.A.C. 6A:9B-5.5. The [approved private school for students with disabilities] **APSSD** may use unrecognized administrative job titles, but maximum salaries [of these] **for the** titles are restricted in accordance with N.J.A.C. 6A:23A-[18.5(a)9]**18.6(a)9**. [If an approved private school for students with disabilities hires] **The maximum salaries of APSSD-hired** staff in administrative or support job titles, such as, but not limited to, [Chief Executive Officer] **chief executive officer** or [Chief Financial Officer] **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)]**18.3(p)**.

- (r) **For non-administrative individual employees, the Commissioner, or his or her designee, may approve a salary higher than the maximum allowable salary identified in (o), (p), or (q) above. Approval may be given for no more than two APSSD employees in any fiscal year in which the APSSD demonstrates, to the Commissioner's or his or her designee's satisfaction, the maximum allowable salary is inadequate and would cause a hardship to the APSSD. The hardship exception will be granted in limited circumstances and only if the Commissioner, or his or her designee, determines the APSSD has demonstrated an exception is warranted based upon the following:**

- 1. The APSSD shall submit an application to the Commissioner, or his or her designee, postmarked or electronically transmitted no later than the May 1**

**preceding the applicable school year. The APSSD shall submit the application with appropriate documentation that shall include, but not be limited to, the following:**

- i. Detailed information on the staff member for whom the increase is sought, including, but not limited to, job title and related description, experience and credentials, hire date, previous salary information and new salary sought, accomplishments/achievements of note, and publications or the like. If applicable, the APSSD shall include the same detailed information for all staff employed under the same job title;**
- ii. A detailed budget demonstrating the impact the increased salary would have on the projected total expenditures, ADE, and budgeted tuition rate, if any;**
- iii. Detailed explanation of the need for a salary above the maximum allowable rate; and**
- iv. An outline of the educational impact of the employee.**

**2. The Commissioner, or his or her designee, shall review the application and respond in writing to the APSSD by June 30 of the school year preceding the applicable school year; and**

**3. Applications solely based on the length of service of the employee or familiarity with the school will not be granted.**

(s) For students who are transitioning back to a program of the sending district board of education, **or to a third-party location**, for a portion of the enrolled school day[, or to a

third party location] and **who** require the services of an [approved private school for students with disabilities] **APSSD** staff person, the ADE for [tuition rate] **tuition-rate** purposes shall be computed as follows:

1. Regardless of the time period [that a] **the** student is enrolled in a program outside the [approved private school for students with disabilities] **APSSD**, the student shall be considered a [full time] **full-time APSSD** 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. (No change.)
- (t) For students who are transitioning back to a program of the sending district board of education, **or to a third-party location**, for a portion of the enrolled school day [or to a third party location], the [approved private school for students with disabilities] **APSSD** shall compute the tuition rate as follows:
1. The [approved private school for students with disabilities] **APSSD** shall calculate the student's ADE based on the number of hours enrolled in the **APSSD's** program relative to the total number of possible hours of the **APSSD's** program.
  2. (No change.)
- (u) **For tuition-rate purposes for a private placement student, the APSSD shall charge not less than the audited cost per student or shall finance by other means the costs that exceed the tuition rate charged.**

N.J.A.C. 6A:23A-[18.3]**18.4** New approved private schools for students with disabilities



- (a) A prospective applicant shall file **with the Office of Special Education Programs (OSEP)** an application to establish an [approved private school for students with disabilities with the Office of Special Education Programs] **APSSD** and **shall obtain the Commissioner's, or his or her designee's,** approval of [such] **the** application [from the Commissioner] prior to operating an [approved private school for students with disabilities] **APSSD**.
1. A [currently approved private school for students with disabilities which] **current APSSD** that is [expanding a] **adding additional classrooms to an existing approved educational** program [to another] **at a new** location, or opening a new program, is considered a new [private school] **APSSD** subject to (a) above. **For the purpose of this paragraph, a new location may include, but shall not be limited to, a new building.**
  2. A [currently approved private school for students with disabilities] **current APSSD** that is [expanding a] **adding additional classrooms to an existing approved educational** program, or adding a new class type(s), [to] **either of which will** be housed in another building at the current location, shall not be considered a new [private school for students with disabilities] **APSSD** and shall charge as a tentative tuition rate the tuition [the school is] currently [charging] **charged.**
- (b) An applicant applying for approval as a new [private school for students with disabilities] **APSSD** shall provide **to the Department** evidence [to the Department that there is] **of** sufficient need for the new private school [as defined] as follows:

1. The applicant shall file **with the OSEP** an application to establish an [approved private school for students with disabilities with the Office of Special Education Programs] **APSSD** and **shall** document [the] **there is a need** [for] and **the new APSSD would likely serve** 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 **applicant** school shall receive preliminary approval to operate for a [two year] **two-year** period, after which the **applicant** school shall provide documentation that [the school] **it** has a minimum ADE of 24 public school placement students by the end of the second school year;
    - i. [A] **An applicant** school meeting the minimum ADE of 24 public school placement students by the end of the second school year shall receive new [school] **APSSD** approval **if it meets all other Department requirements;**
    - ii. [A] **An applicant** 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] **APSSD;**
    - iii. Any [previously] **APSSD** approved [private school for students with disabilities] **prior to the 2004-2005 fiscal year** 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] **APSSD** 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] **APSSD**;

- iv. Any [new private school for students with disabilities] **APSSD** approved [in 2004-05] **to operate during the 2004-2005 fiscal year**, 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] **APSSD**;
- v. [Approved private schools for students with disabilities] **APSSDs** operating in and affiliated with a public school **district** are exempt from [(b)2] **(b)1** and (c)1i, ii, iii, and iv above; and
- vi. An [approval for an approved private school for students with disabilities] **APSSD** operating in and affiliated with a public school [is] **district shall be restricted to operate only** in the public school district location [only]. An [approved private school for students with disabilities] **APSSD** operating in and affiliated with a public school **district** that chooses to move to a location other than [in a] **the public school district** location shall comply with [(a) and (b) above and] this section.

- (d) An [approved private school for students with disabilities] **APSSD** shall **straight line** 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] **APSSD**, 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] **APSSD** shall submit such estimated cost(s) to the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form **and/or electronic system** prepared by the [Assistant] Commissioner, [Division of Finance which] **or his or her designee, that** provides for, but is not limited to, the following:
- 1.-2. (No change.)
  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]**18.3(a)3** and as defined in the chart of accounts;
  - 4.-5. (No change.)
  6. A statement of assurance **as required by the Office of Special Education Programs.**
- (f) If the Commissioner, **or his or her designee**, approves the tentative tuition rate [charged] **calculated pursuant to (e) above**, 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 **after each year of operation**, the tentative tuition charges will be adjusted in accordance with N.J.A.C. 6A:23A-[18.2]**18.3**.
- [(h) In addition to this section, new approved private schools for students with disabilities shall be regulated in accordance with this subchapter.]
- (h) An APSSD approved as a new school shall not begin operations before July 1 of the school year immediately following the school year in which the APSSD received approval to operate, except for an APSSD operating in and affiliated with a public school district.**

N.J.A.C. 6A:23A-[18.4]**18.5** Bookkeeping and accounting

- (a) An [approved private school for students with disabilities] **APSSD** shall maintain accounting and bookkeeping systems as prescribed in **the Department's** Financial Accounting for New Jersey Private Schools for [students] **Students** with [disabilities issued by the Department] **Disabilities** in accordance with the following standards:
1. An [approved private school for students with disabilities] **APSSD** shall maintain accounts in accordance with generally accepted accounting principles (GAAP) as [defined] **established by the Financial Accounting Standards Board (FASB) and recognized as authoritative** by the American Institute of Certified Public Accountants, except as already modified in this [chapter] **subchapter**.
  2. At a minimum, an [approved private school for students with disabilities] **APSSD** shall use accrual accounting on a quarterly basis.

3. An [approved private school for students with disabilities] **APSSD** shall capitalize fixed asset expenditures of \$2,000 or more and depreciate such expenditures using the [straight line] **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] **that** 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] **APSSD** shall [capitalize]:
  - i. **Capitalize** leasehold improvements **made to an existing structure leased by the APSSD** and depreciate [such] **the** improvements using the straight-line method and a useful life equal to [that of] the lease's **remaining term and any extension(s)**, but not less than five years[.];
  - ii. **Depreciate any leasehold improvement(s) to which a related party(ies) is the lessor using the straight-line method and a useful life equal to the lease's remaining term and any extension(s), but not less than 10 years;**
  - iii. **Not depreciate a leasehold improvement(s) made to a structure for any month(s) the structure is not in service as an APSSD, or in excess of amounts determined under (a)4i or ii above for any fiscal year; and**
  - iv. **Not depreciate a leasehold improvement(s) made to a structure that does not directly benefit public school placement students being**

**educated or that is in excess of amounts determined pursuant to (a)4i, ii, or iii above.**

5. An [approved private school for students with disabilities] **APSSD** shall maintain asset, liability, and [fund balance] **net asset** accounts, as well as expenditure and revenue accounts.
6. [Non-profit] **Nonprofit** organizations shall maintain financial records on a fund basis, which requires [that] restricted or unrestricted donations [shall] **to** 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, **or his or her designee**, shall be maintained by each [approved private school for students with disabilities] **APSSD**. [Effective July 1, 2002, a uniform minimum chart] **A Uniform Minimum Chart** of [accounts] **Accounts** consistent with Financial Accounting for Local and State School Systems [2003] **2014**, developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented as prepared, published, and distributed by the Commissioner, **or his or her designee**, for use in the accounting systems of all [approved private schools for students with disabilities] **APSSDs** 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.] **Effective July 1, 2017, the Department will not consider requests for approval to use an alternative chart of accounts. APSSDs that received approval prior to July 1, 2017, to use an alternative chart of accounts may continue to do so.**

- i. Effective July 1, 2018, the first \$15,000 of attorney’s fees or other costs per litigation and per fiscal year of costs incurred by an APSSD shall be included within the administrative cost category limits identified in N.J.A.C. 6A:23A-18.3(a)3. Costs for litigation above the first \$15,000 per litigation and per fiscal year shall be outside the total cost category assignment as indicated in the Department’s chart of accounts pursuant to (a)7 above.**
- ii. For purposes of (a)7i above, litigation means a suit brought by or against an APSSD for which a court of law or agency of the State or Federal government assigns a docket or other form of tracking number.**

8. If multiple facilities for [a private school] **an APSSD** have been approved, financial information **in the bookkeeping records** shall be segregated by facility [in the bookkeeping records]. If the [approved private school for students with disabilities] **APSSD** chooses to charge tuition rates by class type, financial information **in the bookkeeping records** shall be segregated by class type [in the bookkeeping records]. Bookkeeping records shall include, but not be limited to:
  - i.-vi. (No change.)



9. An [approved private school for students with disabilities] **APSSD** 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. **All documentation shall be subject to audit by the Department and shall support expenses charged by the APSSD in its audited financial statements.**
10. An [approved private school for students with disabilities] **APSSD** shall prepare a payroll that is supported by an accurate employee time record in a format prescribed or approved by the Commissioner, **or his or her designee**, signed by the employee and supervisor, prepared in the time period in which the work was done and completed **semi-monthly**, at a minimum [semi-monthly]. An employee time record shall be prepared for all employees of the [private school for students with disabilities] **APSSD**, including all administrative employees. **Upon receipt of written approval from the Commissioner, or his or her designee, APSSDs may use an electronic time record system in lieu of the Commissioner-prescribed format. Approval shall continue unless and until an APSSD alters the system or engages the services of a new provider for the electronic time record system.**

11. [An approved private school for students with disabilities] **At least quarterly, an APSSD** shall prepare a financial report in a format prescribed or approved by the Commissioner, [each quarter at a minimum] **or his or her designee**, for the [school year] **school-year** program. [This] **The financial** report shall be submitted to the school's governing body and its acceptance shall be documented in the **governing body's meeting** minutes [of the meetings].
12. An [approved private school for students with disabilities] **APSSD** shall maintain [acceptable] **effective** internal control practices, [which include] **including, but not limited to**, the separation of duties such as the recording and authorizing of checks and purchase approvals.
13. An [approved private school for students with disabilities] **APSSD** shall use the **Commissioner-prescribed** mandated tuition contract [prescribed by the Commissioner] for each student received from a **sending** district board of education. The mandated tuition contract may [only] be revised **only** by the [approved private school for students with disabilities] **APSSD** or the sending district board of education with **the Commissioner's** prior written approval [by the Commissioner].
14. An [approved private school for students with disabilities] **APSSD** that incurs contingent pay increases shall have [in place] an employee contract that contains the criteria by which the increase will be paid. **Under no circumstances shall the APSSD employee's salary plus the contingent pay increase exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q).** The [plan] **criteria** shall be submitted to the Commissioner, **or his or**

**her designee**, for approval prior to implementation. The [private school] **APSSD** shall make payment of [such] **the contingent pay** increase upon achievement of the contractual contingencies as set forth in the approved plan. [Such] **The** payment shall **be based upon measurable criteria and shall** not be at the **management's** discretion [of management]. The employee contract shall contain the following:

- i. The date and signature of both the staff member and authorized [school] **APSSD** representative;
- ii. The [average daily enrollment] **ADE** contingency the [approved private school for students with disabilities] **APSSD** must achieve [in order] to generate the increase; and
- iii. (No change.)

15. An [approved private school for students with disabilities] **APSSD** that incurs merit pay increases shall have adopted a formal [board] policy that outlines the criteria of the merit pay plan(s). **The APSSD employee's salary plus the merit pay shall not exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q).** The plan(s) shall be submitted for approval to the Commissioner, **or his or her designee**, prior to implementation. The [private school] **APSSD** shall [make payment] **accrue the merit pay and any resultant employer payroll tax expense in the fiscal year in which the merit pay is awarded. Payment** of such merit pay increase upon achievement of the criteria set forth in the approved plan[, but] **shall occur** no later than the

following January 31[st]. [Such] **The** payment shall not be at the **management's** discretion [of management]. The plan(s) shall include the following:

i.-v. (No change.)

16. [A] **An imprest balance** petty cash fund shall be [approved] **maintained upon annual approval in the minutes** by the **APSSD's** governing body.  
**Replenishments and reimbursements shall be** supported by documentation.  
**Undocumented outflows from petty cash shall be classified as a non-allowable cost.** The **imprest fund balance** shall not exceed \$1,500 and[,] **individual** disbursements **made** shall not exceed \$150.00, except in the case of an [emergency] **emergent condition**.
17. A student activity fund shall be approved by the **APSSD's** 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] **Mileage** records 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, **or his or her designee**. The mileage records shall be maintained on a [trip by trip] **trip-by-trip** basis and **shall** 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] **the personal** 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, **and** insurance [and car phone].

19. Upon request from the Commissioner, **or his or her designee**:
  - i. A profit-making [approved private school for students with disabilities] **APSSD** shall submit a copy of [the] **its** Internal Revenue Service (IRS) tax return **for any fiscal year requested**; and
  - ii. A [non-profit approved private school for students with disabilities] **nonprofit APSSD** shall submit a copy of IRS form 990 **for any fiscal year requested**.
20. An [approved private school for students with disabilities] **APSSD** shall maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the [audit] **annual audited financial statement, or until the Commissioner, or his or her designee, issues approval or adjustment to an independent-auditor-certified tuition rate.**
21. A [non-profit] **nonprofit** entity that has chosen to cease operations as a [non-profit private school for students with disabilities] **nonprofit APSSD** 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] **APSSD's** last five years of operation. **Public school placement restricted working capital may be retained if an APSSD reconfigures its operations and continues to serve a majority of the same sending district boards of education from the last five years of operation.**

- i. The distribution shall be based on **the ratio of** each **sending** district board of education's total ADE in the [private school] **APSSD** for the last five years of operation to the [private school's] **APSSD's** total ADE for the same period.
  - ii. Within 90 days of filing **with the Department** the required year-end audited financial statements [with the Department] in accordance with N.J.A.C. 6A:23A-[18.9]**18.10**, the [private school] **APSSD** shall submit to the Commissioner, **or his or her designee**, 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] **APSSD** shall ensure [that] school staff[, outside]; consultants[, and]; subcontractors, including members of a management company; **and anyone working with students** hold the proper school certification, license, or bachelor's degree required pursuant to N.J.A.C. 6A:23A-[18.1]**18.2** to provide the services being rendered.
- (b) An [approved private school for students with disabilities] **APSSD** that receives a refund(s) from a current or [prior year] **prior-year** expenditure, or **that** cancels an accounts payable, shall apply [such] **the** refund or accounts payable as a reduction to the **original** general expenditure account charged to reduce the [current year] **current-year** expenditure account[. If] **even if** the original expenditure [account charged is] **was** not [charged] **made** in the current [school] **fiscal** year[, such amount(s) shall be used to reduce total expenditures in the current year].

(c) An [approved private school for students with disabilities] **APSSD annually** shall execute an employment contract [annually] with each school employee [whose position requires a certificate, license or a bachelor's degree, which contains]. **The contract shall contain** the following information:

1. The **employee's** name [of employee];
2. (No change.)
3. Work [hours] **hours/durational term of employment;**
4. (No change.)
5. **Certification(s) required for the job title;**

[5.] 6. (No change in text.)

[6.] 7. The job title; [and]

8. **All fringe benefits; and**

[7.] 9. (No change in text.)

(d) An [approved private school for students with disabilities] **APSSD that operates its educational program outside of a public school district** shall request **Departmental** 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] **APSSD's educational facility. Once received, an approval shall not require renewal, unless and until the APSSD changes the location of its educational or administrative facility.** At the Department's request:

1. The [County Office of Education shall] **county office of education may** conduct an on-site facility review to determine if there is sufficient space at the [school] **APSSD's educational facility** for these operations; and/or

2. The [approved private school for students with disabilities] **APSSD** shall submit [documents] to the [Assistant] Commissioner, [Division of Finance] **or his or her designee, documents** that substantiate the need for additional space.
- (e) An [approved private school for students with disabilities] **APSSD** shall ensure [that] its employees provide:
1. [The] **To the students, an** instructional program [to the students] for which [they] **the employees** are compensated during the hours the school is in session; and
  2. All administrative and business functions on **the APSSD's** premises [that] **whether the premises** are [either] owned or leased by the [approved private school for students with disabilities] **APSSD**, and during the [private school's] **APSSD's** normal hours of operation, [with the exception of] **except for** meetings and/or conferences held offsite related to the job function. If [this is] **the APSSD's facilities are** not deemed feasible for any administrative or business function, the [school] **APSSD** shall provide written justification to the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, and request approval of [any] **a** reasonable alternative work location.
- (f) An [approved private school for students with disabilities] **APSSD** shall establish[,] **and** maintain [and distribute] an employee handbook **that shall be distributed** to all staff **each school year and made available to the Department upon request**. The [approved private school for students with disabilities] **APSSD's employee handbook** shall include [in the employee handbook] an outline of all employee fringe benefits. All employee fringe benefits shall be adopted [in] **at** 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]**18.6(a)23** for which costs are deemed allowable are as follows:

1. Health insurance coverage (including dental and vision)[;] **that complies with Federal and State laws, rules, and regulations, including payments to employees for a complete waiver of health insurance coverage that comply with the following:**
  - i. **The payment for waiver of health insurance coverage shall not exceed \$5,000 per fiscal year; and**
  - ii. **The employee shall provide, and the APSSD shall keep on file, documented evidence the employee had other valid health insurance coverage during the fiscal year;**
- 2.-5. (No change.)
6. [Long term] **Long-term** disability;
- 7.-10. (No change.)
11. Tuition reimbursement; [and]
- 12. Health savings account (HSAs), medical savings accounts (MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs) established and maintained within applicable law and regulations; and**
- [12.] **13.** Other benefits for which an [approved private school for students with disabilities] **APSSD** has applied and received written approval from the Commissioner, **or his or her designee.**

- (g) An [approved private school for students with disabilities] **APSSD** that loans funds to any party shall charge interest at a rate equal to the prime rate. [The] **An** independent auditor shall compute imputed interest on [those] funds that are loaned at less than the prime interest rate or interest free. [Such imputed] **Imputed** interest revenue shall be netted **first** against [any] short-term interest costs [first,] and then [long term] **against long-term** interest costs incurred by [the private school] **an APSSD**. If the [approved private school for students with disabilities] **APSSD** 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] **central** services.
- (h) [An approved non-profit private school for students with disabilities] **A nonprofit APSSD** that has a positive public school placement restricted working capital fund balance [and] **but reports** a net deficit **unrestricted** 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] **or his or her designee**, within 60 days after [the end of] the third fiscal year's **end**, a corrective action plan to reduce the net **overall** deficit fund balance. The [approved private school for students with disabilities] **nonprofit APSSD** shall be subject to **Department** monitoring [by the Department] to ensure implementation of and adherence to the corrective action plan. If the [private school] **APSSD** fails to [decrease] **eliminate** the deficit [within] **by the end of year** three [years], the [private school] **APSSD** shall be placed on conditional approval status until [such time that] the deficit [decreases] **unrestricted fund balance is eliminated**.

- (i) An [approved private school for students with disabilities] **APSSD** that [accumulates] **allows employees to accumulate and carryover from year to year unused** sick and/or vacation leave shall do so in accordance with Financial Accounting Standards Board Statement No. [71] **43 Accounting for Compensated Absences** (FASB; 401 Merritt 7, PO Box 5116, Norwalk, CT 06856-5116), incorporated herein by reference, **as amended and supplemented**, and shall include [these] **the** costs in program expenses **in the appropriate cost category** only [when the compensation is actually paid] **in the year of payment.**
- (j) An [approved private school for students with disabilities] **APSSD** shall use [the] job titles [that are] in use in [the] public schools **districts** in accordance with N.J.A.C. 6A:9B, and the list published each year by the Commissioner, or [those] **job titles** approved in accordance with N.J.A.C. 6A:9B-5.5.
- (k) An [approved private school for students with disabilities] **APSSD** shall [issue] **limit** compensation increases after the start of the fiscal year [only] **to specific instances** in accordance with N.J.A.C. 6A:23A-[18.2(q)]**18.3(q)**, and when the increase:
1. Is due to a staff [member(s)] **member's** promotion that results in additional job responsibilities;
  2. Is due to a staff [member(s)] **member's** attaining a higher degree or certification;
  3. Is due to a staff [member(s)] **member's** additional job responsibilities such as a coach, [class or school] advisor, or mentor;
  4. (No change.)

5. Has been approved by the Department after review of a formal written request to the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, documenting the facts supporting the increase[, if none of the above applies].
- (l) An [approved private school for students with disabilities] **APSSD** shall ensure [that employees which] **individuals who** are **newly employed by the APSSD or** new to the positions listed below on or after July 1, [2006] **2017**, possess the appropriate [bachelor's] **master's degree or other required degree or certification** as defined in N.J.A.C. 6A:23A-[18.1]**18.2**. [In addition, approved private schools for students with disabilities] **The APSSD also** shall ensure [that employees functioning] **individuals employed or serving** in the following positions on or before June 30, [2006 either] **2017**, currently possess the appropriate bachelor's degree **or other required degree or certification** 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]**18.2**, or will be removed from the position:
1. (No change.)
  2. Assistant [Director] **director**;
  3. Executive [Director] **director**; and
  4. Business [Manager] **manager**.
- (m) An [approved private school for students with disabilities] **APSSD** that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-[18.5(a)31]**18.6(a)31** and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-[18.5(a)56]**18.6(a)54** shall include [these] **the** costs in the certified actual cost per student **only** on the cash basis of accounting.

- (n) An [approved private school for students with disabilities] **APSSD** shall have [the] **its** paraprofessional staff approved in accordance with N.J.A.C. [6A:9B-7.1] **6A:32-4.2** and any change(s) to an approved job description shall be resubmitted for approval.
- (o) An [approved private school for students with disabilities] **APSSD** shall comply with the maximum salaries determined [in accordance with] **pursuant to** N.J.A.C. 6A:23A-[18.2(o) and (p)]**18.3(o) and (p)** and restricted [in accordance with] **pursuant to** N.J.A.C. 6A:23A-[18.5(a)6, 8 and 9]**18.6(a)6, 8, and 9** regardless of the job titles used and whether [these job titles] **they** comply with the list of job titles published by the Commissioner, **or his or her designee**.
- (p) [An approved private school for students with disabilities shall under] **Under** no circumstances other than in accordance with [N.J.A.C. 6A:23A-18.4(k)] **(k) above shall an APSSD** provide compensation increases after the start of the fiscal year.

N.J.A.C. 6A:23A-[18.5]**18.6** Non-allowable costs

- (a) Costs that are not allowable in the calculation of the certified actual cost per student **shall** include the following:
  1. [An administrative cost] **Administrative costs** in excess of, and/or instructional cost less than, the percentages indicated in N.J.A.C. 6A:23A-[18.2(a)3]**18.3(a)3**;
  2. [The cost of] **Costs for** maintaining an administrative office in a private home or other residence;

3. [An advertising] **Advertising** costs in excess of 0.5 percent of the [private school's for students with disabilities] **APSSD's** actual allowable costs, not including advertising;
4. [Any cost] **Costs** associated with lobbying, including salaries and fringe benefits;
5. [Any cost] **Costs** other than those governed by [(a)52] **(a)50** below associated with lobbying in an attempt to influence:
  - i. (No change).
  - ii. The introduction, **enactment, or modification** of Federal **or State** legislation[, State legislation] or **a** 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, **or contracted to perform the duties of**, a position requiring certification in accordance with N.J.A.C. 6A:9B or bachelor's **or master's** degree [required in accordance with] **under** this subchapter;
7. The salary and fringe benefits of a staff member, **or any payment(s) to a purchased service provider**, for time not expended and/or services not performed except in accordance with [(a)58] **(a)56** and [59] **57** below;
8. A salary in excess of the associated maximum allowable salary determined [in] **pursuant to** N.J.A.C. 6A:23A-[18.2(o)]**18.3(o)**, (p), and (q) for a staff member or consultant whose position requires certification, license, or a bachelor's **or**

**master's** degree, including a director, assistant director, executive director, and business manager.

- i. An [approved private school for students with disabilities] **APSSD** 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)]**18.3(e)** and (f);
  - ii. The part-time and split-time maximum allowable salary [is] **shall be** 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] **APSSD** position;
    - (2) Multiply the maximum allowable [full time] **full-time** salary for the position by the percentage of time attributed to the [approved private school for students with disabilities] **APSSD** position; and
    - (3) Subtract the amount calculated in (a)8ii(2) above from the amount calculated in (a)8ii(1) above. [and if] **If** the result is [a positive amount] **greater than zero**, 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)]**18.3(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]**18.2**.

- i. An [approved private school for students with disabilities] **APSSD** 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)]**18.3(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] **APSSD** 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] **APSSD** position; and
    - (3) Subtract the amount calculated in (a)9ii(2) above from the amount calculated in (a)9ii(1) above. [and if] **If** the result is [a positive amount] **greater than zero**, this is the non-allowable part-time or split-time salary.
10. [The cost] **Costs** of fringe benefits [that are] **when** based on **and/or associated with** a non-allowable salary;
  11. [A legal] **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] **including**, but [may] not [be] limited to, the following:

- i. Overall merit of the claim; [and] **or**
- ii. (No change.)

12. [A consultant fee] **Consultant fees** for services **that fail to meet the following standards:**

- i. [That are not] **The work of the consultant shall be** detailed in an executed written contract **signed by both parties** that includes [a list]:

- (1) **A detailed description** of the nature of the services **to be** provided[, the];
- (2) **Duration of the contract;**
- (3) **Detailed fee information;**
- (4) **Fee payment schedule(s);**
- (5) **The** approximate number of days to complete the work[, the charge per day]; and
- (6) [the] **The anticipated** product or outcome of the [consultation] **work;** [and]

- ii. [Are performed] **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] **\$750.00;**

14. Depreciation [that is] unacceptable under N.J.A.C. 6A:23A-[18.4(a)3 and (a)4]**18.5(a)3 and 4** and depreciation:

- i. (No change.)
  - ii. [That is not] **Not** based on estimated straight-line method;
  - iii. On [autos] **automobiles** in excess of the dollar or percentage limitation contained under Internal Revenue [Service] Code (**IRC**) 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] **stepped-up** basis resulting from the sale to a related party as defined in [Internal Revenue Service Code] **IRC** Section 318 for Constructive Ownership of Stock. For a [not-for-profit] **nonprofit** organization, Section 318 will apply to the members of the [Board of Directors] **board of directors** or related parties as defined in **IRC** 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] **or**
  - v. On a [stepped up] **stepped-up** basis from transfer from one spouse to another upon death as defined in [Internal Revenue Code] **IRC** Section 1014;
15. The [yearly] cost of:
- i. [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] **Depreciation associated with the purchase and ownership of any passenger vehicle [not used for transporting students or supplies without regard to the weight class exceptions under 280F(d)(5)(A)] not used for transporting students or supplies purchased on or after July 1, 2017, if:**

- (1) The depreciable basis upon which depreciation is calculated exceeds \$30,000;**
- (2) The depreciation expensed exceeds allowable depreciation calculated on the straight-line basis over a period of not less than five years; or**
- (3) The depreciation expensed is attributable to a passenger vehicle that has been assigned to, or used on a regular basis by, an APSSD staff member who is not the APSSD executive director, director, and/or owner.**

**ii. Vehicle lease payments made pursuant to the lease agreement entered into on or after July 1, 2017, when:**

- (1) The annual lease payment(s) exceeds the annual depreciation allowable on an owned passenger vehicle with a maximum depreciable basis of \$30,000; or**
- (2) The lease payments are for a leased passenger vehicle that has been assigned to, or used on a regular basis by, an APSSD staff member who is not the APSSD executive director, director, and/or owner.**

16. [An investment] **Investment** expenses associated with the purchase/sale of stock, securities, other investment instruments, or other investments not associated with the education of [disabled children] **students with disabilities**;
17. Total costs in excess of [\$1,000] **\$500.00** incurred for entertainment expenses;
18. The cost of food/beverages in excess of [\$3,000] **\$1,500** 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] **Costs from** a fine or penalty [which results] **resulting** from a violation of, or failure by, the [school] **APSSD** 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;]

**20. Meal costs in excess of the limits set forth in N.J.A.C. 6A:23A-18.23.**

21. (No change.)

22. The cost of an employee's life insurance coverage, both term and whole life policies, in excess of 3.5 times [their] **the employee's** gross salary;

23. [Fringe] **Costs for fringe benefits as follows:**

- 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] **according to** 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] **APSSD's board of directors** at a board meeting prior to the **benefit's** implementation [of the benefit], documented in the [board] **meeting** minutes, and the employees were not made aware of the policy; [and] **or**
  - iii. When the benefit is not listed in N.J.A.C. [6A:23-4.4(f)] **6A:23A-18.5(f)** or not approved by the Commissioner, **or his or her designee**;
24. The cost of [fund raising such as] **fundraising, including, but not limited to, costs for** a financial campaign, an endowment drive, or solicitation of a gift and bequest [that is done] to raise capital or obtain a contribution;
25. (No change.)
26. Interest costs on loans when:
- i. (No change.)
  - ii. The loan is a less-than-arm's length/related party transaction [which] **that** has not been previously approved by the Department and has not been repaid in accordance with the Department's approval letter; [and] **or**
  - iii. The loan is not exclusively used to meet **educational** program needs;
27. Interest costs on long-term loans or mortgages [when] **if**:
- i. (No change.)
  - ii. The loan is not secured by the fixed asset being financed; [and] **or**
  - iii. (No change.)
28. (No change.)
29. The write-off of uncollected accounts receivable (bad debts) [before]:

- i. **Before** three years has elapsed and before a reasonable effort has been made to collect such accounts receivable; **or**
  - ii. **That arise out of the APSSD's provision of:**
    - (1) **Extraordinary services;**
    - (2) **Services to students placed by an out-of-State agency; or**
    - (3) **Services to private placement students;**
30. (No change.)
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. (No change.)
  - iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see [Internal Revenue Code] **IRC** Section 415(c)) as the lesser of 100 percent of the employee's compensation or [\$44,000] **\$53,000 as adjusted annually in IRC;**
  - iv. For a defined benefit plan in excess of an amount, by employee, [which] **that** 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] **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 **Employee**

**Retirement Income Security Act of 1974 (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 **APSSD's** fiscal tax year [of the approved private school for students with disabilities];

vii.-viii. (No change.)

[32. The cost associated with a conference, meeting or seminar held in countries not contiguous to the United States;]

[33.] **32.** [The costs] **Costs** of a contingent pay increase or merit pay award when [such] **the** amount(s) [were] **was** not in accordance with N.J.A.C. 6A:23A- [18.4(a)14]**18.5(a)14** or 15 or the contingent pay increase or merit pay award(s)[ are not consistent] **is inconsistent** with the plan(s) submitted to and approved by the Commissioner, **or his or her designee**, 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.] **33.** [A] **Costs for the** payment of a bonus;

[37.] **34.** [A] **Costs for a** loss on an investment;



- [38.] **35.** [The cost of] **Costs associated with a research activity, including, but not limited to** staff salaries, supplies, or printing and reproduction of a material [for a research activity];
- [39.] **36.** (No change in text.)
- [40.] **37.** [Any cost] **Costs** associated with travel to and from the officer's or employee's home and the school or agency;
- [41.] **38.** [All] **Costs for all** personal expenses, such as a personal travel expense or repair on a personal vehicle;
- [42.] **39.** [Personal] **Costs associated with personal** use of [a school-owned] **an APSSD-owned** or -leased vehicle, [which includes] **including, but not limited to**, to/from work commutation as determined [in accordance with] **pursuant to N.J.A.C. 6A:23A-[18.4(a)18]18.5(a)18**;
- [43.] **40.** [Any costs] **Costs** associated with [a school-owned] **an APSSD-owned** [vehicle,] **or** -leased vehicle[,], or **a** vehicle contained in a related party transaction involving the purchase of transportation services where a **detailed daily** mileage log **documenting vehicle usage** was not maintained;
- [44.] **41.** A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the [United States Internal Revenue Service] **IRS** for automobile travel;
- [45.] **42.** Transportation costs for a student to and from school, except where the student's IEP requires [after school] **after-school** activities;
- [46.] **43.** Rental costs for buildings and equipment when the lessor is not a [separate] **separately identifiable** legal entity;

- [47.] **44.** 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] **transactions** between divisions of an institution; institutions or organizations under common control through common officers, directors, [or] members, **or owners**; 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]**18.5(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] **APSSD** shall [include in] **submit a cost of ownership form in a Commissioner-supplied format. The property or business owner shall sign and notarize the cost of ownership form and include a copy of the lease agreement, and** 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[,] **and shall be** signed by the sub-lessor and notarized;
- iii. (No change.)
- iv. Cost of personal services paid to a related party when [such] **the** services are provided by an employee **of**, or consultant [of] **to** the [approved private school for students with disabilities] **APSSD** 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 **goods or services from a related party** in excess of the actual allocated costs of [ownership (such as] **providing the purchased goods and/or services, including, but not limited to,** salaries, fringe benefits, insurance, operation, maintenance, straight-line depreciation[)] incurred by the related party owner. [including] **Costs may include** 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] **APSSD shall file a cost of ownership form in a**

**Commissioner-prescribed format. The cost of ownership form shall be signed by the property or business owner and shall include[ in] a copy of the purchase agreement, and 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.] **45.** Cost of a less-than-arm's length/related party transaction when the related party **and/or the APSSD, as applicable,** does not [provide]:

**i. Provide to the Commissioner documentation on Commissioner-prepared forms** 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 **be** limited to:

[i.] **(1)** The related parties' tax returns; [and]

[ii.] **(2)** The related parties' [paid] **invoices received, payroll and payroll tax records,** bills and canceled checks, **or electronic transfer records** concerning the transaction; **and**

**(3) Any other document(s) requested by the Department; or**

**ii. Disclose the related party relationship on Commissioner-prepared forms pursuant to this subchapter and N.J.A.C. 6A:23A-19;**

[49.] **46.** Rental costs under sale and leaseback arrangements in excess of the amount that would be [incurred had] **allowable if** the [organization] **APSSD** continued to own the property;

[50.] **47.** Indirect and direct costs [associated with unrelated] **that are:**

i. **For unrelated** activities or enterprises as defined in N.J.A.C. 6A:23A-  
[18.2(g)]**18.3(g)**; or

ii. **Unrelated to the function, operations, and/or program of an APSSD  
as defined in N.J.A.C. 6A:23A-18.3(d)**;

[51.] **48.** Costs [of] **for** the year-end audited financial statements **when** prepared by  
an individual who does not meet the requirements [contained] in N.J.A.C.  
6A:23A-[18.9(a)]**18.10(a)**;

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

i. (No change.)

ii. For membership in an organization that devotes any [activities]  
**activity(ies)** to influencing legislation or [state] **State** regulation(s) not  
directly related to the educational instruction program of [disabled]  
students **with disabilities** and [such activities are] **the activity(ies)** is not  
subsidized by sources other than membership fees from [approved private  
schools for students with disabilities] **APSSDs**;

iii. Not an established annual rate charged to all members, but one [which]  
**that** 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 **with disabilities** were funded by sources other than dues from  
[approved private schools for students with disabilities] **APSSDs**;

[53.] **50.** [Salary of a] **A** staff member's **salary** 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]**18.5(a)10**;

[54.] **51.** A salary or payment made to a member(s) of the board of directors/trustees for services performed in [their] **his or her** capacity as a member of the board of director/trustees;

[55.] **52.** Cost of a pension plan **contribution made on behalf of**, and/or medical benefits for, current or retired members of the board of directors/trustees;

[56.] **53.** 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] **APSSD** and have less than 10 years of service in an [approved private school for students with disabilities] **APSSD**;

[57.] **54.** Costs of salaries and fringe benefits of unrecognized position titles [that are] not properly approved [in accordance with] **pursuant to** N.J.A.C. 6A:9B-5.5;

Recodify existing 58. and 59. as **55. and 56.** (No change in text.)

[60.] **57.** 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] **APSSD**;

[61.] **58.** 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] **APSSD** location that was not approved [in accordance with] **pursuant to** N.J.A.C. 6A:23A-[18.4(d)]**18.5(d)**;

- [62.] **59.** 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)]**18.5(k)**; [and]
- [63.] **60.** Start-up costs in excess of [those] **costs** allowed [in] **pursuant to** N.J.A.C. 6A:23A-[18.3(d)]**18.4(d)**;
- [64.] **61.** Costs [including] **of** salaries and fringe benefits [of] **for** employees providing services **that are** not in compliance with N.J.A.C. 6A:23A-[18.4(e)2]**18.5(e)2**;
- [65.] **62.** The cost of a [violation in accordance with] **fine levied pursuant to** N.J.S.A. 18A:6-7.5 for any staff member [that] **who** does not have:  
i.-ii. (No change.)
- [66.] **63.** Legal costs for an [approved private school for students with disabilities] **APSSD** and/or for [a school] **an APSSD** representative(s), [which includes] **including** an owner, employee, or agent [that have] **who has** plead guilty and/or [are] **is** found to be guilty or liable in a case involving the misuse of funds, [or] fraud (criminal or civil), **or endangerment or abuse of a child(ren)**;
- [67.] **64.** The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23A-[18.2(r)]**18.3(q)** and determined in accordance with N.J.A.C. 6A:23A-[18.4(o)]**18.5(o)** and (p); [and]
- [68.] **65.** Costs found to be patently unreasonable by the Commissioner, or his or her [representative(s)] **designee**, or [the] **an** independent auditor/accountant [.];
- 66.** **Cost(s) of payments made to an individual employee(s) for earned unused sick benefit that is in excess of one percent of the individual employee's**

**contracted salary amount during the fiscal year in which the payment is made;**

- 67. Proportional costs of salary and fringe benefits for any administrative staff member, as defined in N.J.A.C. 6A:23A-18.3(o), with the exception of principal and unrecognized position titles in the administrative category, that are in excess of a total of 3.0 FTE administrative positions per APSSD, per fiscal year. If the combined administrative positions exceed 3.0 FTE, the disallowed amount will be apportioned equally across all of the positions;**
- 68. Costs associated with travel, defined in N.J.A.C. 6A:23A-18.21, that:
  - i. Exceed .0025 of the total actual allowable costs, less travel costs, in a fiscal year for an APSSD, or \$20,000, whichever is less; and/or**
  - ii. Violate the provisions of N.J.A.C. 6A:23A-18.21(g);****
- 69. Costs associated with waiver of health insurance coverage that violate the provisions of N.J.A.C. 6A:23A-18.5(f)1;**
- 70. Costs associated with depreciation of leasehold improvements that violate N.J.A.C. 6A:23A-18.5(a)4;**
- 71. Costs of the salary, benefits, or other compensation provided to an APSSD employee or contractor/consultant who is receiving retirement benefits as a result of his or her retirement from the APSSD after two calendar years has expired since the individual began retirement;**
- 72. Costs associated with undocumented outflows from petty cash, pursuant to N.J.A.C. 6A:23A-18.5(a)16; and**



**73. Costs associated with the failure to comply with the requirements of N.J.A.C. 6A:23A-18.5(d).**

6A:23A-[18.6]**18.7** Surcharge

- (a) For profit-making [schools] **APSSDs**, the [school's] tuition rate may include an annual surcharge up to 2.5 percent of the [private school's] **APSSD's** allowable actual costs.
- (b) For profit-making [schools] **APSSDs**, interest earned in accordance with N.J.A.C. 6A:23A-[18.2(h)]**18.3(h)** is an unrestricted revenue and [is] **shall not be** part of the school's surcharge computation.
- (c) For profit-making schools, the allowable Federal, State, and local income tax [liability] **payment** in N.J.A.C. 6A:23A-[18.5(a)39 is]**18.6(a)36 shall be** computed using only the public school placement tuition income and all allowable and non-allowable [approved private school for students with disabilities] **APSSD** 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]**18.8** Public school placement restricted working capital fund

- (a) For [approved non-profit private schools for students with disabilities] **nonprofit APSSDs**, the [school's] tuition rate may include an amount that will permit the [school] **APSSD** to establish a public school placement restricted working capital fund of up to 15 percent of the [private school's] **APSSD's actual** allowable [actual] costs[, for the 2006-2007 through 2007-2008 school year, but]. **However**, the [private school] **APSSD** shall not include **in the certified actual cost per student** an amount in excess of 2.5 percent of the [private school's] **APSSD's actual** allowable [actual] costs per year. **The restricted working capital fund shall not exceed 15 percent of an APSSD's actual annual allowable cost in a fiscal year.**
- (b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the [school's] **APSSD's** total allowable costs incurred in account numbers classified as undistributed [expenditures—business and other support services] **expenditures—central** 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)] (c) Interest earned in accordance with N.J.A.C. 6A:23A-[18.2(h) is] **18.3(h) shall be** unrestricted revenue and [is] **shall** not part of the [school's] **APSSD's** public school placement restricted working capital fund computation.

6A:23A-[18.8] **18.9** Calculation of student attendance

- (a) Each [approved private school for students with disabilities] **APSSD** 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] **APSSD** shall submit to the Commissioner, **or his or her designee**, by September 1, verification of the [average daily enrollment] **ADE** for the previous school year on **Department-provided** forms [provided by the Department].
- (c) Each [approved private school for students with disabilities] **APSSD** shall identify private placements in the register.
- (d) Each [approved private school for students with disabilities] **APSSD** shall maintain a separate register by class type.

6A:23A-[18.9]**18.10** Audit requirements

- (a) Regardless of the **APSSD's** fiscal year [of the school], each [approved private school for students with disabilities] **APSSD** shall submit to the Commissioner, **or his or her designee**, audited financial statements based on the July 1 to June 30 school year. [which must] **The audited financial statements shall** 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] **APSSD** shall engage **to conduct the annual audit** 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.

2. The [approved private school for students with disabilities] **APSSD** shall ensure the **auditor's** independent status [of the auditor] in accordance with [standards set forth in] the Code of Professional [Ethics] **Conduct and General Principles and Responsibilities** issued by, and available from, the American Institute of Certified Public Accountants (AICPA).
  3. Additionally, upon review by the Department, an [accountant] **auditor** shall not be considered independent[, ] **if he or she may have been influenced by other parties, including, but not limited to, APSSD directors or other staff, or by conflicting interests such as if [such accountant] the independent auditor** 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] **APSSD. If the Department determines an independent auditor engaged to conduct the APSSD's annual audit has not acted independently, the Department may take any and all appropriate action.**
- (b) The audit shall follow generally accepted auditing standards (GAAS), as set forth **by the Auditing Standards Board (ASB)** in the Codification of Statements on Auditing Standards, [1993] **2015**, 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]; **the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Audit issued by the Federal Office of Management and Budget**; or NJOMB Circular Letter [98-07] **15-08**, as amended and supplemented. The [approved private school for students with disabilities] **APSSD** shall ensure the use of the

auditing guidelines as published and distributed by the Commissioner, **or his or her designee**.

1. The [approved private school for students with disabilities] **APSSD** 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] **APSSD** shall ensure [that] the audited financial statements reflect the certified actual cost(s) per student as determined by [the] **an** independent auditor and final tuition rate(s) charged at the end of the school year as determined by the [school's] **APSSD's** management.
- (d) The [approved private school for students with disabilities] **APSSD** 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] **APSSD** 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] **APSSD** shall ensure [that] the audit report contains a letter signed by both the [school] **independent** 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] **APSSD** 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] **the** corrective action plan to the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, for review and approval. **The corrective action plan shall be on a form prescribed by the Commissioner, or his or her designee.**

- (f) The [approved private school for students with disabilities] **APSSD** shall not amend the final tuition rate charged after [certification] **approval** by the Commissioner, **or his or her designee**.
- (g) Any adjustment(s) that results from the [certified audit or a tuition audit] **approval following a compliance review of the audited financial statements** performed by the Commissioner, **or his or her designee, and** that [are] **is** in excess of \$10.00 per sending district board of education [will] **shall** be paid in accordance with N.J.A.C. 6A:23A-[18.2(l)]**18.3(l)** and (m).
- (h) An [approved private school for students with disabilities] **APSSD** 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 **the provisions of** N.J.A.C. 6A:23A-[18.2(j) will]**18.3(j)** **shall** not apply.
- (i) Failure to comply with this section may result in the Commissioner, **or his or her designee**, placing the [approved private school for students with disabilities] **APSSD** on conditional approval status.
- (j) Upon request, the [approved private school for students with disabilities] **APSSD** shall submit to the Department a copy of the **APSSD** corporation's [agency wide] **agency-wide** audited financial statements.

6A:23A-[18.10]**18.11** Appeals

- (a) The decision of the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, regarding the calculation of the tentative tuition rate, pursuant to N.J.A.C. 6A:23A-[18.2(j)]**18.3(j)**, [regarding] the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23A-[18.3]**18.4**, and [regarding] conditional approval status pursuant to N.J.A.C. 6A:23A-[18.9(i)]**18.10(i)** may be appealed in accordance with N.J.A.C. 6A:3, **Controversies and Disputes**.
- (b) The decision of the [Assistant] Commissioner, [Division of Finance in regard to] **or his or her designee, regarding** certification may be appealed in accordance with N.J.A.C. 6A:3.
- (c) The decision of the Commissioner [in regard to] **regarding** N.J.A.C. 6A:23A-[18.3, New private schools for students with disabilities,]**18.4** 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. **For purposes of this subchapter, a decision by the Commissioner’s designee shall not constitute final agency action.**

**6A:23A-18.12 Roundtable work group**

**The Commissioner, or his or her designee, may create a working group that may consist of, at the Commissioner’s discretion, Department staff, representative(s) from the APSSD community, or others as the Commissioner so shall designate. The working group’s**

**purpose shall include, but shall not be limited to, discussing issues that impact APSSDs. Any such discussions or actions of the working group are non-binding. Such working group may be disbanded without prior notice and at any time at the Commissioner's discretion.**

6A:23A-[18.11]**18.13** Out-of-State approved private schools for students with disabilities

- (a) [Out-of-State] **An out-of-State** private school[s] for students with disabilities shall be approved to provide special education programs by the department of education of the state in which [they are] **the private school is** located. Exceptions [to this requirement] may be made only at the discretion of the **Department's** Office of Special Education[, New Jersey Department of Education] **Programs** in accordance with N.J.A.C. 6A:14-7.1[(e)](f).
- (b) The Commissioner shall abide by the tuition regulations for [approved private schools for students with disabilities] an **APSSD** 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] **APSSD** shall submit **to the Commissioner** verification of the **tuition rate's** approval [of the tuition rate to the Commissioner] either on **Commissioner**-prescribed forms or verification from the out-of-State [Department] **department** of education or other regulatory agency.
- (c) If the out-of-State [approved private school for students with disabilities] **APSSD** 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] **out-of-State APSSD** 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] **documentation** indicating agreement of [such] **the** rate shall be forwarded to the Commissioner.
2. An [approved private school for students with disabilities which] **out-of-State APSSD that** 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] **out-of-State APSSD**, 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] **the** 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] **out-of-State APSSD** shall file a budget in a format prescribed by the Commissioner, **or his or her designee**, to determine a tentative tuition rate and shall comply with the **subchapter's** provisions [of this subchapter in order] to collect tuition from a [New Jersey] **sending** district board of education, **charter school board of trustees**, or agency. The cost of the audit [contained in] **required pursuant to**

N.J.A.C. 6A:23A-[18.9]**18.10** 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]**18.14** Inspection of records

- (a) All financial and accounting records maintained by the [approved private school for students with disabilities] **APSSD**, 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)] **designee**, for the period indicated in N.J.A.C. 6A:23A-[18.4(a)20]**18.5(a)20**.
- (b) All financial and accounting records maintained by a related party, [which] **as defined by N.J.A.C. 6A:23A-18.6(a)45**, that pertain to a transaction(s) **or the relationship** between [a] **the** related party and the [approved private school for students with disabilities] **APSSD** shall be open during normal business hours for review and audit by the Commissioner, or his or her [representative(s)] **designee**, for the period indicated in N.J.A.C. 6A:23A-[18.4(a)20]**18.5(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)] **designee**, for the period indicated in N.J.A.C. 6A:23A-[18.4(a)20]**18.5(a)20**.

6A:23A-[18.13]**18.15** Fiscal monitoring of approved private schools for students with disabilities and corrective action plans

- (a) The Commissioner, or his or her [representative(s)] **designee**, shall monitor [approved private schools for students with disabilities] **APSSDs** in accordance with this subchapter. [On site] **On-site** monitoring shall be conducted at least every six years.
- (b) (No change.)
- (c) After the monitoring process is completed, a report shall be written and sent to the [approved private school for students with disabilities] **APSSD**, the **executive** county superintendent, and the [school's] **APSSD's independent** auditor **for the period(s) under audit**.
- (d) If the [school] **APSSD** receives a final report that indicates noncompliance a corrective action plan shall be developed and submitted, **on a form prepared by the Commissioner, or his or her designee**, to the Department for approval **within 30 days of the final report's receipt**.
- (e) The corrective action plan shall include, but [is] not **be** limited to, the following:
- 1.-2. (No change.)
- (f) When an [approved private school for students with disabilities] **APSSD** is determined to be in noncompliance, the Commissioner may:
1. Issue a conditional approval status when noncompliance with State [rules] **regulations and requirements** 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, **or his or her designee**, may be appealed according to N.J.A.C. 6A:3 **and/or 6A:23A-18.11, as applicable.**
- (h) [Annually, the] **The Department annually** shall publish the results of the [on-site] fiscal monitoring of [private schools for students with disabilities] **APSSDs, as well as the audited financial statements and associated reports or documents.**

6A:23A-[18.14]**18.16** Fiscal **and budget** information

- (a) [Annually] **In accordance with a timeline and format prescribed by the Commissioner, or his or her designee**, each [approved private school for students with disabilities] **APSSD** shall submit information to the [Assistant] Commissioner, [Division of Finance] **or his or her designee**, including, but not limited to:
  - 1. Fiscal and program information, including:
    - i. (No change.)
    - ii. The number of [and types of] **each** class type[s];
    - iii. Number of schools days; [and]
    - iv. The daily hours in session; **and**
    - v. **Revenues, appropriations, and supporting documents;**
  - 2. Staffing information, including, **but not limited to:**
    - i. A staff roster, [including, but not limited to,] **which may include requested information, such as** names, job titles, salaries, hours worked, **and** 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 **Education** 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 owner(s)/operator(s) of the program [are] **is** aware of the non-allowable costs contained in N.J.A.C. 6A:23A-[18.5]**18.6** and [that such] **the** costs charged as allowable costs in the [private school for students with disabilities] **APSSD** tuition rate are consistent with [the individualized education program of] a [disabled] student **with disabilities' IEP** 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] **The** Department **annually** shall publish a [Private School for Students with Disabilities Comparative Spending] **Taxpayer's Guide to Education Spending for APSSDs**.
  - (c) An [approved private school for students with disabilities] **APSSD** shall have a copy of the board of director's minutes, or [for a partnership,] the minutes of the partners meetings **for a partnership**, available upon **the Department's** request [by the Department].

6A:23A-[18.15]**18.17** Failure to comply with Department directives

The Department may place an [approved private school for students with disabilities] **APSSD** on conditional approval status [when] **if** the [school] **APSSD** fails to comply with Department [directives,] **regulations** such as, but not limited to, failure to refund tuition funds as a result of a Department tuition audit **or failure to provide requested documentation.**

6A:23A-[18.16]**18.18** Sale or disposition of assets of an approved private school for students with disabilities

(a) In the event of the **bulk sale or non-bulk sale** of the **capital** 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] **of an APSSD to any individual or entity, including another APSSD,** the selling [school must] **APSSD shall:**

1. **Agree to an independent valuation of the acquired assets for the purpose of allocation of the total purchase price to the various acquired capital assets;**
2. **Enter into a written agreement of sale that references and incorporates the values presented in the independent valuation of the acquired capital assets.**

**The written agreement of sale shall clearly identify the transferred capital assets and, at a minimum, include the date(s) of acquisition and historical cost(s), the dates of capital improvement(s) and historical cost(s), the term of depreciation, the method of depreciation, and the accumulated depreciation for financial purposes of each transferred capital asset. The written agreement of sale shall allocate the total consideration provided to the selling**

**APSSD based upon the independent valuation of the acquired assets;**

3. **Within 30 days of sale, the selling APSSD shall** provide the Department with a copy of the sale agreement[, copy of], **the independent valuation of the capital assets, and** the allocation of **the** purchase price as defined in **Internal Revenue Code (IRC) 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] **documented by Internal Revenue Service Form 8594 or successor form;**
4. **The selling APSSD shall include in the annual audited financial statement as required by N.J.A.C. 6A:23A-18.10 in the year of sale, a separate schedule showing the sale or** disposition of its assets and any corresponding **tuition** refund(s) to the sending district(s) 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)[.];
5. **If the buying entity is a new or existing APSSD, establish the APSSD's beginning book value for each acquired asset using the independent valuation and the written agreement of sale, except for as provided in (a)6 below; and**
6. **If the buyer is an APSSD that is a less-than-arm's-length buyer or a related party to the selling APSSD, the buying APSSD shall carry forward the selling APSSD's acquisition dates(s), historical cost(s) plus improvements, term and method of financial depreciation, accumulated depreciation, and book value**

**of the acquired asset(s) for purposes of determining the allowable annual depreciation or amortization pursuant to the acquisition.**

**(b) In the fiscal year of the sale or disposition pursuant to (a) above, the gain or loss on the sale of capital or non-capital asset(s) shall not be included in the calculation of allowable costs used to determine the certified actual cost per student, the calculation of surcharge pursuant to N.J.A.C. 6A:23A-18.7, or public school placement restricted working capital pursuant to N.J.A.C. 6A:23A-18.8.**

**(c) In addition to the provisions of (a) above, the following conditions shall apply in the event of a sale of real property by an APSSD:**

- 1. If the selling APSSD acquires real property placed in service for the express purpose of operating the APSSD using all of the proceeds from the sale of real property within 30 business days of the sale, the selling APSSD shall not be subject to (c)2 through 4 below.**
- 2. The selling APSSD shall immediately deposit the proceeds received upon the sale at settlement into a bank account maintained by the APSSD and credited to the retained earnings of the profit-making APSSD or the working capital from sale of real property account of the nonprofit APSSD, except for the simultaneous purchase of real property placed in service for the express purpose of operating the APSSD. The sale and treatment of the proceeds shall be included in a separate schedule in the annual audited financial statement as required by N.J.A.C. 6A:23A-18.10 in the year of sale and all subsequent years through the fiscal year in which any corresponding tuition refund(s) has been completed.**



- 3. The selling profit-making APSSD shall:**
- i. Not withdraw any amount deposited pursuant to (c)1 above from the APSSD-maintained bank account and/or retained earnings for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD, or to distribute proceeds as provided for in (c)3ii below; and**
  - ii. Within 13 months after the sale, distribute the proceeds not used to acquire real property owned by the APSSD and placed in service for the express purpose of operating the APSSD from retained earnings to sending school districts that paid tuition to the APSSD during the five years of operation prior to and including the year of sale as set forth below:**
    - (1) The amount of sale proceeds to be refunded to the sending school districts shall be equal to, but shall not exceed, the allowable accumulated depreciation of the property;**
    - (2) The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's total ADE for the five years of operation prior to and including the year of sale or disposition of the real property;**
    - (3) Remaining proceeds may remain in the APSSD's retained earnings for use at the discretion of the profit-making APSSD's management;**

- (4) Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.7; and**
- (5) The APSSD shall provide a listing of the total distribution of retained earnings to the Department within 90 days of filing the required year-end audited financial statements for the year the required distribution of retained earnings is reported.**

**4. The selling nonprofit APSSD shall:**

- i. Not withdraw any amount deposited pursuant to (c)1 above from the APSSD-maintained bank account and/or working capital for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD, or to distribute working capital as required by N.J.A.C. 6A:23A-18.5(a)21.**
- ii. Within 13 months after the sale by the APSSD, distribute the proceeds not used to acquire real property owned by the APSSD and placed in service for the express purpose of operating the APSSD, or distributed as required by N.J.A.C. 6A:23A-18.5(a)21 to sending school districts that paid tuition to the APSSD during the five years of operations prior to and including the year of sale as set forth below:**
  - (1) The amount of sale proceeds to be refunded to the sending school districts shall be equal to, but shall not exceed, the allowable accumulated depreciation of the property;**

- (2) The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's total ADE for the five years of operation prior to and including the year of sale or disposition of the real property;
  - (3) Remaining proceeds may be transferred to the APSSD's working capital account within the limitations at N.J.A.C. 6A:23A-18.8 for use at the discretion of the APSSD's management; and
  - (4) Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.8.
- (d) In the event of a sale of stock representing ownership of a profit-making APSSD, the new owner of the APSSD assumes the carryover book value of all assets and liabilities held by the profit-making APSSD. Any gain or loss on the sale of the stock shall be outside of the operations of the APSSD and shall not impact the calculation of the certified actual cost per student or the surcharge pursuant to N.J.A.C. 6A:23A-18.7 in the year of sale or disposition.

**6A:23A-18.19 Annual disclosure statement**

- (a) Annually, each APSSD shall file a management disclosure of information statement with the Department on a form prescribed by the Commissioner, or his or her designee. The statement shall be signed by the director, owner, or president of the

**APSSD who is filing the statement. The signature shall constitute a representation of the accuracy of the statement's contents.**

- (b) All disclosure statements filed shall include, but shall not be limited to, salary, pension, and other information regarding staff members, related staff, related parties, vendors, and business interests.**
- (c) Annual disclosure statements shall be filed on (the first November 1 following enactment of this rule) and, thereafter, on or before November 1 of each subsequent calendar year.**
- (d) All annual disclosure statements filed shall be considered public records.**
- (e) An APSSD that fails to file a statement, or files an annual disclosure statement containing information the statement filer knows to be false, shall be subject to reporting to appropriate State agencies and/or be assessed non-allowable costs documented in its annual audited financial statements as applicable in this subchapter. Nothing in this subsection shall be construed to prevent or limit criminal prosecution.**

#### **6A:23A-18.20 Nepotism**

- (a) Each APSSD shall develop and implement a nepotism policy to be included in the employee handbook, pursuant to N.J.A.C. 6A:23A-18.5(f). The policy shall include the following:**

- 1. A definition of “relative” consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2, and a definition of “member of immediate family” 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 an APSSD official from being employed in an office or position at the APSSD, unless:
    - i. The relative is properly qualified for the position;**
    - ii. The relative is properly licensed for the position; and**
    - iii. The relative’s salary and fringe benefits are comparable to a person of like experience and education.****
- (b) Nepotism shall be disclosed in the annual disclosure statement filed pursuant to N.J.A.C. 6A:23A-18.19. If the relative relationship is unknown at the time the disclosure form is filed, the APSSD shall file an updated annual disclosure form immediately upon the statement filer obtaining knowledge of the relationship.**

#### **6A:23A-18.21 Travel**

- (a) Each APSSD shall ensure the effective and efficient use of funds by adopting and implementing policies and procedures related to the use of funds for travel by its employees and officials.**
- (b) Travel expenditures shall be defined as the costs paid by the APSSD, whether directly by the APSSD or by employee reimbursement, for travel by APSSD employees to training and seminars, conventions and conferences, and APSSD-sponsored events or attendance at meetings or conferences. Costs may include**

**transportation, meals, lodging, and registration or conference fees directly related to participation in an event. Travel expenditures shall not include the cost of mileage reimbursement or tolls for travel carried out in the performance of regularly assigned job functions such as, but not limited to, travel between commonly owned APSSDs.**

**(c) Regular business travel expenditures shall be educationally necessary and fiscally prudent and shall be directly related to, and within the scope of, the employee's or APSSD's current responsibilities and/or professional development plan(s);**

**(d) The amount of travel expenditures included within the certified actual cost per student each year shall be the lesser of the following:**

- 1. One-quarter of one (.25) percent of an APSSD's total actual allowable costs in the current fiscal year, not including travel expenditures; or**
- 2. Twenty thousand dollars (\$20,000).**

**(e) APSSDs may apply for a waiver of the travel expenditure limitations in (d) above.**

**Waiver requests shall be in writing and submitted to the Commissioner, or his or her designee, prior to the end of the fiscal year for which the waiver is sought.**

**Waivers requests shall be submitted in advance of the travel and will be approved only in instances where the APSSD demonstrates that, due to the limitations imposed under (d) above, APSSD staff attendance at a necessary or required professional development opportunity or training will result in non-allowable costs.**

- 1. The name, location, and date(s) of the event supported by a copy of the agenda or program for the event;**
- 2. A statement justifying the necessity for each staff member(s) attendance,**

**including the primary purpose of the event, the relevance of the event to the staff member's work duties, and how the event will improve instruction or the operation of the APSSD; and**

**3. A detailed budget for the event, including, but not limited to, the travel method(s) and cost, identification of the hotel or other accommodation and the rate per night, total meal allowance, and the cost of registration.**

- (f) Any travel expenditure(s) that exceeds the limits in (d) above without an approved waiver shall be considered a non-allowable cost consistent with N.J.A.C. 6A:23A-18.6(a)70.**
- (g) The following types of expenditures shall not be eligible for inclusion in the certified actual cost per student:**
- 1. Travel expenditures by employees whose duties are unrelated to the travel event's purpose or who are not required to attend to meet continuing education requirements or to comply with law or regulation;**
  - 2. Travel by spouses, civil union partners, domestic partners, immediate family members, or other relatives or unrelated persons who are not school employees;**
  - 3. Costs for employee attendance for coordinating other attendees accommodations at the travel event;**
  - 4. Lunch or refreshments for training sessions, professional development, and retreats held within the APSSD, including in-service days beyond the limitations at N.J.A.C. 6A:23A-18.6(a)18;**

5. **Training to maintain a certification that is not required as a condition of employment;**
6. **Charges for laundry, valet service, or entertainment;**
7. **Limousine services and chauffeuring costs to or during an event;**
8. **Alcoholic beverages;**
9. **Entertainment costs, including, but not limited to, amusement, diversion, and social activities, and any directly associated costs;**
10. **Gratuities or tips in excess of those permitted by the Federal per diem rates;**
11. **Hospitality rooms;**
12. **Souvenirs, memorabilia, promotional items, or gifts;**
13. **The cost associated with a conference, meeting, or seminar held in countries not contiguous to the United States; and**
14. **Other travel expenditures that are unnecessary and/or excessive.**

**6A:23A-18.22 Behavior modification**

- (a) **APSSDs recording expenditures for behavior modification shall adopt a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD's behavior modification program.**
- (b) **Behavior modification, provided pursuant to (a) above, shall not include:**
  1. **Cash or checks;**
  2. **The replacement of meals or components of meals on a regular basis outside of special achievements outlined in the policy described in (a) above; or**



3. **High-dollar value items such as personal electronics.**

**6A:23A-18.23 Child nutrition**

- (a) **APSSDs may provide meals to students that align to the Dietary Guidelines for Americans, using United States Department of Agriculture’s meal patterns reviewed and/or approved by the New Jersey Department of Agriculture. The costs associated with providing meals may be included in the certified actual cost per student if the following requirements are met:**

1. **Nonprofit APSSDs shall:**

- i. **Ensure the menu is approved by the New Jersey Department of Agriculture;**
- ii. **Apply for and receive funding from the Child Nutrition Program administered by the New Jersey Department of Agriculture;**
- iii. **Charge students for a reduced and/or paid meal; and**
- iv. **Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)liii above, that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture. Excess expenditures are non-allowable costs.**

2. **For-profit APSSDs shall:**

- i. **Ensure the menu is approved by the New Jersey Department of Agriculture;**

- ii. Charge students for a reduced and/or paid meal; and**
- iii. Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)2ii above, that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture. Excess expenditures shall be deemed non-allowable costs.**

**(b) The cost of meals for staff shall not be included in the certified actual cost per student.**