

EDUCATION

STATE BOARD OF EDUCATION

Fiscal Accountability, Efficiency, and Budgeting Procedures

Readoption with Amendments: N.J.A.C. 6A:23A-16 through 22

Authorized By: New Jersey State Board of Education, Kimberley Harrington, Acting

Proposed: December 19, 2016, at 48 N.J.R. 2719(a).

Adopted: April 5, 2017, by the New Jersey State Board of Education, Kimberley Harrington, Acting Commissioner, Department of Education, Secretary, State Board of Education.

Filed: April 6, 2017, as R.2017 d.088, **without change**.

Authority: N.J.S.A. 18A:4-15.

Effective Date: April 6, 2017, Readoption;
May 1, 2017, Amendments.

Expiration Date: April 6, 2024.

Summary of Public Comments and Agency Responses:

Comments were received from Michael A. Vrancik, Director, Government Relations, New Jersey School Board Association (NJSBA).

1. COMMENT: The commenter proposed the following amendments to N.J.A.C. 6A:23A-17: 1) an annual cap on tuition increases equal to the sending school district's tax levy cap; 2) a revision to the definition of "average daily enrollment" to reflect the actual practice used in

calculating average daily enrollment; and 3) school districts should not be required to pay tuition to vocational-technical schools for programs that are duplicative and redundant to those currently available in the school district.

RESPONSE: The procedure for calculating tuition rates is set by N.J.S.A. 18A:38-19, which does not include a provision allowing for an annual cap on tuition increases equal to the sending school district's tax levy cap. The Department disagrees with the commenter; the definition of "average daily enrollment" at N.J.A.C. 6A:23A-17(b)2 reflects the actual practice used in calculating average daily enrollment.

The final comment is outside the scope of this rulemaking because the provisions allowing students to attend county vocational schools and requiring school districts to pay tuition are set forth in statute. N.J.S.A. 18A:54-20.1 requires a district board of education to send to any of the schools of the county vocational school district "each pupil who resides in the school district ... and who has applied for admission to and has been accepted for attendance" at that school. The statute also requires that "the board of education shall pay tuition for each of these pupils to the county vocational school district."

2. COMMENT: The commenter proposed the following amendments at N.J.A.C. 6A:23A-18: 1) require tuition increases for approved private schools for student with disabilities (APSSDs) to have an annual cap equal to the two percent tax levy cap for school districts; 2) include at N.J.A.C. 6A:23A-18.13(a) a fiscal monitoring of APSSDs every three years instead of every six years; and 3) require at N.J.A.C. 6A:23A-18.13(c) for post-monitoring reports to be sent to sending school districts, as well as to the executive county superintendent and auditor.

RESPONSE: The procedure for calculating tuition rates is set by N.J.S.A. 18A:46-21, which

does not include a provision allowing for an annual cap on tuition increases equal to the sending school district's tax levy cap. The Department disagrees that fiscal monitoring of APSSDs should occur every three years instead of every six years. The monitoring conducted by the Office of Fiscal Accountability and Compliance (OFAC) is in addition to desk reviews of audited financial statements for compliance conducted by the Division of Finance. Additionally, the Department can make a referral to OFAC for monitoring if any issues arise at a specific APSSD during the six-year period. Finally, N.J.A.C. 6A:23A-18.13(c) already requires that final reports of noncompliance be sent to the executive county superintendent and the APSSD's auditor. OFAC also sends a copy of the final report of noncompliance to sending school districts.

Please note the Department has proposed substantive amendments to N.J.A.C. 6A:23A-18, Tuition for Private Schools for Students with Disabilities, published at 49 N.J.R. 365(a).

3. COMMENT: The commenter proposed the following amendments at N.J.A.C. 6A:23A-22.6: 1) eliminate N.J.A.C. 6A:23A-22.6(a)3 through 6, which regulate the process for engaging legal services; 2) amend N.J.A.C. 6A:23A-22.6(a)6iii to permit public relations activities, such as booths at Statewide conferences; 3) eliminate N.J.A.C. 6A:23A-22.6(a), which restricts employment of public relations personnel to half time as a full-time public relations professional may be cost-effective and beneficial to a charter school with specialized programs and enables a charter school to market its services.

RESPONSE: N.J.A.C. 6A:23A-22.6 establishes requirements for charter school boards of trustees to develop policies and strategies to minimize the expenditures for professional services and public relations activities. N.J.A.C. 6A:23A-22.6(a) is a fiscally efficient and reasonable

standard for public school expenditures on professional services and is consistent with the requirements for district boards of education set forth at N.J.A.C. 6A:23A-5.2.

Additionally, the Department has proposed amendments to N.J.A.C. 6A:23A-22.6 in the notice of proposal affecting charter schools published at 49 N.J.R. 357(a). If the Department determines a change regarding public relations services in charter schools and its possible impact is warranted, amendments will be proposed in a future rulemaking.

4. COMMENT: The commenter proposed an amendment at N.J.A.C. 6A:23A-22.9 to allow for reasonable expenditures for staff recognition events that comply with limits for meals included in travel regulations and the State Department of the Treasury's Office of Management and Budget circulars.

RESPONSE: The proposed amendments to N.J.A.C. 6A:23A-22.9(d) refer to and adopt the language of the Office of Management and Budget circulars for Travel Regulations, 16-11-OMB, and Entertainment, Meals, and Refreshments, 11-09-OMB.

5. COMMENT: The commenter proposed the deletion of N.J.A.C. 6A:23A-22.10 and stated that the School Ethics Act and other guidance documents provide sufficient direction. The commenter also stated the School Ethics Act, the Code of Ethics for School Board Members, and policy models in NJSBA's Charter School Critical Policy Reference Manual provide sufficient guidance to prevent nepotism and conflicts of interest in hiring decisions. The commenter stated, in absence of the deletion of N.J.A.C. 6A:23A-22.10, the definitions of "relative" and "immediate family member" at N.J.A.C. 6A:23A-1.2 should mirror the School Ethics Act definitions, rather than those in the State Conflict of Interest Law.

Additionally, the commenter proposed the deletion of N.J.A.C. 6A:23A-22.10(a)6 and stated that “the school district boundary should be line of demarcation for conflicts, particularly in collective negotiations and that board members and school administrators should be authorized to fully participate in the collective negotiation process where their conflict is limited to an out-of-district union affiliation.”

Finally, the commenter proposed the deletion of N.J.A.C. 6A:23A-22.10(b) and stated that the exception to the nepotism policy should be eliminated.

RESPONSE: N.J.A.C. 6A:23A-22.10 parallels the requirements for school districts set forth in N.J.A.C. 6A:23A-6.2. Like the School Ethics Act, a nepotism policy is essential to ensure public confidence in the impartiality of the board of trustees in making decisions affecting a charter school, including determinations regarding employment and collective bargaining. The School Ethics Act prohibits some conduct that relates to nepotism, but does not address all circumstances or require the adoption of a comprehensive policy by charter schools, as required by N.J.A.C. 6A:23A-22.10.

NJSBA’s policies regarding nepotism and conflicts of interest are not binding on district boards of education and charter schools and, therefore, are not sufficient to achieve the accountability goals set forth in the regulations.

The Department disagrees that N.J.A.C. 6A:23A-22.10(a)6 should be amended to allow charter school administrators who have an immediate family member who is a member of the same Statewide union in another school district or charter school to participate in negotiations with that Statewide union. Such a relationship poses a clear conflict of interest, as the administrator will be negotiating with an organization representing his or her immediate family member. The regulation also prevents the appearance of impropriety to the public, who might

believe an administrator may not vigorously represent the charter school's interests due to the administrator's family relationship. As with all other provisions in N.J.A.C. 6A:23A-22.10, N.J.A.C. 6A:23A-22.10(a)6 is essential to ensure public confidence in the impartiality of the charter school board of trustees in making decisions affecting the charter school, including determinations regarding employment and collective bargaining.

N.J.A.C. 6A:23A-22.10(b), which is identical to the exception for school districts set forth at N.J.A.C. 6A:23A-6.2(b), provides charter schools reasonable flexibility for the employment of temporary employees by allowing charter schools to exclude per diem substitutes and student employment from the nepotism policy.

Federal Standards Statement

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

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6A:23A-16 through 22.

Full text of the adopted amendments follows:

text