

hearing officers.

-- January 10 – Camden County College, Blackwood, New Jersey. Robert Bumpus, Assistant Commissioner for Field Services, and Lester Richens, Executive County Superintendent, Monmouth County Office of Education, served as hearing officers.

-- January 11 – Morris County Police and Fire Academy Auditorium, Morristown, New Jersey. Kevin Dehmer, Chief Financial Officer, and Roger Jinks, Executive County Superintendent, Morris County Office of Education, served as hearing officers.

Several individuals and organizations testified at the hearings in Mercer and Morris counties. No individuals or organizations testified at the hearing in Camden County. The hearing officers made no recommendation during the hearings. After reviewing the comments received during the hearing and the public comment period, the hearing officers recommend that the notice of proposal be adopted without change. The Department accepts the hearing officers' recommendation; however, in response to public comment, one change was made upon adoption.

A record of the public hearings in Mercer and Morris counties is available for inspection in accordance with applicable law by contacting:

Diane Shoener, Director

State Board of Education Office

Department of Education

PO Box 500

Trenton, NJ 08625-0500

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received from members of the public and

the Department's responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. Michael Vrancik, Director, Governmental Relations, Michael Kaelber, Legal and Labor Relations Services, John Burns, New Jersey School Boards Association (NJSBA)
 2. New Jersey Principals and Supervisors Association (NJPSA)
 3. New Jersey Association of School Administrators (NJASA)
 4. Maria Lepore, Chief Association Counsel, NJASA
 5. Susan Goldman and Mary Faella, New Jersey Speech-Hearing Association (NJSBA)
 6. New Jersey Association of Speech-Language Specialists (NJASLS)
 7. David Verducci, Ph.D.
 8. Barbara Garand, Member, Northern Highlands Board of Education
 9. Lorraine Waldes, President, River Vale Board of Education
 10. Anthony Gasparovich, President, Ramsey Board of Education
 11. Laura L. Lab, President, West Orange Board of Education
 12. Demarest Board of Education
 13. Marybeth O'Connell, New Brunswick Public Schools
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1. COMMENT: The commenter stated that the proposed amendments to the definition of "maximum salary amount" at N.J.A.C. 6A:23A-1.2 must be viewed positively because of the flexibility that the proposed amendment offers in increasing salaries and including an

annual cost of living increase. However, the commenter opposed the superintendent salary caps and requests the deletion of this provision from the Administrative Code. (2)

RESPONSE: The Department thanks the commenter for its support of the proposed amendments and agrees that the new definition of maximum salary amount provides flexibility in increasing superintendents' salaries. The Department disagrees with the deletion of the "maximum salary amount" definition, as this amendment will enable school districts to attract and retain quality superintendents, while still promoting fiscal efficiency.

2. COMMENT: The commenter supported the proposed amendments to the definition of "maximum salary amount" at N.J.A.C. 6A:23A-1.2 that increases chief school administrator salaries and includes a cost of living increase. The commenter also stated that the amendments are not necessary because of school district control of all other employment and compensation, increased financial responsibility for school funding at the school district level, State overview, and the tax levy budget cap. However, the commenter stated that the proposed amendment to N.J.A.C. 6A:23A-1.2 will contribute positively to the recruitment and retention of effective chief education officers. (3)

RESPONSE: The Department thanks the commenter for its support, but disagrees that the maximum salary amount for chief school administrators is not necessary.

3. COMMENT: The commenters opposed the definition of “maximum salary amount” at N.J.A.C. 6A:23A-1.2 and stated that the proposed superintendent salary cap should be deleted as it is unnecessary, overly rigid, and threatens local control. The commenters also stated that superintendent salary caps tied to school district enrollment are overly rigid and do not take into account variables, such as consolidation of additional administrative responsibilities in the position of the superintendent. The commenters also stated that in many smaller school districts, the chief school administrator also serves as a principal or, in other school districts, the superintendent assumes responsibilities that eliminate the need for an additional administrative position, resulting in cost savings to the school district. (1)

RESPONSE: The proposed superintendent salary cap will provide greater flexibility for school districts to attract and keep quality superintendents while still promoting fiscal efficiency. The Department disagrees that aligning the superintendent salary cap to school district enrollment does not take into account variables, such as consolidation of additional administrative responsibilities in the position of superintendent. School district enrollment is a meaningful proxy for the degree of complexity and responsibility faced by a superintendent—as are whether the school district includes a high school and whether the superintendent serves multiple boards of education (the “high school salary increment” and “additional district salary increment” already exist in the rules and the proposed amendments increase these increments by \$5,000 and \$2,500, respectively). As an additional consideration for the degree of complexity and responsibility faced by a superintendent, the proposed amendments include an “additional administrative position salary

increment,” through which a superintendent’s salary can be increased by \$5,000 for holding an additional administrative position.

4. COMMENT: The commenters opposed the definition of “maximum salary amount” at N.J.A.C. 6A:23A-1.2 and stated that it should be deleted because the superintendent salary cap has caused an exodus of experienced superintendents to leave the State and seek employment in surrounding states that do not have superintendent salary caps. The commenters also stated that the superintendent salary cap has negatively affected public schools in the following ways: 1) dramatically increased superintendent turnover; 2) created an environment of instability that has impeded educational reform and improvement; and 3) resulted in a significantly less qualified applicant pool as experienced principals, which are traditional applicants for superintendent positions, no longer apply due to the reduced salary, untenured position, and limited earning capacity in the superintendent position. (2 and 7)

RESPONSE: The Department disagrees that the superintendent salary cap should be deleted. The proposed amendments will allow school districts to continue to attract and retain quality superintendents in their school districts. For one, the amendments collapse the enrollment categories from six to three and significantly increase the superintendent salary caps for each category. The “additional district salary increment” and “high school salary increment” have been increased by \$5,000 and \$2,500, respectively, in addition to the inclusion of a new salary increment of \$5,000, the “additional administrative position salary increment.” The proposed amendments also create incentives for successor con-

tracts because a superintendent reappointed for a subsequent term with the same school district may receive an annual salary that exceeds the maximum salary amount by two percent in the first year of the renewal contract, followed by annual increases of two percent in each of the remaining years of the renewal contract. The two percent annual increases would continue in any subsequent contract as well.

5. COMMENT: The commenters opposed the definition of “maximum salary amount” at N.J.A.C. 6A:23A-1.2 and stated that State education funding has remained static and schools districts are absorbing more of the educational costs, and, therefore, school districts should have authority to determine compensation of superintendents. (3, 7, and 9,)

RESPONSE: The Department disagrees that the school boards should have unfettered authority to determine compensation of superintendents. In the absence of superintendent salary caps, the State of New Jersey Commission of Investigation concluded that school districts across the State were engaging in excessive compensation practices with respect to superintendents. The initial rules imposing the superintendent salary caps were designed to control the compensation of superintendents and some level of control is still necessary, but the Commission also emphasizes that the proposed amendments provide more flexibility to school districts in determining superintendents’ salaries.

6. COMMENT: The commenter stated that the definition of “maximum salary amount” at N.J.A.C. 6A:23A-1.2 is a cap within a cap within a cap. The commenter also stated that,

in addition to the first cap of enrollment-based salary limitations, administrative spending serves as a second cap. The commenter also stated that this spending limitation is implemented through the State's annual review of the school district's proposed school budget and the spending plan cannot move forward without the endorsement of the executive county superintendent (ECS). The commenter also stated the two percent tax levy limit effectively acts as a third cap placed on budgets. (1 and 7)

RESPONSE: The Department disagrees that the superintendent salary cap is a "cap within a cap," and that the statutory two percent property tax levy cap and the administrative spending growth limit, along with other provisions of the accountability rules, render a superintendent salary cap unnecessary. The superintendent salary cap provides an additional, necessary tool to control the spending in the area of superintendent compensation.

7. COMMENT: The commenters questioned the effectiveness of the superintendent salary cap at N.J.A.C. 6A:23A-1.2, as it applies only to superintendents and does not apply to other school administrators. (2, 10, and 11)

RESPONSE: The Department acknowledges that the superintendent salary cap does not apply to other school administrators, such as principals (with the exception of administrative principals serving as superintendents pursuant to N.J.S.A. 18A:17-20.5), but does not alter the effectiveness of the superintendent salary cap.

8. COMMENT: The commenter opposed the definition of “maximum salary amount” at N.J.A.C. 6A:23A-1.2 and stated that the increment salary levels make it difficult for large school districts to be competitive in salary with smaller school districts with the same set salary and a third of the students. (11)

RESPONSE: The Department acknowledges that the collapse of the enrollment categories from six categories to three categories may result in a greater disparity in enrollment between school districts who are subject to the same superintendent salary cap. However, the complexity and responsibilities associated with being a Superintendent in school districts within these new categories are similar. Further, collapsing the categories from six to three provides boards of education increased flexibility and greater local control.

9. COMMENT: The commenter opposed the definition of “maximum salary amount” at N.J.A.C. 6A:23A-1.2 and stated the following:
- a. Superintendent salary caps have led to a high rate of turnover and lack of continuity in leadership and impeded a school district’s ability to fully realize long-term educational goals for its students;
 - b. The projected savings in tax dollars has been insignificant;
 - c. Superintendent salary caps have led to a dearth of qualified candidates for open positions and severely restricts a school district’s ability to hire and retain the best possible educational leadership; and
 - d. Local control is eroded by State imposition of superintendent salary caps. (12)

RESPONSE: The Department disagrees that district boards of education should have unfettered authority to determine compensation of superintendents. In the absence of superintendent salary caps, the State of New Jersey Commission of Investigation concluded that school districts across the State were engaging in excessive compensation practices with respect to superintendents. The initial rules imposing the superintendent salary caps were designed to control the compensation of superintendents and some level of control is still necessary, but the Commission also emphasizes that the proposed amendments provide more flexibility to school districts in determining superintendents' salaries.

10. COMMENT: The commenters stated that the definition of "maximum salary amount" at N.J.A.C. 6A:23A-1.2 should be deleted or amended to provide an annual two percent cost of living increase for superintendent salaries beginning with the first contract year. (4 and 8)

RESPONSE: The Department disagrees that N.J.A.C. 6A:23A-1.2 should be deleted or amended as the proposed two percent increase available to superintendents in their second contract year with a school district will create incentives for superintendents to remain in school districts and will promote stability.

11. COMMENT: The commenter requested clarification regarding the proposed amendments to the definition of "maximum salary amount" at N.J.A.C. 6A:23A-1.2 whether the increase of up to two percent may be provided on the maximum salary amount plus any applicable salary increments. (4)

RESPONSE: The Department clarifies that the two percent increases may be provided on the maximum salary amounts with the applicable salary increments being added afterwards.

12. COMMENT: The commenters asked the Department to consider regional cost differences in setting the superintendent salary caps under the definition of “maximum salary amount” at N.J.A.C. 6A:23A-1.2 and stated that school districts that border the New York metropolitan area have high educational costs. (2 and 8)

RESPONSE: The Department thanks the commenter for the feedback, but enrollment numbers, in addition to the applicable salary increments, are an appropriate measure to determine the superintendent salary caps for school districts.

13. COMMENT: The commenter asked the Department to reconsider the scope of the School District Regionalization and Consolidation of Services Advisory Committee as N.J.A.C. 6A:23A-2.2 appears to exceed the statute. (2)

RESPONSE: The Department disagrees that the scope of the School District Regionalization and Consolidation of Services Advisory Committee exceeds the statutory requirement. The advisory committee, as regulated in N.J.A.C. 6A:23A-2.2, must consist of representation from each school district in the county and must meet on a monthly basis. Additionally, representatives from the New Jersey Leadership for Educational

Excellence (LEE) Group are invited on a quarterly basis to attend and participate in the advisory committee meetings.

14. COMMENT: The commenter stated that N.J.A.C. 6A:23A-2 requires the executive county superintendent (ECS) to focus on consolidation based solely upon school district size, which the commenter argued is monolithic in approach. The commenter further stated that the process outlined in the section, if pursued, lacks a mechanism for input by district boards of education and building-level personnel. The commenter also urged the Department to reconsider developing a best practice document of examples that school districts have employed in pursuing consolidation/regionalization to share ideas between school districts. (2)

RESPONSE: The Department disagrees that N.J.A.C. 6A:23A-2 requires the executive county superintendent (ECS) to focus on consolidation based solely upon school district size. N.J.A.C. 6A:23A-2.2, while focusing on school district size, does not preclude the ECS from taking into account other considerations in studying the consolidation of administrative services. Additionally, N.J.A.C. 6A:23A-2.3(a)6 specifically sets forth another focus consideration: “any local public school district with an administrative cost per pupil in excess of 125 percent of the county median administrative cost per pupil.” Finally, ECS study of consolidation to create regional school districts in N.J.A.C. 6A:23A-2.5(a) includes factors other than school district size, including the grades served by the school district, and if a school district receives students from other school districts on a tuition basis. The Department also disagrees that the process for consolidation does

not include input by district boards of education and building-level personnel, as that is the purpose of the advisory committee set forth in N.J.A.C. 6A:23A-2.2, which also requires advisory subcommittees to “solicit input, to the extent possible, from current school employee representatives regarding regionalization and consolidation of services proposals.” The Department and county offices remain available to provide assistance and guidance to school districts seeking information on examples of consolidation or regionalization, and county roundtable meetings are a useful tool for sharing ideas between school districts.

15. COMMENT: The commenters stated that N.J.A.C. 6A:23A-2.2 should be deleted as the School District Regionalization and Consolidation of Services Advisory Committees are neither necessary nor operational at this time. (1)

RESPONSE: The Department disagrees as the School District Regionalization and Consolidation of Services Advisory Committees may become necessary to support the continuing obligation of the executive county superintendents (ECS) to promote regionalization and consolidation.

16. COMMENT: The commenters stated that the provision in N.J.A.C. 6A:23A-2.3 that specifies certain school district configurations and shared administrative models to be considered should be deleted, except for the requirement at N.J.A.C. 6A:23A-2.3(g) for consolidated administrative services to be discussed quarterly at superintendents’ and school business administrators’ county roundtables as stated in. (1)

RESPONSE: The Department disagrees as N.J.A.C. 6A:23A-2.3 is necessary to set reasonable standards for the executive county superintendents (ECS) to study and make recommendations regarding the consolidation of school districts' administrative services, as required by N.J.S.A. 18A:7-8.e.

17. COMMENT: The commenters stated that N.J.A.C. 6A:23A-2.5, Plan for school district consolidation to create regional school districts, should be deleted as the goal of the law (P.L. 2007, c. 63) has been accomplished and there is no need for the section's provisions. (1)

RESPONSE: The Department disagrees as the executive county superintendents (ECS) have a continuing obligation to promote regionalization and consolidation, pursuant to N.J.S.A. 18A:7-8, and the statute contains no expiration.

18. COMMENT: The commenters stated that N.J.A.C. 6A:23A-2.6 should be deleted as transportation efficiency studies were completed and filed in July 2009, and the goal of the section's provisions have been accomplished. (1)

RESPONSE: The Department disagrees as the executive county superintendents (ECS) have a continuing obligation to promote efficient transportation, pursuant to N.J.S.A. 18A:7-8.

19. COMMENT: The commenters stated that N.J.A.C. 6A:23A-2.7(a)3i through iv, which involve procedures to be followed prior to out-of-district placement, are overly prescriptive and should be deleted. The commenters also stated that N.J.A.C. 6A:23A-2.7(a)6 through 9, which involve development of lists of appropriately certified professionals, investigation into the sharing of special education staff members, and creation of inventories of surplus equipment, should be deleted unless the State can fund and staff the initiatives as the provisions are not operational. (1)

RESPONSE: The Department disagrees, as the paperwork required to generate a written explanation of why a placement was chosen is minimal, as school districts must already compile the same information and undertake a similar analysis when providing written notice of placement determinations to parents. Pursuant to N.J.A.C. 6A:14-2.3(g), the written notice must include an explanation of why a placement was chosen for a student and why other options were rejected. The information and analysis necessary to provide the written explanation to the executive county superintendent (ECS) as to why other placement options in the county were rejected would already be available to a school district because of the similar nature of the process of providing written notice to parents. Therefore, mandated timelines will not be affected nor will the requirement result in increased costs for school districts. The lists required by N.J.A.C. 6A:23A-2.7(a)6 and 7 are provided on the Department's website at <http://www.nj.gov/education/specialed/clinics/>. The provisions at N.J.A.C. 6A:23A-2.7(a)8 and 9 are used by executive county superintendents (ECS) on an as-needed basis.

20. COMMENT: The commenters stated that the executive county superintendent (ECS) should continue to review all new contracts for chief school administrators required under N.J.A.C. 6A:23A-3.1, as the review provides a necessary and practical control against exorbitant compensation while maintaining an appropriate level of local discretion and authority. (1 and 3)

RESPONSE: The Department thanks the commenters for the support.

21. COMMENT: The commenters stated N.J.A.C. 6A:23A-3.1(e)6, which prohibits reimbursement of employee contributions toward benefits required by law (such as Social Security) or through the school district's teachers contract (for example, health benefits, life insurance), should be clarified. The commenters stated much confusion exists over whether benefit and employee contribution levels in contracts for superintendents, assistant superintendents, and school business administrators could be greater than contribution levels for other school district employees. The commenters also stated issues have arisen over the level of health coverage (for example, single v. family, prescription, dental, vision) and the level of contributions. (1)

RESPONSE: N.J.A.C. 6A:23A-3.1(e)4 and 6 prohibit reimbursement of statutorily required employee payroll withholdings. Benefit and employee contribution levels in contracts for superintendents, assistant superintendents, and school business administrators cannot be greater or more comprehensive than those for other school district employees.

22. COMMENT: The commenters stated that recodified N.J.A.C. 6A:23A-3.1(e)8 should be amended, so that it references both statutes that address payment for unused sick leave. The commenters stated that the current Administrative Code references N.J.S.A. 18A:30-3.5, which limits payment for unused sick leave, but also should cite N.J.S.A. 18A:30-3.6, which specifically applies to new administrator hires, limits supplemental compensation for accumulated sick leave to \$15,000, and subjects all employees hired after June 2010, including school administrators, to the accumulated sick leave cap. (1)

RESPONSE: The Department agrees and will change upon adoption, the regulation at recodified N.J.A.C. 6A:23A-3.1(e)8 to include the following citation, N.J.S.A. 18A:30-3.6, that also addresses payment for unused sick leave, as it was inadvertently omitted from the original notice of proposal.

23. COMMENT: The commenters stated that N.J.A.C. 6A:23A-3.1(e)9 should be amended so that it references a 240-day work year for 12-month employees, which is more consistent with the work year used for other 12-month teaching staff employees. (1)

RESPONSE: The Department disagrees. A 260-day work year, rather than a 240-day work year, is required under recodified N.J.A.C. 6A:23A-3.1(a)10 to calculate per diem salary and is more consistent with the number of work days for 12-month employees, such as administrators.

24. COMMENT: The commenters stated that N.J.A.C. 6A:23A-3.1(e)10 should be deleted. The commenters stated there should not be a superintendent salary cap, so there is no need for bonuses under the superintendent salary cap. (1)

RESPONSE: The Department disagrees that the superintendent salary cap should be deleted. In light of the retention of the superintendent salary cap, the merit bonus will be an effective tool for compensating and aligning incentives for superintendents.

25. COMMENT: The commenters stated that N.J.A.C. 6A:23A-3.1(e)15 should reference the need to comply with N.J.S.A. 18A:6-8.5, which requires, for tuition reimbursement, that the institution be a duly authorized institution of higher education as defined in section 3 of P.L. 1986, c. 87 (N.J.S.A. 18A:3-15.3). (1)

RESPONSE: The Department maintains that the cross-reference to N.J.A.C. 6A:9-2.1 in recodified N.J.A.C. 6A:23A-3.1(e)16 is appropriate and also consistent with N.J.S.A. 18A:6-8.5 and 18A:3-15.3, as N.J.A.C. 6A:9 sets forth definitions for preparation, licensure, and professional development of educators.

26. COMMENT: The commenters stated that N.J.A.C. 6A:23A-4.1(a) should be amended so it contains a definitive standard of due process for the district board of education. The commenters further stated that notice and an opportunity to respond should be provided to a district board of education before the appointment of an external entity, which may result in a significant cost to the State and potentially to the school district. The commenters also stated that guidance in this area should be provided to district boards of

education. The commenters also stated that N.J.A.C. 6A:23A-4.1(d) should be amended to state that school district reimbursement to the Department must be related to the audit findings. The commenters further stated that the amount of reimbursement should be related to the compliance audit findings. (1)

RESPONSE: The Department disagrees. N.J.A.C. 6A:23A-4.1 is a reasonable procedure for the Commissioner to ensure the fiscal accountability of school districts in the expenditure of State funds. Provisions governing controversies and disputes under the school laws are set forth in N.J.A.C. 6A:3 and 4. The reimbursement rule set forth in N.J.A.C. 6A:23A-4.1(d) is appropriate as the school district should bear the cost of an audit where noncompliance is found.

27. COMMENT: The commenters stated that N.J.A.C. 6A:23A-5 is extremely prescriptive and, in many respects, unnecessary as the two percent tax levy cap places significant control over all school district spending and requires a deliberate review of all costs in search of the most effective and efficient expenditure of school funds. The commenters stated that school districts and school administrators should have greater flexibility and control since they are in the best position to determine program needs and spending priorities in their schools. (1)

RESPONSE: The Department disagrees. First, N.J.A.C. 6A:23A-5 provides school districts with reasonable standards on expenditures of taxpayer dollars for professional services, non-employee activities, meals and refreshments, and travel. N.J.A.C. 6A:23A-

5.3 assists school districts to maximize an additional funding source available to them through the Special Education Medicaid Initiative (SEMI) with requirements that correspond with the Federal requirements for SEMI reimbursement. N.J.A.C. 6A:23A-5.1 provides the Commissioner with clear procedures and the school district with due process if the Department identifies ineffective or inefficient expenditures by a school district. Finally, N.J.A.C. 6A:23A-5 provides school districts with clear guidance on internal controls and audits intended to ensure that school districts follow appropriate business practices and efficiently and properly expend State aid and taxpayer dollars.

28. COMMENT: The commenters requested that the Department encourage school districts to hire sufficient numbers of speech-language specialists to meet the needs of students since Medicaid funds are available. (5 and 8)

RESPONSE: N.J.A.C. 6A:14-5.1(a) already requires school districts to hire sufficient numbers of related services staff. Therefore, no further action is necessary.

29. COMMENT: The commenter stated that the school district does not reimburse for license fees and American Speech-Language-Hearing Association (ASHA) annual membership and conference fees. The commenter also stated that it has been difficult to get basic therapy materials or testing supplies. The commenter also stated that students are not provided with services when school district staff are absent. The commenter also stated that money is going into the general operating fund and not for therapeutic services. (13)

RESPONSE: Reimbursement for license fees, annual membership fees, and conference fees are a matter for each school district to address through staff contracts. To the extent the commenter believes the school district is not providing basic materials or staff to fully implement student Individualized Education Plan (IEP), a complaint may be filed with the Office of Special Education Policies and Procedures.

30. COMMENT: The commenters requested the Department include a provision at N.J.A.C. 6A:23A-5 to ensure that the Office of Special Education appropriately monitors the time provided for school district speech-language specialists (SLS) to perform duties related to SEMI. (5 and 6)

RESPONSE: The Department does not agree that the Office of Special Education should monitor school district SLSs work as it relates to SEMI. Each school district is responsible for determining staff administrative duties and assessing relevant schedule implications. This flexibility is necessary to ensure school districts have the ability to function in a cost-effective and efficient manner.

31. COMMENT: The commenters stated that N.J.A.C. 6A:23A-5.2(a)2, which requires the establishment of procedures to ensure the prudent use of legal services by employees and district board of education members and the tracking of the use of the services, should be deleted as it is overly prescriptive and micro-manages school districts. The commenters also stated the use of legal services should be a matter of school district policy not a Statewide mandate. (1)

RESPONSE: The Department disagrees, as N.J.A.C. 6A:23A-5.2 establishes requirements for school districts to develop policies and strategies to minimize the expenditures for professional services and public relations activities. N.J.A.C. 6A:23A-5.2(a) is a fiscally efficient and reasonable standard for public school expenditures on professional services.

32. COMMENT: The commenter asked that N.J.A.C. 6A:23A-5.2(a)3 and (a)3i and iv be eliminated. The commenter questioned whether the mandated procedure that seeks to limit legal costs if a school district is 130 percent above the Statewide average is necessary and opposed to the use of a cut-off number, such as school district size. The commenter also stated that the restrictions on who may speak with a district board of education attorney are unwise and unpractical and restrictions can lead to unnecessary delay in taking action or to late court filings. The commenter also stated that the current log requirement is ineffective since legal matters may not originate with school district outreach. The commenter further stated clarification is needed as to 1) types of matters that require approval; 2) whether matters preceding or subsequent to an event are included with an approval; and 3) interpretation of “continuing use” of an attorney’s services. (2)

RESPONSE: The Department disagrees, as N.J.A.C. 6A:23A-5.2 sets fiscally efficient and reasonable standards for public school expenditures on professional services. The requirement for school districts to establish the procedures outlined in N.J.A.C. 6A:23A-

5.2(a)3 is triggered only upon the school district exceeding the Statewide average per pupil amount of legal costs by 130 percent. Measuring legal costs on a per pupil basis already takes school district size into account. Moreover, the school district may provide “evidence that such procedures would not result in a reduction of costs,” if the legal costs procedures are not established, which should account for any particular circumstances in the school district that may lead to legal costs that exceed 130 percent. The requirement at N.J.A.C. 6A:23A-5.2(a)3i for the school district to set a limit on the number of contact persons with the authority to request services or advice from contracted legal counsel and the requirement at N.J.A.C. 6A:23A-5.2(a)3iv to maintain a log of all legal counsel contact are consistent with good business practices to track and account for the use of legal services by the school district.

33. COMMENT: The commenters stated that N.J.A.C. 6A:23A-5.2(a)3 should be deleted. The commenters stated that identifying who may contact the board attorney, requiring that requests for legal advice be made in writing and maintained on file, establishing a process to determine whether a request warrants legal advice, keeping a detailed contact log, etc., should be determined by the client (the district board of education) through policy and not through State regulation. The commenters also stated that requiring other in-house resources to be consulted before calling an attorney may be detrimental programmatically and financially, and may create legal exposure for school districts. The commenters also stated that, if this section is retained, expenditure controls should take into account regional cost differences. Finally, the commenters stated the section should

permit retainer agreements for basic legal services, a process that can be extremely cost-effective for school districts. (1)

RESPONSE: The Department disagrees, as N.J.A.C. 6A:23A-5.2 sets fiscally efficient and reasonable standards for public school expenditures on professional services. The requirement for school districts to establish the procedures outlined in N.J.A.C. 6A:23A-5.2(a)3 is triggered only upon the school district exceeding the Statewide average per pupil amount of legal costs by 130 percent. The procedures required in N.J.A.C. 6A:23A-5.2(a)3 are consistent with good business practices to track and account for the use of legal services by the school district.

34. COMMENT: The commenters supported the proposed amendments at N.J.A.C. 6A:23A-5.3(e)2, as they provide clarification for approval of Medicaid benefits and align with the Federal SEMI regulations at 42 CFR 440.110(c). (5 and 6)

RESPONSE: The Department appreciates the commenters' support.

35. COMMENT: The commenters suggest that the proposed regulation under N.J.A.C. 6A:23A-5.3(e)2vi use the title "speech-language pathologist" under services for Medicaid instead of "speech-language specialist." The commenters said Federal Medicaid regulations use "speech-language pathologist" because it is the American Speech-Language Hearing-Association (ASHA) credential required for Medicaid reimbursement. (5 and 6)

RESPONSE: The Department's proposed amendments align with Federal regulations for practitioner qualifications. The practitioner is required to submit documentation of either the State Division of Consumer Affairs license in speech-language pathology or ASHA credentials along with the practitioner's speech language specialist certificate. The Department disagrees that "speech-language pathologist" should be used since the rules align with the title of the Department's educational services certificate for "speech-language specialist."

36. COMMENT: The commenters stated that because school districts participating in SEMI reimbursement are mandated to comply with SEMI program requirements, the commenters urged the Department to include a provision under N.J.A.C. 6A:23A-5.3(e) that requires school districts to provide adequate time to complete required Medicaid tasks by certified/licensed practitioners who are being asked to sign off on Medicaid documentation. (5 and 6)

RESPONSE: The Department disagrees. Each school district is responsible for determining staff administrative duties and assessing relevant schedule implications. This flexibility is necessary to ensure school districts have the ability to function in a cost-effective and efficient manner.

37. COMMENT: The commenters requested that the Department assure that N.J.A.C. 6A:23A-5.3(a), which requires school districts to follow "the policies and procedures to

maximize participation in the program ... and to comply with all program requirements" will be implemented with fidelity. (5 and 6)

RESPONSE: The Department agrees the policies and procedures regarding the SEMI program must be implemented with fidelity. Currently, school districts that participate in SEMI are required to comply with all program requirements, per submission of their assurances and certification during pre-enrollment for SEMI. Therefore, no further action is necessary.

38. COMMENT: The commenters stated N.J.A.C. 6A:23A-5.4 should be amended to reflect that the penalty for a violation of the Public School Contracts Law is proportional to the frequency, severity, and materiality of the violation and not the full amount of the contract awarded, as currently stated in N.J.A.C. 6A:23A-5.4(b). (1)

RESPONSE: The Department disagrees. The withholding of State funds in the amount of the contract awarded is a proportional penalty for a violation of the Public School Contracts Law, since any violation renders the contract invalid and the withholding directly corresponds to the materiality of a violation as measured by the contract's value.

39. COMMENT: The commenters stated that N.J.A.C. 6A:23A-5.5, Expenditures and internal control auditing, should be deleted as it is unnecessary and has not been implemented within the stipulated timeframe indicated. The commenters also stated that the cost of the State-required additional audits would be completely borne by the school

district and would impose an undue cost burden on school districts, particularly those least able to pay. The commenters also stated this provision is redundant because school districts are already subject to New Jersey Quality Single Accountability Continuum review, annual audits, and the Statements of Assurance. (1)

RESPONSE: The Department disagrees that N.J.A.C. 6A:23A-5.5 should be deleted. The procedures in N.J.A.C. 6A:23A-5.5 were postponed due to the economic conditions in the State at the intended time of implementation. However, the rules should be maintained as the purpose of the independent audit and other reviews referenced by the commenters differ from the expenditure internal control audit outlined in the section. The purpose of the annual independent audit is to express an opinion on the financial statements taken as a whole. An expenditure and internal control audit is transaction-based and provides assurance that internal controls over expenditures are working as described by the school district. The section has been maintained as it may still be implemented when needed.

40. COMMENT: The commenters stated that N.J.A.C. 6A:23A-5.8 should be amended to allow for reasonable expenditures for staff recognition events (for example, breakfast on back-to-school day). The commenters also stated that school district expenditures based on limits set forth in State travel regulations or Office of Management and Budget circulars would be reasonable and not excessive in any way. The commenters stated that, even if reasonable expenditures were permitted, nothing would prevent a school district from continuing what has become a common practice: having a vendor or the school

district teachers' association donate the refreshments in return for the ability to display signage or make a statement regarding the donation. (1)

RESPONSE: N.J.A.C. 6A:23A-5.8 refers to and adopts the language of the Office of Management and Budget (OMB) circulars for Travel Regulations, 16-11-OMB, and Entertainment, Meals, and Refreshments, 11-09-OMB, which apply to school districts, pursuant to N.J.S.A. 18A:11-12. The rules regarding staff recognition events in N.J.A.C. 6A:23A-5.8 are consistent with the OMB circulars.

41. COMMENT: The commenters requested that the Department encourage school districts to hire sufficient numbers of speech-language specialists to meet the needs of students since Medicaid funds are available. (5 and 8)

RESPONSE: N.J.A.C. 6A:14-5.1(a) already requires school districts to hire sufficient numbers of related services staff. Therefore, no further action is necessary.

42. COMMENT: The commenters stated that N.J.A.C. 6A:23A-6.2, Nepotism policy, should be deleted because sufficient protection exists through other regulations, State law, and guidance documents. The commenters also stated that the School Ethics Act, the Code of Ethics for School Board Members, and policy models in NJSBA's Critical Policy Reference Manual provide sufficient guidance to prevent nepotism and conflicts of interest in hiring decisions. The commenters also stated that, if the proposed nepotism

regulations are not deleted, the definitions of “relative” and “immediate family member” at N.J.A.C. 6A:23A-1.2 should match the definitions in the School Ethics Act rather than the State Conflict of Interest Law. (1)

RESPONSE: The Department disagrees; N.J.A.C. 6A:23A-6.2 should not be deleted. Like the School Ethics Act, a nepotism policy is essential to ensure public confidence in the impartiality of district boards of education in making decisions affecting schools, including determinations regarding employment and collective bargaining. The School Ethics Act prohibits some conduct that relates to nepotism but does not address all circumstances and does not require the adoption of a comprehensive policy by district boards of education, as required by N.J.A.C. 6A:23A-6.2. NJSBA’s policies regarding nepotism and conflicts of interest are not binding on district boards of education and, therefore, are not sufficient to achieve the accountability goals set forth in the rules.

43. COMMENT: The commenters stated that N.J.A.C. 6A:23A-6.2(a)5 should be eliminated as it pertains to out-of-district same Statewide union affiliation conflicts in negotiations. The commenters also stated that N.J.A.C. 6A:23A-6.2(a)5 should be amended to limit the collective negotiations participation exclusion to “immediate family members” who work in the school district, and not to the more expansive “relatives.” (1)

RESPONSE: The Department disagrees that N.J.A.C. 6A:23A-6.2 should be eliminated as the section is essential to ensure public confidence in the impartiality of a district board of education in making decisions affecting the school district, including

determinations regarding employment and collective bargaining. The Department also disagrees that N.J.A.C. 6A:23A-6.2(a)6 should be eliminated to allow school district administrators who have an immediate family member who is a member of the same Statewide union in another school district to participate in negotiations with the 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 may believe that an administrator may not vigorously represent the school district's interests due to his or her family relationship.

44. COMMENT: The commenters stated that N.J.A.C. 6A:23A-6.2(b) should be deleted. While the commenters acknowledge that it is ultimately a matter of local control, the commenters stated they see no reason for the exception. (1)

RESPONSE: The Department disagrees that N.J.A.C. 6A:23A-6.2(b) should be eliminated, as the rule provides reasonable flexibility for the employment of temporary employees by allowing school districts to exclude per diem substitutes and student employment from the nepotism policy.

45. COMMENT: The commenters stated that the rules in N.J.A.C. 6A:23A-7, School District Travel Policies and Procedures, are overly prescriptive and unnecessary given the two percent tax levy cap and its impact on school district spending. (1)

RESPONSE: The Department disagrees. N.J.A.C. 6A:23A-7 provides guidance for compliance with the provisions of N.J.S.A. 18A:11-12 regarding travel, travel policy, and travel procedures. The section is designed to ensure compliance with law through the implementation and maintenance of strong internal controls over travel expenditures. Through compliance, efficiencies are achieved and school spending for travel is appropriate.

46. COMMENT: The commenter expressed concern that N.J.A.C. 6A:23A-7 utilizes the Office of Management and Budget (OMB) circulars. The commenter expressed concern that the use of Office of Management and Budget circulars by school districts did not meet the specific requirement of school districts, including the need for staff to maintain certification and ongoing professional development. Specifically, the commenter stated:
- a. N.J.A.C. 6A:23A-7.3(b)1 should be amended to increase the maximum annual amount not requiring district board of education approval to include an annual inflationary index, such as the Consumer Price Index (CPI);
 - b. N.J.A.C. 6A:23A-7.3(b)2 should be amended to increase the maximum in-State registration fee to \$300.00 with an inflationary index;
 - c. N.J.A.C. 6A:23A-7.3(b)2 should allow a waiver process for the regular business travel dollar amount to allow for the higher speakers fees for nationally renowned experts;
 - d. N.J.A.C. 6A:23A-7.11 should be amended to eliminate the restriction for reimbursement of overnight travel stays for conference and training that is less than 50 miles;

- e. N.J.A.C. 6A:23A-7.9 should be amended to be consistent with OMB circulars;
- f. N.J.A.C. 6A:23A-7.12 should be amended to include an inflationary index related to meal allowances; and
- g. N.J.A.C. 6A:23A-7.12(f)5 should be deleted and the Department should not regulate the disposal of left over meals from school districts. (5)

RESPONSE: The Department disagrees, as the OMB circulars are applicable to school districts by statute, N.J.S.A. 18A:11-12. Additionally:

- a. The Department disagrees that the \$1,500 level set by N.J.A.C. 6A:23A-7.3(b)1 should be increased. If the maximum amount were increased, it could weaken internal controls and stewardship of public funds for school districts;
- b. The Department disagrees that the maximum in-State registration fee in N.J.A.C. 6A:23A-7.3 should be increased with an inflationary index because an increase would risk weakening internal controls and stewardship of public funds;
- c. The Department disagrees that the maximum registration fee for attendance at an event without district board of education approval, as set forth in N.J.A.C. 6A:23A-7.3(b)2, should be increased. If the registration fee for an event exceeds \$150.00, the school district should seek district board of education approval for the expenditure to ensure proper internal controls;
- d. The Department disagrees that N.J.A.C. 6A:23A-7.11 should be amended to eliminate the restriction for reimbursement of overnight travel stays for conference and training that is less than 50 miles. Pursuant to N.J.S.A. 18A:11-12.c(3), a district board of education's travel policies and procedures must comply

with State travel payment guidelines as established by the Department of the Treasury. OMB Circular 16-11-OMB, section X, provides that “[n]o overnight travel is permitted within the State”; however, the Commissioner “is authorized to grant waivers for overnight travel for district board of education members and school district employees to attend in-state conferences pursuant to guidelines issued by the Department of Education.” Thus, the 50-mile requirement is reasonable as it provides school districts with more flexibility than otherwise required by the Department of the Treasury;

- e. The Department thanks the commenter for the support of the amendments to N.J.A.C. 6A:23A-7.9 for consistency with the OMB circulars, including the deletion of N.J.A.C. 6A:23A-7.9(c)3ii, which requires a single traveler within the Northeast Corridor to use NJ Transit as the rail option unless Amtrak is the only means of travel available, and the deletion of N.J.A.C. 6A:23A-7.9(c)3iv, which prohibits the use of rail travel when multiple school district employees and/or school district board of education members are traveling to the same event in the Northeast Corridor and requires travelers to use a school district vehicle or a personally owned vehicle if rail travel is prohibited;
- f. The Department disagrees that N.J.A.C. 6A:23A-7.12 should be amended to include an inflationary index for meal allowances as the reimbursement rates are consistent with OMB Circular 16-11-OMB; and
- g. The Department disagrees that N.J.A.C. 6A:23A-7.12(f)5 should be deleted as the rule is intended to discourage the over-ordering of meals at the school’s cost and

the resultant left-over food. If a school has left-over food, the regulations encourage donation to a charitable shelter or similar facility, if feasible.

47. COMMENT: The commenters stated that N.J.A.C. 6A:23A-7.3 should be amended to include a maximum annual dollar amount per district board of education member for regular school business travel. The commenters also stated that the travel regulations should include a maximum annual dollar amount per district board of education member for travel and professional development, for which additional district board of education approval is not required. The commenters also stated that the maximum amount per employee and per district board of education member should be set at \$3,000 and adjusted annually for inflation through a factor, such as the CPI, as the current maximum of \$1,500 was set almost 10 years ago. Additionally, the commenters stated that increasing the maximum “in-State” registration fee for in-State professional development for which district board of education approval is not required. The commenters also stated that the current maximum registration fee for in-State professional development is \$150.00 and was set almost 10 years ago, and it should be increased to \$300.00 for activities included in the definition of “regular business travel” and adjusted annually for inflation through a factor such as the CPI. (1)

RESPONSE: The Department disagrees with the commenters’ suggestion to include a maximum annual dollar amount per district board of education member for regular school business travel as it is in direct conflict with the following requirement in N.J.S.A. 18A:11-12.g: “For board members, a district board of education shall require in its policy

that travel occur only upon prior approval by a majority of the full voting membership of the board and that the travel be in compliance with [N.J.S.A. 18A:12-24 and N.J.S.A. 18A:12-24.1].” The Department also disagrees that the maximum amount per employee without district board of education approval and the maximum in-State registration fee without district board of education approval should be increased, as it could weaken internal controls and stewardship of public funds for school districts.

48. COMMENT: The commenters stated that N.J.A.C. 6A:23A-7.4 should be amended to allow post-event approval for district board of education members to attend conferences, training events, and programs, within certain established parameters. The commenters further stated that, on occasion, a district board of education member may become aware of a valuable program, but there is no district board of education meeting scheduled in time to obtain pre-approval. The commenters also stated that establishing a maximum dollar amount for district board of education member travel would assist school districts. Finally, the commenters stated that post-event approval of district board of education member travel is still necessary. (1)

RESPONSE: The Department disagrees as the commenters’ suggestion is in direct conflict with the following requirement in N.J.S.A. 18A:11-12.g: “For board members, a district board of education shall require in its policy that travel occur only upon prior approval by a majority of the full voting membership of the board and that the travel be in compliance with [N.J.S.A. 18A:12-24 and N.J.S.A. 18A:12-24.1].”

49. COMMENT: The commenters stated that N.J.A.C. 6A:23A-7.8 should be amended to clearly permit reimbursement of district board of education member training related to district board of education responsibilities. The commenters stated that N.J.A.C. 6A:23A-7.8(a)3 could be misinterpreted to restrict district board of education member participation in programs addressing responsibilities in labor relations, policy, school law, and other areas because such training might not be specifically required under statute. The commenters recommended the section be rewritten to make it clear that reimbursement for training related to district board of education responsibilities is permissible. (1)

RESPONSE: The Department disagrees, as the section indicates that prohibited travel includes either travel “by board members or employees whose duties are unrelated to the purpose of the travel event” or “who are not required to attend ... or comply with law or regulation.”

50. COMMENT: The commenters stated that the 50-mile restriction on reimbursement for overnight travel at N.J.A.C. 6A:23A-7.11(d) should be deleted. The commenters further stated the 50-mile provision limits affected district board of education members’ and school employees’ access to training at multi-day Statewide programs. In addition, the commenters stated that in situations where the 50-mile limit runs through the school district, some district board of education members can attend the conference, stay over, and be reimbursed, while other district board of education members in the same school district cannot. (1)

RESPONSE: The Department disagrees. Pursuant to N.J.S.A. 18A:11-12.c(3), a district board of education's travel policies and procedures must be in compliance with State travel payment guidelines as established by the Department of the Treasury. The Department of the Treasury Office of Management and Budget Circular 16-11-OMB, section X, provides that "[n]o overnight travel is permitted within the State"; however, the Commissioner "is authorized to grant waivers for overnight travel for school board members and school district employees to attend in-state conferences pursuant to guidelines issued by the Department of Education." Thus, the 50-mile requirement is reasonable as it provides school districts with more flexibility than otherwise required by the Department of the Treasury.

51. COMMENT: The commenters stated that N.J.A.C. 6A:23A-7.11(f) should be amended to clarify whether per diem rates apply to lodging per person or per room. The commenters stated that a per-person rule would encourage room-sharing and save school districts money. (1)

RESPONSE: N.J.S.A. 18A-11-12.o(2) and OMB Circular No. 16-11-OMB reference the Federal per diem rates. As set forth in the regulation governing the per diem rates at 41 CFR 301-11.13, sharing a room results in a reimbursement that "is limited to one-half of the double occupancy rate if the person sharing the room is another Government employee on official travel. If the person sharing the room is not a Government employee on official travel, your reimbursement is limited to the single occupancy rate."

52. COMMENT: The commenters stated that the prohibition in N.J.A.C. 6A:23A-7.12(c)3 regarding lunch reimbursement on in-service days for staff members who travel from other parts of the school district should be deleted. The commenters further stated that the regulation should permit reimbursement for lunch at modest rates in accordance with meal allowances in the OMB circular. (1)

RESPONSE: The Department disagrees. It is reasonable to prohibit meal reimbursement for in-service days or other events held in a school district.

53. COMMENT: The commenters stated that N.J.A.C. 6A:23A-7.12(f)5 should be deleted. The commenters stated that the requirement for leftover food from district board of education meetings to be donated to charitable shelters is a noble concept but is not practical and is difficult, if not impossible, since few such facilities accept left-over food. (1)

RESPONSE: The Department disagrees that N.J.A.C. 6A:23A-7.12(f)5 should be deleted on the basis of its practicality or difficulty, as the rule already provides sufficient flexibility by stating that unintended left-over food should be donated to a charitable shelter or similar facility, "if at all possible."

54. COMMENT: The commenters stated that N.J.A.C. 6A:23A-8.3 should be deleted because its provisions are unnecessary and constrain local decision-making concerning

the allocation of resources. The commenters also stated that administrative cost limits, which reflect statute (N.J.S.A. 18A:7F-5), are unnecessary because of other State-level controls that are in place and budgeting practice among New Jersey's school districts. The commenters also stated that the two percent tax levy cap provides a significant control on school district spending, requiring a deliberate review of all costs in search of the most effective and efficient expenditure of school funds. The commenters stated that district boards of education and school administrators are in the best position to determine program needs and spending priorities within the two percent tax levy cap. The commenters recommended that the Department clearly define the components used in the administrative cost calculation and delineate between instruction-related costs and operational costs. The commenters also stated that, as long as State law includes administrative spending growth limits, the regulations should clearly define the component used in the calculation. The commenters also stated that administrative expenditures considered operational, as well as those needed to carry out State requirements, should not be part of the cost limits. (1)

RESPONSE: The Department disagrees as the provisions in N.J.A.C. 6A:23A-8.3 provide school districts with rules that clarify, and are consistent with, the statutory requirements set forth in N.J.S.A. 18A:4-14, 18A:7-8.1, and 18A:7F-5.

55. COMMENT: The commenters supported the repeal of N.J.A.C. 6A:23A-8.7 since the time frame for it has expired and is no longer necessary since the phase-in from the Abbott Parity Remedy, including Abbott Parity Aid, Educational Opportunity Aid, and

Discretionary Educational Opportunity Aid, was completed in the 2011-2012 school year.

(1)

RESPONSE: The Department appreciates the commenters' support of the proposed repeal of N.J.A.C. 6A:23A-8.7.

56. COMMENT: The commenter stated that the use in N.J.A.C. 6A:23A-9.3 of State medians and averages to set efficiency levels in school districts is arbitrary, and school districts should be provided with additional flexibility and discretion. (2)

RESPONSE: The Department disagrees, as N.J.A.C. 6A:23A-9.3 sets forth fiscally efficient and reasonable standards for public school expenditures. N.J.A.C. 6A:23A-9.3(b) requires that the executive county superintendent (ECS) "consider the efficiency standards as outlined in [N.J.A.C. 6A:23A-9.3](c) ... as guidelines and applied based on district specific circumstances." Moreover, the TGES accounts for school district size in setting medians and benchmarks in the areas identified in N.J.A.C. 6A:23A-9.3(c). Therefore, the efficiency standards in N.J.A.C. 6A:23A-9.3(c) remain relevant and practical, as they are regularly updated through adjustments to the TGES and the executive county superintendent (ECS) retains flexibility to account for differences among school districts.

57. COMMENT: The commenters stated that the provision in N.J.A.C. 6A:23A-9.3(c) that restricts employment of public relations personnel to half time should be deleted. The

commenter also stated that a full-time public relations professional may be cost-effective and beneficial to county vocational-technical schools, academies, choice school districts, special services school districts, educational services commissions, and school districts with specialized programs. The commenters further stated that the provisions restricting the number of custodians, limiting the amount of overtime, restricting the ability to offer employees incentives to waive health coverage, budgeting of vacant positions at no higher than step 1 on the salary guide, prohibiting the use of teacher aides not specifically required by law, and the self-sufficiency of food service operations be deleted as school districts are in the best position to determine the resources needed to implement their responsibilities within the constraints of the two percent tax levy cap. (1)

RESPONSE: The Department disagrees, as N.J.A.C. 6A:23A-9.3 sets forth fiscally efficient and reasonable standards for public school expenditures. The Department also disagrees that N.J.A.C. 6A:23A-9.3(c)14 “restricts employment of public relations personnel to half time,” as the rule clearly contemplates the hiring of “a dedicated public relations staff position or contracted service provider.” Instead, this rule is a reasonable limitation on the amount of time staff members with duties other than public relations, such as superintendents, business administrators, and/or other staff positions, may spend on public relations.

58. COMMENT: The commenters supported in N.J.A.C. 6A:23A-9.3(a), the deletion of references to Commissioner cap waivers, which were eliminated by the 2010 statute creating the two percent tax levy cap. (1)

RESPONSE: The Department appreciates the commenters' support.

59. COMMENT: The commenters recommended that the Department review, at N.J.A.C. 6A:23A-9.3(c), the list of efficient administrative and non-instructional costs for relevancy and practicality, including:

- a. Use of the State median, or average, as a benchmark in several areas;
- b. The standard of one custodian or janitor for every 17,500 square feet of building space;
- c. Overtime pay at 10 percent or less of regular wages;
- d. Incentives for employees to waive health coverage;
- e. Placement of vacant positions budgeted at no more than step one of the salary guide;
- f. Use of teacher aides not required by law; and
- g. Self-sufficiency of food service operations. (1)

RESPONSE: The Department disagrees as N.J.A.C. 6A:23A-9.3(b) requires that the ECS “consider the efficiency standards as outlined in [N.J.A.C. 6A:23A-9.3](c) ... as guidelines and applied based on district specific circumstances.” The Taxpayers Guide to Education Spending (TGES) accounts for school district size in setting medians and benchmarks in the areas identified in N.J.A.C. 6A:23A-9.3(c). Therefore, the efficiency standards in N.J.A.C. 6A:23A-9.3(c) remain relevant and practical as they are regularly updated through adjustments to the TGES and the executive county superintendent (ECS)

retains flexibility to account for differences among the school districts.

60. COMMENT: The commenters stated that regional cost factors should be considered in the review of administrative and non-instructional expenditures and efficient business practices, pursuant to N.J.A.C. 6A:23A-9.3. The commenters further stated N.J.A.C. 6A:23A-9.3 was originally part of the Commissioner's Abbott regulations and, if retained, the section should be amended to reflect current practice. (1)

RESPONSE: The Department disagrees that N.J.A.C. 6A:23A-9.3 was originally part of the Commissioner's Abbott rules, which were codified at N.J.A.C. 6A:10 and expired on March 19, 2009. The efficiency standards set forth in N.J.A.C. 6A:23A-9.3 are specifically authorized by N.J.S.A. 18A:7-16 and provide rules for the executive county superintendent (ECS) review of school budgets, including determining whether the school district has implemented "all potential efficiencies in the administrative operations of the district," and whether "the budget includes excessive non-instructional expenses." The Department also disagrees that N.J.A.C. 6A:23A-9.3 does not reflect current practice. The review set forth in N.J.A.C. 6A:23A-9.3(b) requires the executive county superintendents (ECS) to apply the efficiency standards in N.J.A.C. 6A:23A-9.3(c) "based on district-specific circumstances," which accounts for the differences in costs in each region. Additionally, differences in costs in each region are accounted for because the review is conducted at the county level.

61. COMMENT: The commenters stated that N.J.A.C. 6A:23A-9.5(b)6 should be deleted. The commenters stated that this requirement, which allows the Commissioner to review future collective bargaining agreements as a possible corrective action, is unduly prescriptive and intrudes on local governance of public education. The commenters stated that the collective bargaining process is a mutual determination of terms and conditions of employment between the district school board of education's and the union's bargaining teams, which are in the best position to determine what is needed in the school district from a labor relations perspective, and should not be subject to Commissioner review and approval. (1)

RESPONSE: The Department disagrees as collective bargaining agreements need to be reviewed as a possible corrective action as they comprise a large portion of a typical school district budget and may impact the educational program.

62. COMMENT: The commenters supported the repeal of N.J.A.C. 6A:23A-10.1, which required the Commissioner to conduct a four-year study of the impact of the former four percent property tax cap and to make a recommendation on its continuation. The commenters stated the moratorium period was from the 2008-2009 school year through the 2011-2012 school year and the statute creating the two percent tax levy cap made the property tax cap permanent and rendered N.J.A.C. 6A:23A-10.1 unnecessary. (1)

RESPONSE: The Department thanks the commenters for the support.

63. COMMENT: The commenters supported the deletion of N.J.A.C. 6A:23A-10.2, since the Commissioner's spending growth limitation adjustments for capital outlay, pupil transportation, changes in enrollment, special education costs in excess of \$40,000 receiving school tuition, and opening a new school facility no longer exist. (1)

RESPONSE: The Department thanks the commenters for the support.

64. COMMENT: The commenters stated that N.J.A.C. 6A:23A-10.3, which addresses the ability of school districts that did not budget for the two percent tax levy cap in one year to apply the unused (banked) cap in either of the next two succeeding budget years, should be amended to match the timeframe in N.J.S.A. 18A:7F-39.c, that is, "any one of the next three succeeding budget years." (1)

RESPONSE: The Department thanks the commenters for the support of the amendment at recodified N.J.A.C. 6A:23A-10.3 to allow a district board of education to increase its adjusted tax levy pursuant to N.J.S.A. 18A:7F-39.e.

65. COMMENT: The commenter stated that school districts should not be penalized by N.J.A.C. 6A:23A-10.3(a) for underutilizing school tax levy and asked the Department to expand the authority to use banked cap to not more than five years, instead of three, to afford school districts additional budgetary flexibility. (2)

RESPONSE: The Department disagrees as the budget years in which a school district may add banked cap to its adjusted tax levy is set at three years by N.J.S.A. 18A:7F-38.e.

66. COMMENT: The commenters stated that N.J.A.C. 6A:23A-11.1, which prescribes the calculation of adjustments to a school district's tax levy growth limitation under the previous statute that created a four percent cap, should delete the references to cap adjustments for reductions in total unrestricted State aid and to "Commissioner waivers."
(1)

RESPONSE: The Department thanks the commenters for their support for the deletion of references to cap adjustments and Commissioner waivers in N.J.A.C. 6A:23A-11.1(a)2.

67. COMMENT: The commenters stated that N.J.A.C. 6A:23A-11.3, which provides for an adjustment for a reduction in total unrestricted State aid, should be deleted, as the adjustment was repealed upon enactment of the two percent tax levy cap. (1)

RESPONSE: The Department thanks the commenters for the support for the deletion of N.J.A.C. 6A:23A-11.3.

68. COMMENT: The commenters stated that N.J.A.C. 6A:23A-12.1 through 12.11, which address various types of Commissioner waivers, should be deleted since the Commissioner waivers were repealed with the enactment of the two percent property tax cap. (1)

RESPONSE: The Department appreciates the commenters' support of the repeal of N.J.A.C. 6A:23A-12.1 through 12.12 to align the subchapter with N.J.S.A. 18A:7F-38.

69. COMMENT: The commenters stated that N.J.A.C. 6A:23A-12.13, Voter authorization to exceed tax levy limitation, should be amended to reflect that a simple majority of voters is necessary to approve separate ballot questions. The commenters stated that a 2010 statute eliminated a previous requirement that an affirmative vote by 60 percent of participating voters is needed to approve ballot questions to exceed the tax levy cap. The commenters recommend that the Department review this section to address the differences between approval of separate ballot proposals in April school district elections and in November school district elections and the subsequent impact on budget development and implementation. The commenters also stated that more than 90 percent of the State's school districts conduct elections in November, an option not available in 2008, when the accountability regulations were implemented. (1)

RESPONSE: The Department appreciates the commenters' support of the amendment of recodified N.J.A.C. 6A:23A-12.11(a)1 to align the rule with P.L. 2010, c. 44, which reduced the threshold from 60 percent to a simple majority.

70. COMMENT: The commenters stated that N.J.A.C. 6A:23A-14, which addresses the establishment and use of capital reserve accounts, should be amended to allow school districts to transfer funds from and between reserve accounts to offset fiscal emergencies,

upon executive county superintendent (ECS) approval. The commenters also stated that access to reserve accounts in emergency situations should be allowed with ECS approval and not require placement of a separate question before voters. (1)

RESPONSE: The Department disagrees. N.J.S.A. 18A:7F-41.d(1) requires all reserve accounts to be established and held in accordance with generally accepted accounting principles (GAAP). Capital reserve, established pursuant to N.J.S.A. 18A:7F-31, is subject to this legal requirement and is classified by GAAP as a “restricted fund balance.” Funds placed into this category are subject to restrictions that are legally enforceable through the enabling law that established the balance. Specifically, the law requires funds in the capital reserve account to be used to finance the school district’s long-range facilities plan.

71. COMMENT: The commenters stated that N.J.A.C. 6A:23A-15.1 should be amended to revise the definition of “projected enrollment” to establish a better mechanism to forecast first-year enrollment in new charter schools, particularly blended charter schools. (1)

RESPONSE: The Department disagrees. The definition of “projected enrollment” is the best available mechanism to forecast first-year enrollment in new charter schools.

72. COMMENT: The commenters stated that N.J.A.C. 6A:23A-15.3 should be amended to add a second student count date to address the movement of students to and from a charter school. The commenters also stated that a second child count date would enable

funding to follow the student throughout the academic year, rather than waiting for an end-of-year adjustment. (1)

RESPONSE: The Department disagrees. The Department currently requires two count dates – one on October 15 and again at the end of the school year. Adjustments in enrollment during the school year are not significant enough to justify more than the two counts under the rule.

73. COMMENT: The commenters stated that N.J.A.C. 6A:23A-15.4, Procedures for private school placements by charter schools, should be amended to allow a school district to conduct a needs assessment when a charter school proposes a student placement in a private day or residential program. The commenters further stated that the school district should also be able to consult with its IEP team prior to provision of notice to the parent. (1)

RESPONSE: The Department disagrees. The procedure outlined in N.J.A.C. 6A:23A-15.4 is consistent with N.J.S.A. 18A:36A-11.b and State and Federal statutes and regulations ensuring the provision of a free appropriate public education for students with special needs.

Federal Standards Statement

The rules readopted with amendments and repeals will not be inconsistent with or exceed Federal requirements or standards. The Federal SEMI program is required by the State for school districts and private schools for students with disabilities. N.J.A.C. 6A:23A-5.3 is amended to conform to Federal regulations and requirements. There are no other Federal standards or requirements applicable to the rules readopted with amendments and repeals; therefore, a Federal standards analysis is not required.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 6A:23A-1 through 15.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]):

6A:23A-1.2 Definitions

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

...

"Maximum salary amount" for superintendents means \$147,794 for any school district(s) with a total enrollment of 749 or less based on the enrollment figures in the Application for State School Aid (ASSA) filed by the district(s) on the prior October 15; \$169,689 for any district(s) with a total enrollment of 750 to 2,999 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15; \$191,584 for any school district(s) with a total enrollment greater than 3,000 based on the enrollment figures in the ASSA filed by the district(s) on the prior October 15. Upon the expiration of a contract in effect on July 1, 2016, a superintendent re-

appointed for a subsequent term with the same school district may receive an annual salary that exceeds the maximum salary amount by up to two percent in the first year of the renewal contract, followed by annual increases of up to two percent in each of the remaining years of the renewal contract and any contract thereafter. If the contract in effect on July 1, 2016, is not the superintendent's initial contract with that school district, the superintendent can renegotiate at any time after *[(the effective date of these amendments)]* ***May 1, 2017,*** and may receive an annual salary moving forward that exceeds the maximum salary amount by up to two percent in the first year of the renewal contract, followed by annual increases of up to two percent in each of the remaining years of the renewal contract and any contract thereafter. However, the superintendent shall not receive any retroactive or back pay as part of that renegotiation. For any school district(s) with a total enrollment of 10,000 or more based on the enrollment figures in the ASSA filed by the school district(s) on the prior October 15, the Commissioner, upon written application by the district board(s) of education and on a case-by-case basis, may approve a waiver of the maximum salary amount. The eligible district board(s) of education may only submit one waiver request during the term of a contract; requests for a renegotiated waiver during the term of a contract are prohibited.

...

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

(a)–(d) (No change from proposal.)

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

1.-7. (No change from proposal.)

8. Contractual provisions regarding accumulation of sick leave and supplemental compensation for accumulated sick leave shall be consistent with N.J.S.A. 18A:30-3.5 ***and 18A:30-3.6***. Supplemental payment for accumulated sick leave shall be payable only at the time of retirement and shall not be paid to the individual's estate or beneficiaries in the event of the individual's death prior to retirement. Pursuant to N.J.S.A. 18A:30-3.2, a new district board of education contract may include credit of unused sick leave days in accordance with the new district board of education's policy on sick leave credit for all employees.