This comment and response form contains comments from and since the February 1, 2017, meeting of the State Board of Education when the draft regulations were considered at Proposal Level.

**Topic:** Fiscal Accountability, Efficiency, and Budgeting Procedures

**Code Citation:** N.J.A.C. 6A:23A-18

**Level:** Adoption

**Division:** Finance

**Completed by:** Office of School Facilities and Finance

**Meeting Date:** June 7, 2017

**Summary of Comments and Agency Responses:**

The following is a summary of the comments received from State Board of Education members and members of the public and the Department’s responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

A. Mark Biedron, President
   State Board of Education

B. Arcelio Aponte, Member
   State Board of Education

C. Jack Fornaro, Member
   State Board of Education

D. Edithe Fulton, Member
   State Board of Education

1. A.J. Ferrer
2. Aaron Stiefel
3. Abbey M. Horwitz
4. Abby Tanzer
5. Abel Mejia U
6. Adam S. Gentile
7. Adonis and Gondelina Tibay
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9. Adrienne Suydam
10. Al and Stephanie Fritsch
11. Alan Laird
12. Alan Staniforth and Neng Wang
13. Alane Gruber
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15. Aleksandra Brodka
16. Alex and Phatavone Cayley
17. Alexander J. Wurst
18. Alexandra Rusiecki
19. Alfonso Feria
20. Alicia Barker
21. Alicia Ciaravino
22. Alicia Silvestri
23. Alison Niederauer
24. Alledu, Paraprofessional at New Beginnings
25. Allison Bisbey
26. Allison Tegano
27. Alonso Rivera
28. Amanda Lukof
29. Amanda Mitola
30. Amy Stoller
31. Amy Williams
32. Andrea Benzinger
33. Andrea L. and Luis A. Ortiz
34. Andreas and Tamara Oranje
35. Andrew Hall
36. Andrew Isaac
37. Angela Randion
38. Angela Territola
39. Angie Tener
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42. Anna Forestiero
43. Anne Wargo
44. Annette Bourhill
45. Annette Brodka
46. Annette Codispoti
47. Annette Evangelista
48. Annette Ristoro
49. Annmarie Scorzo, Business Manager, Windsor and Shepard Schools
50. Anthony and Carla Lomangino
51. Anthony Eldridge and Tishun Myers
52. Anthony Mastandino
53. Anthony Pusateri Jr.
54. Anthony Troncone
55. Antonette DiMiceli
56. April and Karl Weber
57. April Rofe
58. Archana Sharma
59. Arisleyda Riehl
60. Arlene Gildersleeve
61. Artea Lombardi
62. Athena and Deron Siddons
63. Atonia and Will Worley
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67. Barbara Levine
68. Barbara Meyers
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71. Barbara Russell
72. Barry P. Goldberg
73. Beenu and Ritesh Chaturbedi
74. Bernard A. Polatschek
75. Beth and Tony Elkis
76. Beth Gardella
77. Bill and Tracey Hammill
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79. Blair Harrell
80. Brady Fox
81. Brandon T. Schurter
82. Brian Hartung
83. Brian James
84. Brian King
85. Brian Steinberg
86. Brittany McCormick
87. Brooke Sanford
88. Bruce and Richele Chituck
89. Bruce Ettinger, Executive Director/Superintendent, Spectrum 360
90. Caitlin Celebre
91. Cara Zoppina
92. Carmel Birney
93. Carol Anne Chupak
94. Carol Barron
95. Caroline Johnson
96. Caroline Kane
97. Carrie Graifer
98. Carrie Nugent
100. Casey L. Nottingham
101. Cassandra Hillmer
102. Catalina Nung
103. Catherine Leccese
104. Cathy Anniballi
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110. Cherie Povia
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Christine De La Garza and Vincent Leone
Christine Ferguson
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Christine Urgo
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Claudia F. Webster
Claudia Frankel
Clint McDonough
Colin Heckman
Colin Wiss
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Colleen Twardziak
Collette Stewart
Concerned parent of Y.A.L.E. School student
Connie Hofer
Connie Sharar-Conway
Constantine Archon
Cora M. Tulish
Corinna Kotrokois
Craig Garritano
Crystal Dengelegi
Dan Keating, Executive Director, Alliance for the Betterment of Citizens with Disabilities
Dana Vergara
Daniel and Tanja Frade
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Danny, Occupational Therapist at New Beginnings
Dariel Burger
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David and Christine Pedraza
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David and Rachel Youngren
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Dawn M. Calvetti
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175. Debra L. Wentz, President, New Jersey Association of Mental Health and Addiction Services
176. Deborah Salanitro
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178. Delores, Paraprofessional at New Beginnings School
179. Denise and Juan Gonzalez
180. Denise Durand
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184. Diane Callari
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214. Elodia Santiago
215. Eric Chung
216. Eric P. Fekete
217. Eric W. Erbe
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219. Erik Rofe  
220. Erin Richard White  
221. Erin Simko  
222. Eugene Colter and Allison Bisbey  
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225. Evelyn Kensel  
226. Felisha V. Fasullo  
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229. Fran Padovan  
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236. Fredrick Huber  
237. Gabrielle Caracciola  
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241. Genevieve Spielberg  
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249. Gerry Crisonino, Chairperson, New Jersey Association of School Administrators Special Education Committee  
250. Gerry Gross  
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269. Heather Staples
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271. Helen Gildersleeve
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292. James and Theresa Pacetti
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294. James Christy and Mary Phillipuk
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355. Jill Nadison, Executive Director, and Leah Farinola, Principal, REED Academy
356. Jillian DeGironimo
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394. Joy Jable
395. Joyce Alu
396. Judi Meighan
397. Judith L. Schwartz
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399. Judy Raybon
400. Julita and Aneil Chetram
401. Julianne Grider
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405. K. Bender
406. K., Teacher at Glenview Academy
407. Karen and Donald Russell
408. Karen and Matthew Ibold
409. Karen Gorman
410. Karen Jones
411. Karen Russell
412. Karima Avaloy
413. Kate Brosowsky
414. Katelyn Downey
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420. Kathryn Eckstine
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422. Katie Kane
423. Katie Rumley
424. Keciu Bowden
425. Keesha Reyes
426. Keira Meli
427. Keith and Ellen Redvanly
428. Keith Raymond
429. KelliAnn Cantaffa
430. Kelly A. Rossetto
431. Kelly J. Robinson
432. Ken Berger, Executive Director, CTC Academy
433. Kenneth Nicholas
434. Kenny Kaplan
435. Kensuke Okabayashi
436. Kevin and Karen McCann
437. Kevin J. Brothers, Executive Director, Somerset Hills Learning Institute
438. Kevin Drenniany
439. Kim Cristo
440. Kim Rallo
441. Kimberle Strasser
442. Kimberlee McCafferty
443. Kimberley A. Careccia
444. Kimberley Ann and Alfonso Frattino
445. Kimberley Hammonds
446. Kimberly Claudi
447. King Family
448. Kristen J. Mider
449. Kristen L. Melchionne
450. Kristen Olson
451. Kristen Walsh
452. Kristina Greer
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454. Kristine Frances Malig
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462. Laura Del Duca
463. Laura Doherty
464. Laura E. Morgan
465. Laura Goode
466. Laura, Teacher's Aide at New Beginnings School
467. Lauren Cates
468. Lauren Lehman
469. Lauren Zulu
470. Laurie Bertsch
471. Laurie Kane
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473. Lawrence Van Horn
474. Lea F. Riotto
475. Lea Price
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478. Leona, Paraprofessional at New Beginnings School
479. Leonid Katsman
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481. Leslie Lanaden
482. Leydy N. Garache
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493. Lisa Huguenin
494. Lisa Macaluso
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497. Lisa Patterson
498. Lisa Tiboni
499. Lori and Evan Kendis
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501. Lori Barbarisi
502. Lori Cates
503. Lori Klimek
504. Lori Nagel
505. Louis Riehl
506. Louise Shea
507. Luis Sanchez
508. Lydia Raymond
509. Lynn Barral
510. Lynn Toner
511. Lynn Vande Stouwe
512. Lynn, Paraprofessional at New Beginnings School
513. Lynne Rodda
514. Madeline H. Hoffman
515. Madeline Tropinsky
516. Magdelina Bowornikon-Rusnseph
517. Maggie Natale
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520. Marbel Alilea
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522. Marcia Poduy
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Mary Ellen Graham, Assistant Director, Pineland Learning Center
Mary Ellen Rohon
Mary Jane Goode
Mary K. Wilson
Mary Mattessich
Mary McHugh
Unknown
Marybeth Riedinger
Mary-Colleen Erbe
Meryl Dorf
Matthew Alban
Matthew and LeighAnne Castimore
Matthew Campbell
Matthew Rosenthal
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Nahulan Ethiveerasingam
Nancy Garcia
Nancy Peirce
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Narcisa Castillo
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Natasha and Justin Strauss
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Oswaldo Jaramillo
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Pamela Banchi
Pamela Machold
Pamela Smith
Pamela, Paraprofessional at New Beginnings School
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Patricia A. Wurst
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Patricia Krasowski
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Paul Brodka
Paul Cuccinelli
Paul Epply-Schmidt
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Paul Leccese
Penny Pulliam
Phillip and Chana Koenig
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677. Priscilla A. Quesada
678. Priya Raghupathi
679. Rachael Leight
680. Rachel Mongillo
681. Rafael A. Arroyo
682. Rahana Hussain
683. Ralph and Colleen DiDomenico
684. Ralph and Emily Gambatese
685. Raman Kia
686. Randy Pratt, Executive Director, Stepping Stone School
687. Rasmus and Julia Johansen
688. Ravindra Bhatt
689. Renee Hakanson
690. Renee Napolitano
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710. Rose and Tim Duffy
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713. Rosemary Burke
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718. Ruthann Sudah
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723. Sai Okabayashi
724. Said and Khairieh Saleh
725. Salvatore and Roberta Gianone
726. Salvatore and Stefanie Gianone
727. Sam and Malathy Kumar
728. Samantha Peters 
729. Samuel and Traci Wilk 
730. Santos Family 
731. Sara and Jeffrey Kantor 
732. Sarah Fritch 
733. Scott Cooper 
734. Scott McHugh 
735. Sean and Tara Murphy 
736. Sean M. Carman 
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749. Shubada Deshpande 
750. Sister Brenda Boyle 
751. Sister Debbie Drago 
752. Sister Josephine Pate 
753. Sister Susan Whitsell 
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755. Stacie Lynn 
756. Stacy Pilato 
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758. Stephanie Repetti 
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765. Susan Hazeldean 
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768. Susan M. Miller 
769. Susan Monroe 
770. Susan Silfen 
771. Susan Hazeldean 
772. Susannah and Craig Leisher 
773. Susannah Hubner-Varela 
774. Susie LaChance 
775. Suzanne Buchanan, Executive Director, and Eric Eberman, Public Policy Director, Autism New Jersey 
776. Suzette Josif 
777. T. Gomez
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<td>778</td>
<td>Tamara Monaco</td>
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<td>795</td>
<td>Thomas Baffuto, Executive Director, The ARC of New Jersey</td>
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<td>Unknown, Head Assistant at New Beginnings School</td>
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<td>Unknown, Paraprofessional at Glenview Academy</td>
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<td>827</td>
<td>Unknown, Speech Language Pathologist at New Beginnings School</td>
</tr>
<tr>
<td>828</td>
<td>Unknown, Teacher at New Beginnings School</td>
</tr>
</tbody>
</table>
COMMENT: The commenters thanked the Department for its efforts and responsiveness regarding the proposed amendments and new rules at N.J.A.C. 6A:23A-18 for approved private schools for students with disabilities (APSSDs) and thanked stakeholders for their engagement in the rulemaking process. (A, B)

RESPONSE: The Department appreciates the commenters’ support.
2. **COMMENT:** The commenter stressed that the State Board would not be voting to close APSSDs or to reduce revenues for APSSDs. The commenter further stated that the State Board is considering proposed amendments and new rules at N.J.A.C. 6A:23A-18 that will assist APSSDs in being more flexible and accountable with the use of available resources and the efficient application of resources. (B)

**RESPONSE:** The Department agrees, as the proposed amendments are designed to focus tuition paid by sending school districts on the costs required to provide special education and related services by targeting specific practices at APSSDs that constitute inappropriate use of public funds as identified by the July 2013 audit by the Office of Legislative Services (OLS) of the Department, the Department’s monitoring of APSSDs, and other investigations. The Department agrees that while the proposed amendments and new rules will increase accountability in those areas, the proposed changes also will create more flexibility for APSSDs, particularly by clarifying and streamlining the regulations and by increasing flexibility in the salary paid to therapists.

3. **COMMENT:** The commenter stated that the proposed amendments and new rules at N.J.A.C. 6A:23A-18 encourage salary increases for professionals at APSSDs who have a direct impact on instruction and provide direct services to students. The commenter also stated the proposal will guide as much funding as possible to direct student services. (B)

**RESPONSE:** The Department agrees, as the current maximum salaries provide ample room for salary growth for most teachers and other professionals who directly provide education and related services to students. With regard to therapists, the Department proposes three special allowances for the maximum salaries in occupational therapist (OT), physical therapist (PT), and speech language specialist (SLS) positions. First, the Department proposes to increase the maximum published salaries for OTs, PTs, and SLSs annually from the 2016-2017 published list of maximum allowable salaries by the consumer price index (CPI). Second, the Department proposes that for OTs, PTs, and SLSs contracted by APSSDs as purchased service providers or independent contractors, the published total hourly rates will include an allowance of 35 percent more than the maximum allowable salary plus the annual CPI increase. Finally, the Department proposes to allow APSSDs to contract with Department-approved clinics and agencies at a rate above the published maximum salary as long as the APSSDs obtain quotes from three clinics or agencies. Regardless of the amount of the quotes, APSSDs may choose to contract with any agency as long as it is not a related party. However, if APSSDs choose to contract with a related party for the services, the related party must be the lowest quote. As a result, the proposed regulations will provide ample flexibility for APSSDs to hire quality teachers and therapists.

The Department also agrees that the goal of the proposal is to guide as much funding as possible to direct student services. To that end, the proposal makes targeted changes to address specific concerns that have been identified by OLS and other reports, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition.

4. **COMMENT:** The commenter asked for an explanation as to why maximum APSSD teacher salaries are higher in Middlesex County than in Essex and Camden counties. (C)
RESPONSE: The determination of the salaries to be paid to APSSD employees is within the discretion of the management of APSSDs as long as the salaries do not exceed the maximum allowable salaries pursuant to N.J.A.C. 6A:23A-18.3(o) and (p). The maximum allowable salaries for certificated staff such as teachers are calculated based on the highest salary ever paid to a certificated staff member in that county. Thus, the maximum allowable salary for a general education teacher in Middlesex County, Essex County, and Camden County are based on an actual certificated staff member who was paid that salary in each of the counties.

5. COMMENT: The commenter stated that APSSDs and teachers who work in APSSDs are doing a spectacular job educating New Jersey students with disabilities. (D)

RESPONSE: The Department thanks the commenter for this input.

6. COMMENT: The commenter asked for clarification as to how salaries are determined at APSSDs and whether there is a salary guide. (D)

RESPONSE: The determination of the salaries to be paid to APSSD employees is within the discretion of the management of APSSDs as long as the salaries do not exceed the maximum allowable salaries pursuant to N.J.A.C. 6A:23A-18.3(o) and (p). The Department does not create or disseminate a salary guide for APSSDs.

7. COMMENT: The commenter stated the proposed amendments and new rules at N.J.A.C. 6A:23A-18 are in response to past incidents in which some APSSDs took advantage of public resources. The commenter also stated the proposed amendments and new rules at N.J.A.C. 6A:23A-18 are reasonable. (D)

RESPONSE: Yes, the proposed amendments and new rules are designed, in part, to address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to public school districts include appropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The proposed amendments and new rules work toward ensuring both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their individualized education programs (IEPs).

8. COMMENT: The commenter sought confirmation that the maximum salary chart is reflective of maximum salaries ever paid in each category for professionals at APSSDs since the Department began keeping records. (A)

RESPONSE: The commenter is correct regarding the maximum salaries for professionals at APSSDs.

9. COMMENT: The commenter stated it is important that APSSDs are accountable to the public regarding their costs and APSSDs should have the same tuition rate calculations and procedures and non-allowable costs as public schools. The commenter also stated that APSSDs owners, boards of directors, and administrators should be subject to the same standards of accountability as district boards of education members and chief
school administrators, including, but not limited to, standards concerning anti-nepotism, criminal background checks, and filing of School Ethics Act disclosure statements. (370)

RESPONSE: The Department agrees that the proposed amendments and new rules will substantially improve accountability for APSSDs, particularly in the areas identified in OLS audits, the Department’s Office of Fiscal Accountability and Compliance reports, Department desk reviews, and newspaper investigations, such as nepotism, related party transactions, high administrator salaries, and luxury vehicles. Since APSSDs expend public school funds, APSSDs must be held to accountability standards on expenditures similar to the rules school districts follow. However, APSSDs are private, for-profit or nonprofit entities that serve particular types of student populations; therefore, the regulations that apply to public schools do not always translate to APSSDs. The proposed amendments and new rules will hold APSSDs to the same or similar standards as public schools wherever possible, pragmatic, and reasonable to do so.

10. COMMENT: The commenter supported the proposed amendments and new rules at N.J.A.C. 6A:23A-18 and thanked the Department for safeguarding the limited resources dedicated to students with disabilities. The commenter also stated the expanded program and fiscal oversight and the nepotism restrictions will enhance accountability and result in more resources flowing to direct student services The commenter further expressed appreciation for the requirement for IEP teams to carefully consider public placements prior to the selection of an APSSD placement. (244)

RESPONSE: The Department appreciates the commenter’s support and agrees that the intent of the proposed amendments is to enhance accountability and to direct more resources to instruction and program for students with special needs.

11. COMMENT: The commenters expressed support for APSSDs, in general, and specific APSSDs. The commenters expressed appreciation for the dedicated professionals at APSSDs and the services provided by APSSDs, which have achieved positive outcomes for students with disabilities through supportive and encouraging educational programs.
RESPONSE: The Department thanks the commenters for sharing their experiences with APSSDs.

12. COMMENT: The commenters opposed the proposed amendments and new rules at N.J.A.C. 6A:23A-18. (1 through 6, 8 through 48, 50 through 56, 58 through 88, 90 through 98, 101 through 106, 108 through 111, 113 through 129, 131 through 137, 139 through 146, 148 through 174, 176 through 199, 201, 202, 204 through 218, 221 through 225, 227 through 238, 240 through 248, 250 through 281, 283 through 291, 294 through 297, 299 through 313, 315, 317 through 324, 326 through 329, 331 through 354, 356 through 374, 376 through 390, 392 through 423, 425, 427, 429 through 436, 438 through 469, 471, 473 through 491, 493 through 507, 509 through 518, 520 through 540, 542 through 560, 562 through 605, 607 through 628, 630 through 636, 638 through 728, 730 through 746, 748 through 758, 760 through 774, 776 through 794, 796 through 804, 806 through 858, 866, 868, and 870)

RESPONSE: The proposed amendments and new rules are designed to ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

13. COMMENT: The commenters stated the proposed amendments and new rules at N.J.A.C. 6A:23A-18 will make it more difficult for APSSDs to provide services and support for students with disabilities. (1, 2, 3, 5, 6, 8, 10 through 21, 23 through 32, 34 through 38, 40 through 48, 50 through 53, 55, 56, 58 through 70, 72 through 88, 90, 92 through 98, 100 through 106, 108 through 111, 114 through 129, 131 through 137, 140 through 144, 146 through 153, 156 through 199, 201 through 207, 209, 211 through 218, 221 through 225, 227 through 238, 241 through 245, 247, 248, 250 through 262, 264 through 281, 283 through 291, 294 through 297, 299 through 303, 305, 306, 307, 309 through 312, 315, 319 through 324, 326 through 329, 331 through 335, 337 through 342, 345 through 354, 356 through 361, 363 through 373, 376 through 379, 381, 382, 384 through 390, 392 through 416, 418 through 422, 425 through 433, 435, 436, 438, 439, 440, 442 through 446, 448 through 469, 471, 473 through 476, 478, 480 through 491, 493 through 497, 499 through 506, 508, 509, 510, 512, 513, 514, 516, 517, 518, 520 through 540, 542, 543, 545 through 560, 562 through 566, 568 through 599, 601 through 605, 607 through 616, 618, 621 through 628, 630, 632 through 636, 638 through 658, 660 through 694, 697 through 704, 706 through 716, 718 through 728, 730 through 735, 736 through 740, 742 through 746, 748 through 755, 757, 758, 760 through 765, 767 through 774, 776 through 784, 786 through 794, 796 through 802, 804, 807 through 846, 848 through 852, 854 through 858, 866, and 870)

RESPONSE: The Department disagrees. The proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department. The proposed amendments and new rules also address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to public school districts include inappropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for
administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The Department also has provided significant allowances for increases in the maximum salaries for related services professionals that will make it easier for APSSDs to employ and contract with OTs, PTs, and SLSs. All of the proposed changes are intended to more closely align the rules governing how APSSDs expend public school funds with the rules governing public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules ensure both the responsible expenditure of public funds and that public students receive the necessary special education and related services as determined by their IEPs.

14. **COMMENT:** The commenter stated that the proposed amendments and new rules at N.J.A.C. 6A:23A-18 are excessive and unworkable and would severely hamper the good work APSSDs accomplish and the positive learning experiences each student is afforded. (842)

**RESPONSE:** The Department disagrees. The proposed amendments and new rules will streamline the current system of accountability for APSSDs and will make it easier for APSSDs, independent auditors, and the Department to ensure compliance. The regulations, as proposed, are reasonably tailored to ensure that the maximum amount of public school funds paid in tuition to APSSDs is used directly for instruction and programs for student's with special needs.

15. **COMMENT:** The commenter stated the proposed amendments and new rules at N.J.A.C. 6A:23A-18 would violate the provisions of the Americans with Disabilities Act that guarantee a free appropriate education for students with disabilities. (585)

**RESPONSE:** The Department disagrees, as the proposed rulemaking is designed to focus the tuition paid by sending school districts on the costs required to provide special education and related services by targeting specific practices at APSSDs that constitute inappropriate use of public funds as identified by the OLS audit, the Department’s monitoring of APSSDs, and other investigations.

16. **COMMENT:** The commenter stated that the proposed amendments and new rules at N.J.A.C 6A:23A-18 limit training and staff salaries at APSSDs and also will limit the quality of teachers and therapists hired at APSSDs and APSSD students’ capabilities in life. (861)

**RESPONSE:** The Department disagrees as a temporary freeze on the maximum salaries that may be paid to professionals working at APSSDs provides ample room for salary growth for most teachers and other professionals who directly provide education and related services to students. Currently, the majority of employees at APSSDs earning the maximum salary amount are directors of the schools, not teachers and therapists. With regard to therapists, the Department has proposed three special allowances for the maximum salaries in OT, PT, and SLS positions. First, the Department proposes at N.J.A.C. 6A:23A-18.2(o)1i to increase the maximum published salaries for OTs, PTs, and SLSs annually from the 2016-2017 published list of maximum allowable salaries by CPI. Second, the Department proposes at N.J.A.C. 6A:23A-18.2(o)1ii that the published total hourly rates for OTs, PTs, and SLSs contracted by an APSSD as purchased service providers or independent contractors will include an allowance of 35 percent more than the maximum allowable salary plus the annual CPI increase. Finally, the Department
proposes at N.J.A.C. 6A:23A-18.2(o)1iii to allow an APSSD to contract with Department-approved clinics and agencies at a rate above the published maximum salary as long as the APSSD obtains quotes from three clinics or agencies. Regardless of the dollar amount of the quotes, an APSSD may choose to contract with any agency as long as it is not a related party (for example, an agency owned by the APSSD). However, if the APSSD chooses to contract with a related party for OT, PT, and SLS services, the related party must be the lowest quote. As a result, the proposed regulations will provide ample flexibility for APSSDs to hire quality teachers and therapists.

The Department also disagrees that the proposed regulations limit training. The travel regulations provide ample flexibility for APSSDs to choose how to allocate their spending, as long as it falls within the lesser of .25 percent of an APSSD’s total allowable costs in the current fiscal year or $20,000. Moreover, the Department has proposed to allow APSSDs to apply for a waiver of the limit on travel expenditures specifically for the costs of necessary or required professional development opportunities or training. As a result, APSSDs should have ample flexibility to provide necessary or required training to staff members.

17. **COMMENT:** The commenter stated APSSDs already are intensely regulated and the additional regulations will divert energy and resources from students by requiring additional staff hours to ensure compliance, which will add to administrative costs. (**561**)

**RESPONSE:** The Department disagrees the proposed amendments and new rules will divert resources from students, as the proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department. The proposed amendments and new rules also are designed to address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to sending school districts include appropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. Along with those changes, the Department has provided significant allowances for increases in the maximum salaries for related services professionals that will make it easier for APSSDs to employ and contract with the professionals. All of these proposed changes are intended to more closely align the rules for expending public funds at APSSDs to the rules for public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules are designed to ensure both the responsible expenditure of public school funds and that public school students receive the special education and related services as determined by their IEPs.

18. **COMMENT:** The commenters stated the proposed rulemaking will cause severe hardship and, ultimately, closure of APSSDs, which are often the last resort for struggling students and their caregivers. (**35, 286, 492, 561, and 745**)

**RESPONSE:** The Department disagrees the proposed amendments and new rules will cause severe hardship and the closure of APSSDs, as the proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department. The proposed amendments and new
rules also are designed to address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to sending school districts include appropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. Along with those changes, the Department has provided significant allowances for increases in the maximum salaries for related services professionals that will make it easier for APSSDs to employ and contract with the professionals. All of these proposed changes are intended to more closely align the rules for expending public funds at APSSDs to of the rules for public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules are designed to ensure both the responsible expenditure of public school funds and that public school students receive the special education and related services as determined by their IEPs.

19. **COMMENT:** The commenter stated that the proposed rulemaking should be rejected and, instead, the Department should focus its attention on specific APSSDs that do not comply with current regulations. (49)

**RESPONSE:** The Department disagrees. The proposed amendments and new rules are targeted to prevent the specific circumstances that resulted in newspaper investigations of APSSDs’ spending practices and OLS audits of the Department. Regulations may not target specific APSSDs and, instead, must be applicable to all similarly situated schools. However, APSSDs that were not engaged in the practices that led to the Department’s proposal (for example, luxury cars, travel costs, salaries out of alignment with public school district salaries, and failure to institute and follow a nepotism policy, and including the associated costs in the tuition paid by sending school districts) should not be burdened by compliance with those areas.

Along with the changes to address concerns with inappropriate costs included in tuition, the Department has provided significant allowances for increases in the maximum salaries for related services professionals that will make it easier for APSSDs to employ and contract with the professionals. All of these proposed changes are intended to more closely align the rules for expending public funds at APSSDs to the rules for public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules will ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

20. **COMMENT:** The commenter stated the proposed rulemaking is unnecessary because the APSSD that was subject to media reports three years ago for mismanagement has closed, very few APSSDs are vulnerable to the problems of excessive family management teams, and most APSSDs already keep tuition at 20 to 25 percent below actual costs because of fundraising. (437)

**RESPONSE:** The Department disagrees. The proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department. The proposed amendments and new rules also are designed to address concerns that have been raised in the OLS audit and by other
investigations into APSSDs, including concerns over transparency and that the tuition rates charged to public school districts include inappropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The Department also has provided significant allowances for increases in the maximum salaries for related services professionals that make it easier for APSSDs to employ and contract with OTs, PTs, and SLSs. All of the proposed changes are intended to more closely align the rules governing how APSSDs expend public school funds with the rules governing public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

21. **COMMENT:** The commenter stated some APSSDs charge less than the maximum approved tuition rate, which decreases costs for school districts, and make up the deficit in student costs through donations and fundraising. The commenter also stated successful fundraising requires additional costs for advertising and staff time, so it would be prudent to incentivize APSSDs to charge less than the maximum approved tuition rate by allowing costs for advertising and administration for these activities. (200)

**RESPONSE:** The allowable advertising costs under the current and proposed rules of 0.5 percent of an APSSD’s actual allowable costs is appropriate. As with other non-allowable costs, an APSSD may spend as much as it chooses on advertising costs, but those in excess of allowable costs simply cannot be included in tuition charged to sending school districts.

22. **COMMENT:** The commenter stated even if it is necessary to bolster N.J.A.C. 6A:23A-18, questioning the finances and ethics of all APSSDs is unwarranted. The commenter also stated a review of the Charity Navigator database indicated no APSSD in New Jersey has received an advisory (i.e., no identified unethical behavior, questionable or excessive financial practices, or other problems). The commenter said, therefore, the Department should investigate an APSSD based on a report of questionable financial practices or other problems rather than propose amendments and new rules that will become a costly and unfunded mandate for all APSSDs. (432)

**RESPONSE:** The commenter is incorrect that the proposed amendments and new rules are unwarranted. The proposed amendments and new rules are designed to address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to sending school districts include appropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The Department has provided significant allowances for increases in the maximum salaries for related services professionals, which will make it easier for APSSDs to employ and contract with OTs, PTs, and SLSs. All of the proposed changes are intended to more closely align the rules for expending public funds at APSSDs to the rules for public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed
amendments and new rules will ensure both the responsible expenditure of public school funds and that public school students receive the necessary special education and related services as determined by their IEPs.

23. **COMMENT:** The commenter stated that the proposed rulemaking needs to be delayed because the Department and APSSDs will not have sufficient time to implement the proposed amendments and new rules at N.J.A.C. 6A:23A-18 in the 17 business days between the rulemaking’s adoption on June 7, 2017, and the effective date of July 1, 2017. *(751, 862, and 863)*

**RESPONSE:** The Department disagrees that the proposed rulemaking needs to be delayed. The Department first presented the proposed amendments and new rules to the State Board on November 2, 2016. In the more than seven months since First Discussion, stakeholders have been able to provide comments to the State Board and Department for consideration. As illustrated in the Department-initiated changes outlined during the Second Discussion and Proposal levels, the Department has continued to remain responsive to constructive input from stakeholders. Moreover, the comments received from stakeholders, including, but not limited to, individual APSSDs and their accountants and auditors, indicate they have had sufficient time to thoroughly review the proposed rulemaking and to pose questions and concerns. The proposed amendments and new rules make targeted changes to the system for determining the tuition charged by APSSDs and address very specific concerns as outlined by OLS and other investigations. Other than the targeted changes, the basic system for calculating APSSD tuition remains the same. To the extent that implementation requires further questions than those addressed during the regulatory process, the Department is ready to assist APSSDs and auditors with guidance, training, and technical assistance. As a result, there has already been ample time for consideration of the proposed amendments and new rules and a delay in the regulatory process will create more, not less, uncertainty for APSSDs and sending school districts.

24. **COMMENT:** The commenter requested that action on the proposed rulemaking be delayed. The commenter also stated that shifting implementation to the 2018-2019 fiscal year will allow additional time to have a thoughtful dialogue regarding any necessary regulatory chances that also address concerns of APSSDs. *(107 and 112)*

**RESPONSE:** The Department disagrees that the proposed rulemaking should be delayed. The proposed amendments and new rules are the culmination of a two-year effort by the Department to focus tuition paid by sending school districts on the costs required to provide special education and related services to students attending APSSDs by targeting specific practices at APSSDs that constitute inappropriate use of public funds as identified by OLS, the Department’s monitoring of APSSDs, and other investigations. During this two-year time period, the Department afforded APSSDs with opportunities to provide significant input into the proposed amendments and new rules. The Department first presented the proposed amendments and new rules to the State Board on November 2, 2016. In the more than seven months since First Discussion, stakeholders have been able to provide comments to the State Board and Department for consideration. As illustrated in the Department-initiated changes outlined during the Second Discussion and Proposal levels, the Department has continued to remain responsive to constructive input from stakeholders.
Moreover, the proposed amendments and new rules are designed to coordinate with a new, modern data collection system to be implemented in the new school year. The proposed amendments and new rules make targeted changes to the system for determining the tuition charged by APSSDs. Other than the targeted changes, the basic system for calculating APSSD tuition remains the same. To the extent that implementation requires further questions than those addressed during the regulatory process, the Department is ready to assist APSSDs and auditors with guidance, training, and technical assistance. There has already been ample time for consideration of the proposed amendments and new rules, including substantial thoughtful dialogue with stakeholders and amendments specifically designed to address their concerns. Any delay in the implementation of the proposed amendments and new rules will only serve to create unnecessary uncertainty for APSSDs, sending school districts, and the Department for the 2017-2018 school year.

25. **COMMENT:** The commenter stated an effective date of July 1, 2017, for the proposed amendments and new rules is unrealistic given the complexities and operational changes that will be required. The commenter suggested additional public hearings to fully understand the proposals. (526)

**RESPONSE:** The Department disagrees that additional time is needed for the consideration and review of the proposed amendments and new rules. The Department has fully complied with the requirements for rulemaking set forth in N.J.A.C. 6A:6, the Administrative Procedures Act, and N.J.A.C. 1:30, all of which provide ample time for consideration of proposed rulemakings, including responses to comments and questions. The Department remains available to provide guidance and technical assistance on the proposed amendments and new rules to APSSDs, accountants, and auditors.

26. **COMMENT:** The commenter requested that the implementation date for the proposed rulemaking be delayed until July 1, 2018, to prevent undue administrative hardships on APSSDs and to allow APSSDs ample time to prepare for a new chart of accounts and to adjust their accounting practices, as necessary. (437 and 775)

**RESPONSE:** The Department disagrees that the proposed amendments and new rules will create undue administrative hardships on APSSDs. The proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department and are targeted to address specific concerns raised in the OLS audit and other investigations into APSSDs. Thus, the proposed amendments and new rules are designed to ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

The Department has already released a new chart of accounts crosswalk for the 2017-2018 school year. The few changes that will be required if the proposed amendments and new rules are adopted, which include changes to travel costs consistent with N.J.A.C. 6A:23A-18.19, litigation costs consistent with N.J.A.C. 6A:23A-18.5(a)7i and ii, and behavior modification costs that meet the requirements of N.J.A.C. 6A:23A-18.22, will be made following adoption. The Department remains available to provide guidance and technical assistance on the proposed amendments and new rules and the chart of accounts to APSSDs, accountants, and auditors.
27. **COMMENT:** The commenter recommended the Department delay until July 1, 2018, the effective date of the proposed amendments and new rules at N.J.A.C. 6A:23A-18 for the following reasons:

- APSSDs already have begun the accounting and administrative processes, including budgets and contracting with sending school districts, employees, consultants, and vendors, for the 2017-2018 school year;
- APSSDs cannot make a comprehensive assessment of the proposed amendments and new rules until the Department provides a detailed chart of accounts along with account definitions and assigned cost categories, job descriptions for approved job titles, and clarification in the rules around non-certified staff and the appropriate use of approved job titles;
- APSSDs have not had adequate training on and will not have enough time to properly implement the proposed changes, which will lead to inconsistent application and significantly more disputed disallowances upon audit by both audit firms and the Department;
- The proposed changes are subject to varied interpretations, which will lead to inconsistent application and improper identification of non-allowable costs;
- The Department’s proposal will require audit firms to perform services that are prohibited by their professional standards by asking for certification of tuition rates. The issue would be resolved by an updated audit program; and
- The factors will cause an increase in the time required to perform audits, which will result in higher audit costs to APSSDs and, ultimately, will drive up administrative costs. (293)

**RESPONSE:** The Department disagrees that the effective date of the proposed amendments and new rules at N.J.A.C. 6A:23A-18 should be delayed. APSSDs and their auditors and accountants have been aware of proposed amendments and new rules that will impact the chart of accounts, such as proposed N.J.A.C. 6A:23A-18.5(a)7i and ii, since the proposed rulemaking was first discussed by the State Board on November 2, 2016. Since then, the Department has responded to numerous comments requesting clarification or changes to the proposed rulemaking, and has proposed Department-initiated changes that ultimately resolved commenters’ concerns. Moreover, the Department has already released a 2017-2018 chart of accounts crosswalk so APSSDs can implement it for their budgetary planning. The proposed amendments and new rules make targeted changes to the system for determining the tuition charged by APSSDs. Other than the targeted changes, the basic system for calculating APSSD tuition remains the same. Therefore, the Department disagrees that APSSDs cannot make a comprehensive assessment of the proposed amendments and new rules.

Due to the streamlining, clarifications, and other amendments proposed in the rulemaking, the Department disagrees that it will drive up administrative costs for APSSDs. The Department also disagrees that the proposed changes are subject to varied interpretations as the summary of the proposed rulemaking and the responses to comments by stakeholders have provided sufficient guidance on the meaning of the proposed amendments and new rules. To the extent that implementation requires further questions than those addressed during the regulatory process, the Department is ready to assist APSSDs, accountants, and auditors with guidance, training, and technical assistance.

Furthermore, the Department is unaware of any section in the proposal that requires audit firms to perform services that are prohibited by their professional
standards. The proposed rulemaking provides a new, comprehensive definition for an “independent school auditor,” and the remainder of the rulemaking emphasizes the auditor’s independence. To the extent this comment is focused on proposed N.J.A.C. 6A:23A-18.3(1), the Department has removed “independent-auditor-certified” from before “tuition rate charged” to clarify that the tuition rate charged will remain a decision of management, as long as the tuition rate charged does not exceed the certified actual cost per student.

28. **COMMENT:** The commenter stated that rushing implementation of the proposed rulemaking will lead to inconsistency and more disputed allowances by audit firms and Department financial monitoring. The commenter also stated that proposed rulemaking will drive up audit costs and, ultimately, administrative costs. (862)

**RESPONSE:** The Department disagrees. The proposed amendments and new rules are the culmination of a two-year effort by the Department to focus tuition paid by sending school districts on the costs required to provide special education and related services to students attending APSSDs by targeting specific practices at APSSDs that constitute inappropriate use of public funds as identified by OLS, the Department’s monitoring of APSSDs, and other investigations. During this two-year time period, the Department afforded APSSDs with opportunities to provide significant input into the proposed amendments and new rules. The Department first presented the proposed amendments and new rules to the State Board on November 2, 2016. In the more than seven months since First Discussion, stakeholders have been able to provide comments to the State Board and Department for consideration. As illustrated in the Department-initiated changes outlined during the Second Discussion and Proposal levels, the Department has continued to remain responsive to constructive input from stakeholders.

Moreover, the proposed amendments and new rules are designed to coordinate with a new, modern data collection system to be implemented in the new school year. The proposed amendments and new rules make targeted changes to the system for determining the tuition charged by APSSDs. Other than the targeted changes, the basic system for calculating APSSD tuition remains the same. To the extent that implementation requires further questions than those addressed during the regulatory process, the Department is ready to assist APSSDs and auditors with guidance, training, and technical assistance. There has already been ample time for consideration of the proposed amendments and new rules. Any delay in implementation of the proposed amendments and new rules will only serve to create unnecessary uncertainty for APSSDs, sending school districts, and the Department for the 2017-2018 school year.

29. **COMMENT:** The commenters recommended the Department establish a program with a few APSSDs to pilot the proposed amendments and new rules at N.J.A.C. 6A:23A-18 rather than implement them Statewide as of July 1, 2017. The commenters stated a pilot program will allow the Department and participant APSSDs to work out implementation issues during the first year. The commenters further stated a pilot will prevent undue administrative hardship and allow private schools ample time to prepare for a new chart of accounts and to adjust their accounting practices, as necessary. (39, 100, 107, 122, 147, 154, 175, 197, 203, 210, 220, 239, 313, 343, 344, 391, 407, 428, 437, 470, 472, 508, 629, 765, 775, 795, 806, 845, and 864)

**RESPONSE:** The Department disagrees that the proposed amendments and new rules will create undue administrative hardships on APSSDs. The proposed amendments and
new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department and are targeted to address specific concerns raised in the OLS audit and other investigations into APSSDs. Thus, the proposed amendments and new rules are designed to ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs. The regulatory process has provided ample time for consideration of the proposed amendments and new rules, including responses to comments and questions. The Department remains available to provide guidance and technical assistance on the proposed amendments and new rules to APSSDs, accountants, and auditors.

30. **COMMENT:** The commenter stated that the proposed amendments and new rules at N.J.A.C. 6A:23A-18 may result in fewer options to ensure placement of students with disabilities in the least restrictive environment. (107 and 836)

**RESPONSE:** The Department disagrees. The proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department. The proposed amendments and new rules also address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to public school districts include inappropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The Department also has provided significant allowances for increases in the maximum salaries for related services professionals that make it easier for APSSDs to employ and contract with OTs, PTs, and SLSs than under the current rules. All of the proposed changes are intended to more closely align the rules governing how APSSDs expend public school funds with the rules governing public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

31. **COMMENT:** The commenter supported the proposed rulemaking’s goals of containing costs, ensuring appropriate accounting and use of funds, and streamlining APSSDs’ interactions with the Department but stated the Department’s interest in achieving the goals must not be allowed to compromise the all-important mission of providing appropriate special education programs and services in compliance with Federal law. (112)

**RESPONSE:** The Department thanks the commenter for the support of the proposed rulemaking’s goals. The proposed amendments and new rules are designed to address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to sending school districts include appropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, and that maximum allowable salaries are out of alignment with the salaries at public schools. The proposed code also refocuses spending on the services and supports provided to students by decreasing the percentage of costs that may be used for
administrative expenses and increasing the percentage of costs that must be used for instructional expenses. In summary, the proposed amendments and new rules ensure both the responsible expenditure of public school funds and that public school students receive the special education and related services as determined by their IEPs.

32. **COMMENT:** The commenter stated the proposed rulemaking jeopardizes the continuum of service options that must be made available to students with disabilities. The commenter also stated the proposed rulemaking will inhibit the ability of APSSDs to provide services and supports to students with complex special needs in the most efficient manner rather than addressing APSSDs’ concerns about current Administrative Code and the Department’s concerns about accountability and transparency. (49)

**RESPONSE:** The Department disagrees. The special education and related services provided to students are governed by the decisions made by their IEP team in accordance with the Individuals with Disabilities Education Act (IDEA) and other Federal and State laws and regulations. Because they have chosen to operate as APSSDs in order to receive public school students and charge tuition to sending school districts, APSSDs are required to implement IEPs for students placed there, and the actual cost per student must include all costs required to implement all students’ IEPs and all related services, except for separate billing for certain services allowed by N.J.A.C. 6A:23A-18.3(a)5. The proposed amendments and new rules also address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to public school districts include inappropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The proposed amendments and new rules also refocus spending on services and supports provided to students by decreasing the percentage of costs that may be used for administrative expenses and increasing the percentage of costs that must be used for instructional expenses.

Regarding related services, the proposed rulemaking provides more flexibility for APSSDs, not less. The Department has provided significant allowances for increases in the maximum salaries for related services professionals that make it easier for APSSDs to employ and contract with OTs, PTs, and SLSs than under the current rules. All of the proposed changes are intended to more closely align the rules for APSSDs to expend public school funds with the rules governing public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules ensure both the responsible expenditure of public school funds and that public school students receive the necessary special education and related services as determined by their IEPs.

33. **COMMENT:** The commenter stated the more than 11,000 student who attend APSSDs will no longer be able to receive the services to which they are entitled if the proposed rulemaking is adopted. (364)

**RESPONSE:** The proposed rulemaking will not prevent students who attend APSSDs from receiving the services to which they are entitled, as the proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department. The proposed amendments and new rules also are designed to address concerns that have been raised in the OLS audit and by
other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to sending school districts include appropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The Department has provided significant allowances for increases in the maximum salaries for related services professionals that will make it easier for APSSDs to employ and contract with OTs, PTs, and SLSs. All of the proposed changes are intended to more closely align the rules for expending public funds at APSSDs to the rules for public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules will ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

34. **COMMENT:** The commenter stated some the proposed amendments and new rules would have a devastating effect on APSSDs’ ability to continue serving students. The commenter also stated the State may be left with no appropriate education programs for many of its most severely disabled students if APSSDs close because of the unreasonable and unworkable provisions. (112)

**RESPONSE:** The Department disagrees, as the proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department. The proposed amendments and new rules also are designed to address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to sending school districts include appropriate costs. The Department has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The Department has provided significant allowances for increases in the maximum salaries for related services professionals that make it easier for APSSDs to employ and contract with OTs, PTs, and SLSs. All of the proposed changes are intended to more closely align the rules for expending public funds at APSSDs to the rules for public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules will ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

35. **COMMENT:** The commenter opposed the proposed rulemaking because restricting salaries and training and feeding funds would drastically compromise the capacity of many APSSDs to provide services. The commenter also stated forcing the closure of APSSDs, which serve our most unique students in the State, would cause disruption to the students, their families, and school districts. (766)

**RESPONSE:** The Department disagrees. Since maximum allowable salaries at APSSDs far exceed the average salaries of public school staff members, APSSDs will have no difficulty providing competitive salaries to attract and retain qualified employees. In addition to increasing the maximum allowable salaries for OTs, PTs, and SLSs by CPI, the Department also proposes to require the published total hourly rates to include an
allowance of 35 percent more than the maximum allowable salary plus the annual CPI increase for positions contracted by APSSDs as purchased service providers or independent contractors. The Department also proposes to allow APSSDs to contract with Department-approved clinics and agencies at a rate above the published maximum salary as long as the APSSDs obtain quotes from three clinics or agencies. In simpler terms, there will be no limit on the hourly salary paid to OT, PT, and SLS providers contracted through a Department-approved clinic or agency. Based on these significant allowances, APSSDs will have essentially no restrictions on the amount of hourly salary to be paid to these service providers. Finally, proposed N.J.A.C. 6A:23A-18.3(r) will allow APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary for two non-administrative individual employees. Taken together, the proposed changes will dramatically increase the flexibility for APSSDs in securing OT, PT, and SLS services, as well as the amount APSSDs can pay for the services.

With regard to food costs, the proposed rules offer significant flexibility for APSSDs to offer meal programs to their students. Proposed N.J.A.C. 6A:23A-18.23 will limit only allowable costs for meals. As with all non-allowable costs, APSSDs may choose to serve meals in excess of the costs set forth in this section, but the excess costs will not be included in the tuition charged to sending school districts. However, as APSSDs are funded through public funds, it is appropriate that the meals are aligned the nutritional guidelines followed by all public schools in the State. Additionally, N.J.A.C. 6A:23A-18.23(a)1iv and 2iii clarify that expenditures for medically fragile students that exceed the total allowable food service costs net of reimbursement and/or sales solely due to substitutions to meals when the student’s disability restricts their diet will not be considered non-allowable costs.

36. **COMMENT:** The commenters opposed the closure of a particular APSSD or APSSDs, in general, and stated closure would have a lasting, negative impact on the community and the students served. (57, 192, 282, 292, 442, 456, 541, 631, 695, and 747)

**RESPONSE:** The Department appreciates the commenters concerns about APSSDs. However, the proposed amendments and new rules are not intended to close APSSDs but are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department, as well as make targeted changes to address specific concerns that have been identified by the OLS audit and other investigations into APSSDs. The proposed amendments and new rules are expected to ensure both the responsible expenditure of public funds and that public school students receive the special education and related services as determined by their IEPs.

37. **COMMENT:** The commenters stated that cutting or limiting funds for APSSDs will deny APSSD students the education and therapies they desperately deserve. (71, 130, 138, 188, 325, 519, 759, 860, and 861)

**RESPONSE:** The Department disagrees as the proposed amendments and new rules do not limit funds for APSSD students’ education. Instead, the proposed amendments and new rules will streamline interactions between APSSDs and the Department. The proposed amendments and new rules also address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to public school districts include inappropriate costs. The Department has made very targeted changes to address specific
concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. The Department also has provided significant allowances for increases in the maximum salaries for related services professionals that make it easier for APSSDs to employ and contract with OTs, PTs, and SLSs. All of the proposed changes are intended to more closely align the rules governing how APSSDs expend public school funds with the rules governing public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

38. **COMMENT:** The commenter questioned how the implementation of the proposed rulemaking would be effective across all private schools, such as charter schools and Catholic schools, because each has its own board of directors that oversees costs and spending. (48)

**RESPONSE:** The proposed rulemaking concerns N.J.A.C. 6A:23A-18, which governs the tuition charged to sending school districts by APSSDs. The proposed rulemaking does not govern public schools, including charter schools, or nonpublic schools such as Catholic schools.

39. **COMMENT:** The commenter stated very few of the amendments and new rules proposed at N.J.A.C. 6A:23A-18 include deadlines or timetables for the Department’s approval or response and the proposal should be amended to include timetables. (293 and 355)

**RESPONSE:** The Department disagrees that a timeline is necessary, as the Department makes every effort to provide APSSDs with responses to requests for approval within a reasonable time, considering the nature and complexity of the particular issue and available Department resources. To receive a prompt response, APSSDs can ensure that their submissions to the Department contain all required and necessary information and can remain available for follow-up questions.

40. **COMMENT:** The commenter requested guidance or a timeline by which the Department will be able to accept and approve annual audits. The commenter stated having audit approval in limbo impacts cash flow and the ability to budget for the future. (526)

**RESPONSE:** The Department disagrees that a timeline is necessary, as the Department makes every effort to provide APSSDs with responses to requests for approval within a reasonable time, considering the nature and complexity of the particular issue and available Department resources. To receive a prompt response, APSSDs can ensure that their submissions to the Department contain all required and necessary information, and can remain available for follow-up questions. The Department expects that the clarifications and streamlining in the proposed amendments and new rules will facilitate compliance determinations for both APSSDs and the Department. Moreover, the Department is available to offer guidance and technical assistance to APSSDs that require clarification or other information to facilitate this process.
41. **COMMENT:** The commenter stated the Department intends to use new financial reporting software that has not been pilot tested by APSSDs but has not advised when the software will be available. (862)

**RESPONSE:** The web-based financial reporting system is not a subject of the proposed rulemaking. Nevertheless, the Department held an introductory meeting on April 26, 2017, to model some of the functions of the web-based financial reporting system for stakeholders and to receive their feedback. As the system is still in development, the Department will appropriately phase-in reporting using the web-based system functions in the financial reporting system as they become available and, until that time, financial reporting must be completed via the current system. The Department will provide training, guidance, and technical assistance as components of the reporting system become available.

42. **COMMENT:** The commenter expressed support for the amendments proposed at N.J.A.C. 6A:23A-18.2 to the definitions of “assistant director,” “business manager,” and “director” that will require, as of July 1, 2017, for new APSSD employees in the three positions to hold master’s degrees rather than the currently required bachelor’s degree. (298)

**RESPONSE:** The Department thanks the commenter for the support.

43. **COMMENT:** The commenters stated APSSDs use their websites and brochures to communicate with parents and the general public. The commenters also stated it is unfair to parents of students who attend APSSDs to consider a website, brochures, and a telephone book listing as “advertising.” (2 through 5, 8, 10 through 16, 18 through 21, 23, 24, 25, 27 through 32, 34, 36, 37, 38, 40, 42 through 47, 50 through 53, 55, 56, 58, 60 through 70, 72 through 88, 90, 92, 93, 94, 96, 98, 101 through 106, 109, 111, 114, 115, 117 through 120, 122, 123, 124, 126 through 129, 131 through 134, 136, 137, 141 through 144, 146, 148, 149, 150, 152, 153, 155 through 159, 161, 163 through 174, 176, 178 through 184, 186, 189 through 199, 201 through 207, 209, 211 through 218, 221 through 225, 227 through 232, 234, 236, 237, 238, 241 through 245, 247, 250 through 262, 264 through 279, 281, 284, 285, 287 through 291, 294 through 297, 299 through 303, 305, 306, 307, 309 through 312, 314, 315, 319 through 324, 326 through 329, 331 through 335, 338 through 342, 345 through 354, 356 through 359, 361, 363, 365 through 373, 377, 378, 379, 381, 382, 384 through 390, 392 through 395, 397 through 406, 408, 409, 410, 412, 413, 414, 416, 418 through 422, 425, 426, 427, 429 through 433, 435, 436, 439, 442 through 446, 449, 450, 452 through 455, 457 through 469, 471, 473, 476, 478, 480, 482 through 489, 491, 493 through 497, 499 through 506, 509, 510, 512, 514 through 518, 520, 521, 522, 524, 525, 528 through 537, 539, 540, 542, 543, 544, 547, 548, 550 through 555, 557 through 560, 563 through 566, 569, 570, 571, 573, 574, 575, 577, 578, 580 through 599, 601, 603, 604, 605, 607, 609 through 613, 615, 616, 618, 621 through 625, 627, 628, 630, 632 through 635, 638 through 651, 653 through 656, 658, 660 through 675, 677 through 685, 687 through 694, 697 through 702, 704, 707 through 710, 712 through 716, 718 through 728, 731 through 734, 736 through 740, 742, 743, 744, 746, 748, 754, 755, 757, 758, 760 through 765, 767 through 771, 773, 774, 776 through 781, 783, 784, 786, 787, 789, 790, 791, 793, 794, 796 through 800, 802, 804, 807 through 811, 813, 814, 815, 817, 818, 819, 821 through 835, 837, 839 through 846, 848 through 851, 854, 856, 858, and 870)
RESPONSE: The Department disagrees. Websites, brochures, and telephone book listings are commonly accepted mediums for advertising, but the Department recognizes they may not always be used for that purpose. As a result, the proposed definition of “advertising costs” in N.J.A.C. 6A:23A-18.2 focuses on how the medium is used, specifically whether it is “associated with promoting, marketing, or public relations.” Any cost that is not “associated with promoting, marketing, or public relations,” regardless of the medium, should not be included in advertising costs.

44. COMMENT: The commenter stated N.J.A.C. 6A:23A-18.2 defines an “APSSD” as an “incorporated entity,” which should be changed since some APSSDs are limited liability company (LLCs) and not incorporated entities. (355)

RESPONSE: The Department agrees and proposes to delete “incorporated” in the definition of “APSSD” at N.J.A.C. 6A:23A-18.2 since APSSDs are not all required by the enabling statute at N.J.S.A. 18A:46-21 to be incorporated for approval as a receiving school. The proposed amendment is as follows:

“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).

45. COMMENT: The commenter stated the proposed amendments to the definition of “bonus” at recodified N.J.A.C. 6A:23A-18.2 to include as a bonus a payment to an employee that meets any of the four listed criteria rather than all four criteria will prohibit an APSSD from compensating employees in the form of stipends for additional tasks that are assigned on an as-needed basis, such as curriculum writer, coach, or school bus or lunch monitor. The commenter also said it is not possible for an APSSD to include many of the tasks in the original employee contract and it is not practical to modify a contract for each additional responsibility. The commenter recommended the Department not adopt the amendment that would replace “and” with “or” so stipends can continue to be provided. (293)

RESPONSE: The Department disagrees that the definition of “bonus,” as proposed for amendment, will prevent an APSSD from compensating employees in the form of stipends. Stipends are allowable if included in the employee’s contract or an addendum and if the total amount paid to the employee (including the stipend) does not exceed the maximum allowable salary. The Department disagrees that it is not practical to modify a contract for each additional responsibility, as employees’ responsibilities and the justification for their salary should be documented for audit and desk review purposes.

46. COMMENT: The commenter stated the proposed amendments to the definition of “bonus” at recodified N.J.A.C. 6A:23A-18.2 to include as a bonus a payment to an
employee that meets any of the four listed criteria rather than all four criteria will disallow additional payments (e.g. for added job responsibilities, payment for the waiver of health care coverage, etc.) since they would be considered bonuses. (355)

RESPONSE: The Department disagrees that the amendments proposed to the definition of “bonus” will disallow additional payments to employees for added job responsibilities or for the waiver of health care coverage. APSSDs should include the payment in the employee’s executed contract and ensure the payment is not part of the employee’s base salary in the subsequent year, is not arbitrary, and is not paid solely at the discretion of management. APSSDs also should follow other specific regulations that apply to the specific type of payment for such payments to be considered allowable.

47. COMMENT: The commenter said the definition of “bonus” at N.J.A.C. 6A:23A-18.2, as proposed, will prevent APSSDs from providing stipends for additional work such as curriculum development and sports coaching. (89 and 112)

RESPONSE: The Department disagrees, as stipends for additional work are allowable if APSSDs include the stipends in the employee’s contract or an addendum and the total amount paid to the employee, including the stipend, does not exceed the maximum allowable salary.

48. COMMENT: The commenter opposed the amendments to the definition of “bonus” at N.J.A.C. 6A:23A-18.2 because they will result in APSSD employees and consultants either being uncompensated for work performed or not making themselves available to perform the valuable work. (112)

RESPONSE: The Department disagrees, as APSSDs can ensure that compensation paid to employees does not meet the definition of “bonus” set forth in the definitions section, which mainly ensures that payment of compensation charged in tuition meets the following criteria: is properly documented, is not part of the employee’s base salary in the subsequent school year, is based on specific criteria or qualifications, and is not discretionary. Although bonuses are non-allowable costs under recodified N.J.A.C. 6A:23A-18.6(a)33, APSSDs may pay bonuses to employees using other funds but cannot include the cost of bonuses in the tuition charged to sending school districts.

49. COMMENT: The commenter stated that the proposed amendments at recodified N.J.A.C. 6A:23A-18.2 will define a “full-time” employee as meaning someone who works 35 or more hours per week over the term outlined in the employee contract, which could drive personnel and administrative costs up and labor hours down. The commenter suggested amending the definition of “full time” to delete “or more,” which would establish 35 hours as the basis for the maximum salary calculation and would make the calculation uniform and easy to understand. (355)

RESPONSE: The Department disagrees. A work week of “35 hours or more per week” is a universally accepted definition of full-time. The inclusion of “or more per week over the term outlined in the employment contract” will provide an APSSD the flexibility to determine, in negotiated contracts with its employees, the exact required time for a work week for each individual school and employee. This flexibility should lower an APSSD’s administrative costs.
50. **COMMENT:** The commenters requested clarification regarding language in the proposed amendment at N.J.A.C. 6A:23A-18.3(a)5, specifically what the Department means by “limited exception” in reference to related services and who will determine if a related service provided during the school day is a limited exception. The commenters also asked what the Department means by “typically provided” and who will determine if the nature of a related service is beyond what is “typically provided during the school day.” The commenters further questioned whether the proposed amendments will allow an APSSD to choose to not include any related service in its tuition contract. The commenters stated the proposed language is open to misinterpretation, which could lead to the exclusive use of therapies that would violate a student’s right to a free appropriate public education (FAPE). (637 and 865)

**RESPONSE:** Recodified N.J.A.C. 6A:23A-18.3(a)5, as proposed, codifies the Department’s guidance in its May 3, 2016, Revised Frequently Asked Questions Regarding the Provision of Related Services for Students Placed by Local Education Agencies in N.J. Approved Private Schools for Students with Disabilities. Recodified N.J.A.C. 6A:23A-18.3(a)1iii, as proposed, will require the actual allowable costs for the APSSDs’ program to be “[i]nclusive of all costs required to implement all students’ IEPs and all related services, except as set forth in (a)5 below.” Consistent with this provision, proposed amendments at recodified N.J.A.C. 6A:23A-18.3(a)5 will allow APSSDs to bill separately for the cost of extraordinary services and only related services that fit into the limited exception set forth in the rule. The “limited exception” referenced is detailed in the rule’s second sentence, as amended: “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.”

51. **COMMENT:** The commenter stated N.J.A.C. 6A:23A-18.3(a)5 allows an APSSD to contract separately with a school district to provide services if related services are required beyond what is typically provided. The commenter stated that APSSDs should not be required to contract separately with a school district and should not be required to provide services that are beyond what is typically done at the APSSD. The commenter further stated a different placement should be found for a student if his or her IEP requires OT, PT, and speech therapy services, which are not utilized by some APSSDs, or the student’s IEP should be amended to exclude the services. (355)

**RESPONSE:** The Department disagrees that APSSDs are required to contract separately with a school district for related services. APSSDs are not required to accept students when a school cannot serve a student’s needs as set forth in his or her IEP. The proposed amendments at N.J.A.C. 6A:23A-18.3(a)5 will allow APSSDs to address the costs and provision of related services required by an IEP that are beyond what is typically provided during the school day or if the related services must be provided beyond the school day/operating hours through a separate agreement with sending school districts. The determination of a student’s education and related services is a matter for the student’s IEP team, and IEPs and the programs at APSSDs are not regulated by N.J.A.C. 6A:23A-18. The Department remains available to provide further guidance on this issue.

52. **COMMENT:** The commenter stated recodified N.J.A.C. 6A:23A-18.3(a)2 will require an APSSD to notify sending district boards of education and the Commissioner that an increase will be charged if any of the quarterly financial statements demonstrate the year-
to-date per diem rate exceeds the tentative tuition rate for the year by more than 10 percent. The commenter also stated the proposal will replace the current provision that triggers the notification if an APSSD proposes to charge a final tuition rate greater than 10 percent. The commenter said an APSSD’s first quarter statement will show a year-to-date tuition rate that is 10 percent higher than the tentative tuition rate due to smaller enrollment in a summer program or no summer program. The commenter further stated an APSSD’s notification to sending school districts that there will be a rebill greater than 10 percent when the APSSD does not intend to charge the rebill will cause school districts to pull back students. The commenter recommended maintaining the rule’s current language that requires the notification when an APSSD proposes to charge a rebill greater than 10 percent. The commenter further recommended the Department not adopt the provision in proposed N.J.A.C. 6A:23A-18.3(a)2ii that allows the Department to disallow the rebill. (293)

RESPONSE: The Department disagrees, as the commenter is confusing the way the proposed amendment affects the current requirements. Recodified N.J.A.C. 6A:23A-18.3(a)2, as proposed for amendment, still solely requires notification by an APSSD “that such an increase will be charged” when any of the APSSD’s quarterly financial reports demonstrates the year-to-date per diem rate exceeds the tentative tuition rate for the year by more than 10 percent. Since the only negative outcome from a failure to comply with recodified N.J.A.C. 6A:23A-18.3(a)2 will be that the APSSD may not charge a final tuition rate that is a more than 10 percent increase over the tentative rate, only APSSDs that propose to exceed a 10 percent increase are required to follow this reporting requirement.

The amendment proposed at recodified N.J.A.C. 6A:23A-18.3(a)2 will address a concern outlined in the 2012 Education Transformation Task Force Report that the rates for APSSD tuition have increased substantially since the inception of the current tuition-setting regulations and that the certified actual cost of tuition is almost always determined to be higher than the tentative rate. The Department maintains that the detailed statement set forth in N.J.A.C. 6A:23A-18.3(a)2ii, as well as the consequences outlined, are a responsible way to work toward the goals of clarifying when notice must be provided and ensuring sending school districts and the Department have a better understanding of the reason(s) why there may be a potential increase in tuition.

53. COMMENT: The commenter stated proposed N.J.A.C. 6A:23A-18.3(a)2ii will require an APSSD to include a detailed statement outlining changing costs and/or enrollment and the reason(s) the changes are not offset by decreases in costs if the APSSD intends to charge a final tuition rate more than 10 percent greater than the tentative tuition rate. The commenter stated the requirement will be onerous, especially if any reason deemed unsatisfactory results in disallowed costs, unless the Department is willing to accept more general descriptions of why increases are not offset by decreases. The commenter further stated the proposed provision will have a harsh impact on small APSSDs because even small reductions in enrollment have a large impact on per-pupil costs. The commenter opposed the proposed provision because the possibility that a tuition increase would be disallowed if an APSSD’s explanation is not sufficient, even if it is documented and not disputed, would require the APSSD to cover costs that should be included in tuition. (112)

RESPONSE: Proposed N.J.A.C. 6A:23A-18.3(a)2ii will require an APSSD to notify the Commissioner and sending school districts if it proposes to charge 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. If an APSSD does not provide the notification, the APSSD will not be allowed to charge an increase of more than 10 percent. Proposed amendments at recodified N.J.A.C. 6A:23A-18.3(a) will clarify when notice must be given and will require the notification to contain a detailed statement providing the reason(s) for the proposed increase in tuition, which may include changes in enrollment and services provided.

The Department disagrees the proposed amendment may be extremely onerous for APSSDs. APSSDs are already required to provide the reason for the increase in their notification to the Department and sending school districts, and the other information required in proposed N.J.A.C. 6A:23A-18.3(a)2ii should be available to and considered by APSSDs prior to determining that they must charge a final tuition rate more than 10 percent above the tentative tuition rate. Moreover, the proposed amendment will address a concern outlined in the 2012 Education Transformation Task Force Report that the rates for APSSD tuition have increased substantially since the inception of the current tuition-setting regulations and the certified actual cost of tuition is almost always determined to be higher than the tentative rate. The Department maintains that the detailed statement set forth in N.J.A.C. 6A:23A-18.3(a)2ii, as well as the consequences outlined, are a responsible way to work toward the goals of clarifying when notice must be provided and ensuring sending school districts and the Department have a better understanding of the reason(s) why there may be a potential increase in tuition.

54. **COMMENT:** The commenter stated recodified N.J.A.C. 6A:23A-18.3(a)3, as proposed, does not include percentages that are an accurate reflection of an APSSD’s instructional and administrative costs because the costs of one-to-one aides, which are instructional costs and required for many APSSD students, are excluded from the denominator in the calculation. The commenter also stated administrative costs are driven up by the requirement of cost accounting records, which must be maintained on an aide-by-aide basis. The commenter recommended including the cost of extraordinary services in the instructional numerator and the total cost denominator when calculating the minimum and maximum percentages in recodified N.J.A.C. 6A:23A-18.3(a)3. The commenter also recommended the allocation, at a minimum, of some administrative expenses to extraordinary services as they require extensive coordination and cost accounting. (293)

**RESPONSE:** One-to-one aides are considered an extraordinary service within the meaning of N.J.A.C. 6A23A-18.3(a)5 and are typically billed separately from tuition. As a result, the cost of extraordinary services would not be added to the calculation of instructional costs included in tuition. The purpose of the proposed amendments at recodified N.J.A.C. 6A:23A-18.3(a)3 is to increase the percentage of the tuition paid by public school funds that directly benefits classroom instruction. While including the cost of extraordinary services may increase the total instructional costs at an APSSD, such an increase would be artificial because it is not charged through tuition and would also allow the APSSD to increase their expenditures on the administrative side by a proportional amount. Therefore, the commenter’s suggestion would actually result in a lower percentage of tuition costs directly going to the classroom, rather than a higher amount, as intended by the Department.

55. **COMMENT:** The commenter stated the proposed amendments at N.J.A.C. 6A:23A-18.3(a)3 will require administrative costs to decrease from 25 percent to 22.5 percent during a five-year period, but the impact of the decrease cannot be assessed without the
Department’s release of a proposed chart of accounts and cost category assignments. (355)

**RESPONSE:** The Department disagrees. APSSDs have been aware of proposed amendments that will impact the chart of accounts, such as proposed N.J.A.C. 6A:23A-18.5(a)7i and ii, since the proposed rulemaking was first discussed by the State Board on November 2, 2016. Moreover, the Department has already released a 2017-2018 chart of accounts crosswalk so APSSDs can implement it for their budgetary planning. More importantly, one goal of the proposed rulemaking is to refocus spending of public funds at APSSDs on instruction and related services provided to students, rather than administrative costs; the adjustment of the maximum and minimum percentages in recodified N.J.A.C. 6A:23A-18.3(a) is the most direct and effective way to do so.

56. **COMMENT:** The commenter stated the proposed rulemaking will decrease allowable administrative costs from 25 percent to 22.5 percent during the next six years, which will create an inequitable bias against APSSDs with smaller enrollments because they have a higher percentage of their budgets devoted to administrative costs. The commenter also stated the proposed rulemaking will require the positions of director and business manager to have a master’s degree rather than a bachelor’s degree and APSSDs often recognize advanced academic degrees with salary scale increases. The commenter stated the two provisions are diametrically opposed as the former provision reduces administrative costs and the latter provision increases administrative costs. (200 and 437)

**RESPONSE:** The Department disagrees that holding different-sized APSSDs to the same standard of administrative and instructional costs will create a bias against APSSDs with smaller enrollments. Since APSSDs vary in number of students and cost of program due to students’ individualized needs, percentages of certified actual costs is the most reasonable measure to control maximum administrative and minimum instructional costs at APSSDs.

The Department also disagrees that requiring the positions of director and business manager to hold a master’s degree will increase costs to APSSDs, as the requirement will apply only to new directors and business administrators at APSSDs and all maximum allowable salaries will be frozen at the current amount until the sunset date of N.J.A.C. 6A:23A.

57. **COMMENT:** The commenter stated the regulations should be amended to return the costs associated with having a principal, which is a requirement, to instructional cost categories. The commenter stated the costs associated with a principal were moved to the administrative category when the caps on administrative costs were implemented, which appeared to be a move to make it impossible to achieve spending below the cap. (437)

**RESPONSE:** The Department disagrees. The inclusion of the costs of employing a principal in the administrative cost category, as set forth in the chart of accounts, is consistent with the treatment of the same costs for school districts. Moreover, this requirement has been in effect since at least 2000, and the vast majority of APSSDs have been able to operate within the administrative cost category limitation during that timeframe.

58. **COMMENT:** The commenter stated proposed N.J.A.C. 6A:23A-18.3(g)1 requires indirect costs for shared space to be charged according to the ratio of time used for
activities associated with the APSSD’s programs, operations, and or functions to the total time the facility is used for any purpose. The commenter stated the rule should be amended to “time available to be used by the APSSD” as the space may sit idle (i.e., a gym outside of physical education classes), not be used by either party (in a shared school situation), or used during the day by an APSSD and at night by another party. (355)

RESPONSE: The Department disagrees. The calculation of “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” clearly does not include “idle” time in the ratio as the facility is not being used, but the ratio will be applied to the indirect or direct cost of the jointly used facility, or portion thereof, to apportion idle time between the parties sharing the facility. The purpose of N.J.A.C. 6A:23A-18.3 is to ensure that tuition paid by sending school districts includes only the proportional cost for the APSSD’s programs, operations, or functions for facilities that are used by both the APSSD and another entity. Therefore, both the APSSD and the other entity should be responsible for a proportional amount of the facility’s cost if a facility is used during the day for an APSSD and at night for another purpose.

59. COMMENT: The commenter stated N.J.A.C. 6A:23A-18.3(k), which states the Commissioner will issue an approval of the final tuition rate charged that following a satisfactory compliance review of an audit report, is ambiguous and does not define what the review entails. The commenter also stated school districts have started to withhold payments until a review has been finalized, which presents unnecessary cash flow problems for APSSDs. The commenter further stated it leaves an APSSD open for future cash flow issues and bad debt concerns because the rule does not contain a set time frame and parameters of what constitutes a satisfactory compliance review. (355)

RESPONSE: The Department disagrees. The proposed amendments at N.J.A.C. 6A:23A-18.3(k) merely clarify that rates are not final until the Department has completed a satisfactory compliance review of the independent auditor’s actual cost per student. Setting a deadline for completion of desk reviews would undermine the current flexibility available for the Department and APSSDs to resolve concerns through requests for follow-up information rather than proceeding to litigation.

60. COMMENT: The commenter requested the Department not adopt the amendment proposed at recodified N.J.A.C. 6A:23A-18.3(l) that would add “independent auditor-certified” before “tuition rate charged” because it is a breach of auditor independence since an auditor cannot audit his or her own work. If the rule stated that an independent auditor actually certified the rate, auditors would be auditing their own calculation, which would be an ethics violation. The commenter further stated an APSSD must certify the rate because it is a management function and the auditor must opine on the calculation, which is covered under the independent auditors' report). (355)

RESPONSE: The Department will not adopt the proposed amendment at recodified N.J.A.C. 6A:23A-18.3(l) to add “independent-auditor-certified” before “tuition rate.” The rule will be adopted as follows:

1) 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.

61. COMMENT: The commenter expressed support for proposed N.J.A.C. 6A:23A-18.3(o)1, which will freeze for seven years the maximum salaries at APSSDs with the exception of certain related services provisions. The commenter stated the most important provision is the freezing of maximum salaries for chief school administrator, executive director, and director positions, which have maximum salary rates from $195,851 to $259,005. (298)

RESPONSE: The Department thanks the commenter for the support.


RESPONSE: A temporary freeze on the maximum salaries that may be paid to professionals working at APSSDs provides ample room for salary growth for most teachers and other professionals who directly provide education and related services to students. Currently, the majority of employees at APSSDs earning the maximum salary amount are APSSD directors, not teachers and therapists. With regard to therapists, the Department proposes three special allowances for the maximum salaries in OT, PT, and SLS positions. First, the Department proposes at N.J.A.C. 6A:23A-18.2(o)1i to increase the maximum published salaries for OTs, PTs, and SLSs annually from the 2016-2017 published list of maximum allowable salaries by CPI. Second, the Department proposes at N.J.A.C. 6A:23A-18.2(o)1ii that the published total hourly rates for OTs, PTs, and SLSs contracted by APSSDs as purchased service providers or independent contractors, will include an allowance of 35 percent more than the maximum allowable salary plus the annual CPI increase. Finally, the Department proposes at N.J.A.C. 6A:23A-18.2(o)1iii to allow an APSSD to contract with Department-approved clinics and agencies at a rate above the published maximum salary as long as the APSSD obtains quotes from three clinics or agencies. Regardless of the dollar amount of the quotes, an APSSD may choose to contract with any agency as long as it is not a related party. However, if the APSSD chooses to contract with a related party for OT, PT, and SLS services, the related party must be the lowest quote. As a result, the proposed regulations will provide ample flexibility for APSSDs to hire quality teachers and therapists.

63. COMMENT: The commenters opposed a salary freeze on all APSSD staff because it is unfair and will result in APSSDs being unable to attract and retain qualified staff. The commenters also stated it is unfair to cap salaries at APSSDs at lower levels than public schools. (2, 3, 5, 8, 10 through 16, 18, 19, 21, 23 through 32, 34, 36, 37, 38, 40 through 47, 50 through 53, 55, 56, 58, 60 through 64, 66 through 70, 72 through 88, 90, 92, 93, 94, 96, 98, 101 through 106, 109, 111, 114, 115, 117 through 120, 122, 123, 124, 126 through 129, 131 through 134, 136, 137, 141 through 144, 146, 148, 149, 150, 152, 153, 155 through 161, 163 through 174, 178 through 184, 189 through 199, 201

RESPONSE: A temporary freeze on the maximum salaries that may be paid to professionals working at APSSDs provides ample room for salary growth for most teachers and other professionals who directly provide education and related services to students. Currently, the majority of employees at APSSDs earning the maximum salary amount are APSSD directors, not teachers and therapists. With regard to therapists, the Department proposes three special allowances for the maximum salaries in OT, PT, and SLS positions. First, the Department proposes at N.J.A.C. 6A:23A-18.2(o)1i to increase the maximum published salaries for OTs, PTs, and SLSs annually from the 2016-2017 published list of maximum allowable salaries by CPI. Second, the Department proposes at N.J.A.C. 6A:23A-18.2(o)1i:ii that the published total hourly rates for OTs, PTs, and SLSs contracted by APSSDs as purchased service providers or independent contractors, will include an allowance of 35 percent more than the maximum allowable salary plus the annual CPI increase. Finally, the Department proposes at N.J.A.C. 6A:23A-18.2(o)1i:iii to allow an APSSD to contract with Department-approved clinics and agencies at a rate above the published maximum salary as long as the APSSD obtains quotes from three clinics or agencies. Regardless of the dollar amount of the quotes, an APSSD may choose to contract with any agency as long as it is not a related party. However, if the APSSD chooses to contract with a related party for OT, PT, and SLS services, the related party must be the lowest quote. As a result, the proposed regulations will provide ample flexibility for APSSDs to hire quality teachers and therapists.

COMMENT: The commenter stated low salary caps for specialists, including speech therapists, PTs, and OTs, will make it difficult for APSSDs to find and/or retain qualified staff. (20 176, 186, 203, 222, 233, 235, 274, 276, 340, 364, 366, 415, 484, 500, 526, 544, 545, 546, 582, 595, 598, 696, 745, 801, 852, and 869)

RESPONSE: The Department disagrees that the salary caps for specialists are low. Currently, the maximum allowable salary ranges from $98,499 in Cumberland County to $150,421 in Hudson County for SLSs, from $101,358 in Cumberland County to $152,593 in Bergen County for PTs, and from $101,358 in Cumberland County to $152,593 in Bergen County for OTs. As most specialists and teachers at APSSDs are not paid at, or
near, the maximum allowable salary, the current maximums allow for competitive salary growth in the coming years, even if the maximum allowable salary amounts are frozen.

The proposed rulemaking also provides significant allowances for the salaries of OTs, PTs, and SLSs. The proposed amendments allow for the following: an increase in the maximum salaries for the positions by CPI, 35 percent more than the maximum allowable salary when paying a provider at an hourly rate, and an APSSD to contract at any price with approved clinics or agencies for related services as long as it obtains three quotes. The proposed rulemaking also includes a process for APSSDs to apply for a waiver for two non-administrative staff members to be paid above the maximum allowable salary. As a result, the proposed rulemaking provides APSSDs with more flexibility to attract and retain qualified staff, particularly in the related services areas.

**65. COMMENT:** The commenter expressed opposition to the proposed freeze on maximum salaries for teachers and administrators in APSSDs because it will make it more difficult to attract qualified and specialized staff. *(526 and 852)*

**RESPONSE:** The Department disagrees that APSSDs will be unable to attract and retain qualified staff if APSSDs are held to the maximum salary chart for the 2016-2017 school year for a period of seven years. The freeze of the maximum salaries chart for positions other than OT, PT, and SLS was proposed, in part, to address a concern raised by the OLS audit that noted the maximum allowable salaries for APSSD administrators is out of alignment with administrator salaries in public schools. The disparity is evident when comparing the median pay for an administrator of a kindergarten-through-grade-12 (K-12) school district in the 2015-2016 school year ($122,097) to the maximum salary allowable for an APSSD for the same year ($253,926). Not limited to administrative positions, APSSDs’ maximum allowable salaries for general education teachers significantly exceeded the average salary ($65,338) for a K-12 public school teacher in 2015-2016 in all counties. APSSDs in Middlesex County, for example, had a maximum allowable salary for general education teachers of $161,022 for 2015-2016. In 11 counties, the APSSD maximum allowable salary was at least double the median teacher salary in public K-12 schools. The Department maintains the maximum salaries are more than sufficient for APSSDs to retain qualified staff.

**66. COMMENT:** The commenter recommended the Department amend proposed N.J.A.C. 6A:23A-18.3(o)1i to include board-certified behavior analysts (BCBAs) as one of the positions that will receive an increase in the maximum published salaries because BCBAs provide essential specialized services for students like already-included OTs, PTs, and SLSs. *(112)*

**RESPONSE:** Except for administrative job titles, recodified N.J.A.C. 6A:23A-18.3(o) establishes the maximum salaries for employees at APSSDs as the “list of maximum allowable salaries by job title and county, according to the job titles contained in N.J.A.C. 6A:9B,” and “based on the highest contracted salaries … of certified staff by job title in a district board of education.” The maximum salary chart is created each year using data collected from school districts on the salaries paid to certificated staff. Because there is no certified position of “BCBA” set forth in the regulations governing certification in New Jersey schools at N.J.A.C. 6A:9B, there is no basis in current N.J.A.C. 6A:23A-18, or as proposed for amendment, to calculate a maximum salary for such a position. There is also no certified staff position to provide a basis for the calculation of a maximum salary for such a job title. Instead, the salaries for employees holding unrecognized job
titles is limited to the lowest maximum allowable salary, which currently ranges from $70,440 in Salem County to $124,537 in Hudson County. However, there is a process for APSSDs to obtain executive county superintendent approval for the use of unrecognized job titles in recodified N.J.A.C. 6A:23A-18.3(q) and N.J.A.C. 6A:9B-5.5. As a result, the commenters’ requested change would necessitate a change to the certificates for instructional staff in N.J.A.C. 6A:9B. Therefore, N.J.A.C. 6A:23A-18 is not the appropriate subchapter for such amendments.

67. **COMMENT:** The commenter stated proposed N.J.A.C. 6A:23A-18.3(o)1i should not subject employees and consultants who are OTs, PTs, SLSs, and BCBA's to the maximum published salaries plus CPI increase. The commenter stated the availability of professionals in the four categories is severely limited and salary caps place APSSDs at a competitive disadvantage because other schools and agencies are not subject to the salary limits, which could make it impossible for APSSDs to secure the services needed for students. The commenter further stated APSSDs already lose skilled, experienced OTs and PTs to agencies that serve public schools, which can compensate therapists at almost double the APSSD maximum salaries. The commenter also stated some APSSDs have engaged therapists above the maximum salaries to meet IEP requirements and cover the associated non-allowable costs with non-tuition funds. The commenter further state APSSDs must be allowed to provide whatever services are required by a student’s IEP, pay the necessary cost for the services, and include the actual cost in the tuition calculation. (112)

**RESPONSE:** The Department proposed to freeze the maximum salaries chart for positions other than OTs, PTs, and SLSs to address a concern raised by the OLS audit that noted the maximum allowable salaries for APSSD administrators is out of alignment with salaries for public school administrators. The disparity is evident when comparing the median pay for a K-12 school district administrator in the 2015-2016 school year ($122,097) to the maximum salary allowable for an APSSD for the same year ($253,926). Not limited to administrative positions, APSSDs’ maximum allowable salaries for general education teachers significantly exceeded the average salary ($65,338) for a K-12 public school teacher in 2015-2016 in all counties. APSSDs in Middlesex County, for example, had a maximum allowable salary for general education teachers of $161,022 for 2015-2016. In 11 counties, the APSSD maximum allowable salary was at least double the median teacher salary in public K-12 schools. A BCBA is not a certificated position and, as such, a BCBA’s salary may not exceed the lowest maximum allowable salary for each county, which currently ranges from $70,440 in Salem County to $124,537 in Hudson County. The Department maintains the salary guide is more than sufficient for APSSDs to retain qualified staff.

The proposed rulemaking will not limit all therapists to the maximum allowable salary plus CPI. Rather, the proposed rulemaking will provide significant allowances for the salaries of OTs, PTs, and SLSs. The proposed amendments will provide an increase in the maximum salaries for these positions by CPI, allow payment of 35 percent more than the maximum allowable salary when paying a provider at an hourly rate, and allow APSSDs to contract at any price with approved clinics or agencies for related services so long as they obtain three quotes. The Department maintains the proposed rulemaking will offer significant flexibility to APSSDs to attract and retain qualified individuals in related services positions.
The proposed amendments and new rules also will make significant allowances for the increase of or payment in excess of the current maximum salary that applies to certain related service professionals. Finally, proposed N.J.A.C. 6A:23A-18.3(r) will allow APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary for two non-administrative individual employees. The proposed rule allows for a limited number of approvals for an APSSD that has a highly qualified staff member and would like to exceed the maximum salary. As a result, the Department anticipates that APSSDs will be able to employ qualified staff to provide special education and related services to students within the proposed freeze and/or adjustments to the maximum salary guidelines.

68. **COMMENT:** The commenter stated the seven-year freeze on maximum allowable salaries at proposed N.J.A.C. 6A:23A-18.3(o)3 and (p)1 and 2 should be limited to no more than five years because seven years is unreasonably long. The commenter stated such a long period of no salary increases for all APSSD employees would fail to account for increases in the cost of living for an extended period. The commenter further stated APSSDs will not be able to keep up with salary increases offered by other entities that provide services to students with disabilities, including public schools. *(112)*

**RESPONSE:** The Department has proposed a cap on the maximum allowable salaries for seven years to ensure the timing directly corresponds with the seven years the regulations, as proposed, will remain in effect. The proposed rule will require the Department to initiate, in approximately five years, a study examining the maximum allowable salary structure and to include a data-driven review of maximum salaries and recommendations in formulating the successor maximum allowable salary calculation formula. The proposed rule also will enable the Department, as part of the study, to seek and/or include input from an APSSD representative(s).

In the meantime, the Department anticipates that APSSDs will be able to employ qualified staff to provide the special education and related services to students within the proposed freeze and/or adjustments to the maximum allowable salary.

69. **COMMENT:** The commenter stated, in some cases, the Department’s maximum salary schedule for APSSD staff is not consistent with Administrative Code. The commenter further stated because of this, maximum salaries for most non-administrative employees have not changed for six years and the proposed requirement could extend this calculation error for a total of seven more years. *(862)*

**RESPONSE:** The Department disagrees. The current maximum allowable salaries have been calculated appropriately, pursuant to N.J.A.C. 6A:23A-18.3(o) and (p).

70. **COMMENT:** The commenter stated the Department’s current salary needs guide has not been adjusted for several years except for a few positions and the amounts on included for some positions are incorrectly calculated. The commenter also stated the salary guide needs detailed review and adjustment before it is frozen for an extended period of time. *(112)*

**RESPONSE:** The Department disagrees. The current maximum allowable salaries have been calculated appropriately, pursuant to N.J.A.C. 6A:23A-18.3(o) and (p).
The Department proposed to freeze the maximum allowable salaries chart for positions other than OTs, PTs, and SLSs to address a concern raised by the OLS audit that noted the maximum allowable salaries for APSSD administrators is out of alignment with salaries for public school administrators. The proposed rule will require the Department to initiate, in approximately five years, a study examining the maximum allowable salary structure and to include a data-driven review of maximum salaries and recommendations in formulating the successor maximum allowable salary calculation formula. The data-driven review of salaries will be assisted with the introduction of a new web-based financial reporting system.

71. **COMMENT:** The commenter stated that the Department provided misleading information about APSSD salaries at the February 1, 2017, State Board meeting by comparing maximum APSSD salaries to average public school salaries. The commenter further stated that the Department has miscalculated maximum salaries for APSSD staff and that “the salaries of public school employees who have a 12-month contract with a salary that exceed the current maximums. However, there are public school employees who have a 10-month contract whose salaries would exceed the maximums if adjusted to 12 months. Most, if not all, employees of private schools have a salary based on a full year.”

**RESPONSE:** The Department disagrees. The Department’s presentation, which compared maximum allowable salaries at APSSDs with average salaries at public schools, was made in response to comments during the regulatory process stating that the proposed amendments at N.J.A.C. 6A:23A-18.3(o)3 and (p)1 and 2 will result in APSSDs being unable to attract or retain qualified staff. The Department’s presentation to the State Board, and written responses to comments, illustrated that APSSDs will have no difficulty providing competitive salaries to attract and retain qualified employees since maximum allowable salaries at APSSDs far exceed the average salaries of public school staff members.

The current maximum allowable salaries have been calculated appropriately, pursuant to N.J.A.C. 6A:23A-18.3(o) and (p). There is sufficient flexibility within the current maximum allowable salary to pay APSSD employees a competitive salary and provide them with regular pay increases over the length of time that the proposed amendments will be in effect, if adopted. Ultimately, the proposed rulemaking provides for the Department to examine the maximum allowable salary structure, which will include a data-driven review of maximum salaries and recommendations, if any, for changes to the maximum allowable salary calculation formulas in N.J.A.C. 6A:23A-18.3(o) and (p). This study, aided by the web-based financial reporting system, will provide APSSDs, the Department, and the public with rigorous information about APSSD salaries and how they relate to the current maximum allowable salaries. This information will ensure confidence that the salaries paid to APSSD staff reflect responsible expenditure of public funds and appropriate attention to attracting and retaining qualified certified staff to serve students’ needs.

72. **COMMENT:** The commenter stated current N.J.A.C. 6A:23A-18 sets the maximum allowable compensation for physicians and psychiatrists is the highest maximum salary but the maximum allowable salary for behaviorists is the lowest maximum salary for certified staff. The commenter further stated the amounts are not reasonable levels based on compensation data for New Jersey and recommended the Department determine a reasonable maximum salary for the positions based on a market evaluation.
RESPONSE: Except for administrative job titles, the maximum allowable salaries for APSSD employees is the “list of maximum allowable salaries by job title and county, according to the job titles contained in N.J.A.C. 6A:9B,” and is “based on the highest contracted salaries … of certified staff by job title in a district board of education,” pursuant to recodified N.J.A.C. 6A:23A-18.3(o). The maximum salary chart is created each year using data collected from school districts on the salaries paid to certificated staff. Because there is no certified position of “behaviorist” set forth in the regulations governing certification in New Jersey schools at N.J.A.C. 6A:9B, there is no basis in current or prior Administrative Code to calculate a maximum salary for such a position. There is also no certified staff position to provide a basis for the calculation of a maximum salary for the job title of “behaviorist.” Instead, the salaries for employees holding unrecognized job titles is limited to the lowest maximum allowable salary, which currently ranges from $70,440 in Salem County to $124,537 in Hudson County. However, APSSDs can obtain executive county superintendent approval for the use of unrecognized job titles, pursuant to proposed N.J.A.C. 6A:23A-18.3(q) and N.J.A.C. 6A:9B-5.5. Additionally, behaviorists holding a certificate with a special education endorsement may be paid the salary for a special education teacher. The commenter’s request would necessitate a change to the certificates for instructional staff at N.J.A.C. 6A:9B; therefore, N.J.A.C. 6A:23A-18 is not the appropriate subchapter for such amendments.

73. COMMENT: The commenter stated severe budgetary constraints already prevent APSSDs from offering truly competitive salaries and raises to staff and maximum salaries for APSSD staff are to be frozen until 2024. The commenter questioned whether there are maximum salaries in public school districts and if they are being frozen for the foreseeable future. (561)

RESPONSE: The Department disagrees. First, the proposed amendments and new rules will not impose a freeze on raises to APSSD staff; but the proposal will freeze the maximum allowable salaries that APSSDs may pay to employees. The proposed rulemaking, in part, addresses a concern raised by the OLS audit that noted the maximum allowable salaries for APSSD administrators is out of alignment with salaries for public school administrators. The disparity is evident when comparing the median pay for a K-12 school district administrator in the 2015-2016 school year ($122,097) to the maximum allowable salary for an APSSD for the same year ($253,926). Not limited to administrative positions, APSSDs’ maximum allowable salaries for general education teachers significantly exceeded the average salary ($65,338) for a K-12 public school teacher in 2015-2016 in all counties. APSSDs in Middlesex County, for example, had a maximum allowable salary for general education teachers of $161,022 for 2015-2016. In 11 counties, the APSSD maximum allowable salary was at least double the median teacher salary in public K-12 schools. The Department maintains the salary guide is more than sufficient for APSSDs to retain qualified staff, and will not prevent APSSDs from providing raises to the majority of staff.

74. COMMENT: The commenter stated the proposed rulemaking will threaten an APSSD’s ability to recruit and retain qualified professionals due to salary caps and restrictions on the percent of spending on administration. (432)

RESPONSE: The Department disagrees that APSSDs will be unable to attract and retain qualified staff if APSSDs are held to the maximum allowable salary chart for the 2016-
2017 school year for a period of seven years. The freeze of the maximum allowable salaries chart for positions other than OT, PT, and SLS, was proposed, in part, to address a concern raised by the OLS audit that noted the maximum allowable salaries for APSSD administrators is out of alignment with salaries for public school administrators. The disparity is evident when comparing the median pay for a K-12 school district administrator in the 2015-2016 school year ($122,097) to the maximum allowable salary for an APSSD for the same year ($253,926). Not limited to administrative positions, APSSDs’ maximum allowable salaries for general education teachers significantly exceeded the average salary ($65,338) for a K-12 public school teacher in 2015-2016 in all counties. APSSDs in Middlesex County, for example, had a maximum allowable salary for general education teachers of $161,022 for 2015-2016. In 11 counties, the APSSD maximum allowable salary was at least double the median teacher salary in public K-12 schools. The Department maintains the salary guide is more than sufficient for APSSDs to retain qualified staff.

The proposed amendments and new rules also will make significant allowances for the increase of or payment in excess of the current maximum allowable salary that applies to certain related service professionals. Finally, proposed N.J.A.C. 6A:23A-18.3(r) will allow APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary for two non-administrative individual employees. The proposed allows for a limited number of approvals for an APSSD that has a highly qualified staff member and would like to exceed the maximum salary. As a result, the Department anticipates that APSSDs will be able to employ qualified staff to provide the special education and related services to students within the proposed freeze and/or adjustments to the maximum salary guidelines.

75. **COMMENT:** The commenter stated arbitrary salary freezes that inhibit hiring qualified staff is short-sighted and forcing APSSDs to hire teachers and specialists at below-market wages will lead to a talent drain and staff without the requisite skills. (254)

**RESPONSE:** The Department disagrees that APSSDs will be unable to attract and retain qualified staff if APSSDs are held to the maximum allowable salary chart for the 2016-2017 school year for a period of seven years. First, the proposed amendments and new rules will not freeze all salaries at APSSDs, but will freeze the maximum allowable salary that APSSDs may pay to employees. The freeze of the maximum allowable salaries chart for positions other than OT, PT, and SLS, was proposed, in part, to address a concern raised by the OLS audit that noted the maximum allowable salaries for APSSD administrators is out of alignment with salaries for public school administrators. The disparity is evident when comparing the median pay for a K-12 school district administrator in the 2015-2016 school year ($122,097) to the maximum salary allowable for an APSSD for the same year ($253,926). Not limited to administrative positions, APSSDs’ maximum allowable salaries for general education teachers significantly exceeded the average salary ($65,338) for a K-12 public school teacher in 2015-2016 in all counties. APSSDs in Middlesex County, for example, had a maximum allowable salary for general education teachers of $161,022 for 2015-2016. In 11 counties, the APSSD maximum allowable salary was at least double the median teacher salary in public K-12 schools. The Department maintains the salary guide is more than sufficient for APSSDs to retain qualified staff.

The proposed amendments and new rules also will make significant allowances for the increase of or payment in excess of the current maximum allowable salary that
applies to certain related service professionals. Finally, proposed N.J.A.C. 6A:23A-18.3(r) will allow APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary to two non-administrative individual employees. The proposed allows for a limited number of approvals for an APSSD that has a highly qualified staff member and would like to exceed the maximum allowable salary. As a result, the Department anticipates that APSSDs will be able to employ qualified staff to provide the special education and related services to students within the proposed freeze and/or adjustments to the maximum allowable salaries.

76. **COMMENT:** The commenter stated the salary scales for APSSD employees seem exceptionally high in relation to the salaries for similar jobs in the State. The commenter stated the salary scales for all APSSD employees need to be reduced since they currently are about what State taxpayers can afford. (316)

**RESPONSE:** The Department agrees that the maximum allowable salaries for employees of APSSDs exceed the typical salaries for public school employees. The freeze of the maximum allowable salaries chart for positions other than OTs, PTs, and SLS, was proposed, in part, to address a concern raised by the OLS audit that noted the maximum allowable salaries for APSSD administrators is out of alignment with salaries for public school administrators.

The proposed rulemaking will require the Department, in approximately five years, to initiate a study examining the maximum allowable salary structure and include a data-driven review of maximum salaries and recommendations in formulating the successor maximum allowable salary calculation formula.

77. **COMMENT:** The commenter opposed the proposed limit on salaries and pensions for APSSD employees and questioned how anyone could be expected to live on a limited salary and without a retirement plan/pension. (759)

**RESPONSE:** The Department disagrees that the maximum allowable salaries at APSSDs are insufficient. The lowest maximum allowable salaries for APSSDs ranges from $70,440 in Salem County to $124,537 in Hudson County. The highest maximum allowable salary, which is for a chief school administrator/executive director/director, is currently set at $259,005. Moreover, APSSD employees have retirement plans provided by the APSSD, and the full cost of the retirement benefits is included in the tuition charged to sending school districts.

78. **COMMENT:** The commenter stated the proposed rulemaking would subject APSSDs to new and onerous rules, including limiting depreciation costs, retiree benefits, and costs associated with health insurance waivers, and requiring the annual submission of an extensive disclosure statement. The commenter also stated some of the requirements are well beyond what is needed by the State. (276)

**RESPONSE:** The Department disagrees the proposed amendments and new rules are onerous and well beyond what is needed by the State. The proposed amendments and new rules are designed to reorganize and clarify the current regulations to streamline interactions between APSSDs and the Department. The proposed amendments and new rules also address concerns that have been raised in the OLS audit and by other investigations into APSSDs, including concerns over transparency and that the tuition rates charged to sending school districts include inappropriate costs. The Department
has made very targeted changes to address specific concerns that have been identified, which include spending on luxury cars, travel costs, the percentage of costs that may be used for administrative expenses instead of instructional expenses, and a temporary freeze on the maximum salaries that APSSDs may include in tuition. Along with the targeted changes, the Department has provided significant allowances for increases in the maximum salaries for related services professionals that will make it easier for APSSDs to employ and contract with the professionals. All of the proposed amendments and new rules are intended to more closely align the rules for expending public school funds at APSSDs to the rules for public schools, which are fully able to comply and also provide a free and appropriate public education to their students. In summary, the proposed amendments and new rules ensure both the responsible expenditure of public funds and that public school students receive the necessary special education and related services as determined by their IEPs.

79. **COMMENT:** The commenter requested clarification in the Administrative Code regarding non-certified staff and the appropriate use of the approved titles listing that was intended for certified staff. (355)

**RESPONSE:** Pursuant to recodified N.J.A.C. 6A:23A-18.3(q), APSSDs must employ staff pursuant to the recognized position title list published annually by the Commissioner to employ staff whose positions require certification. APSSDs may also employ directors, assistant directors, and business managers who meet the requirements in recodified N.J.A.C. 6A:23A-18.2. APSSDs cannot employ staff members in a position that requires certification without that employee holding the required certificate; any cost for such an employee is non-allowable. The salary of any other person who is serving in an unrecognized position title is limited to the lowest maximum allowable salary in the county, unless the APSSD obtains prior approval by an executive county superintendent to employ a person in an unrecognized job title, pursuant to N.J.A.C. 6A:9B-5.5.

80. **COMMENT:** The commenter stated the Department has not provided job descriptions for approved job titles as set forth in N.J.A.C. 6A:23A-18. The commenter also sought clarification regarding non-certified staff and the appropriate use of approved job titles. (862)

**RESPONSE:** The Department is not responsible for creating job descriptions for recognized position titles; APSSDs must create job descriptions that match their employee’s duties. However, recodified N.J.A.C. 6A:23A-18.3(q) sets forth the appropriate use of approved job titles and requires APSSDs to use the recognized position title list published by the Commissioner to employ staff whose position requires certification pursuant to N.J.A.C. 6A:23A-18.2. When hiring employees and crafting their job descriptions, APSSDs should be mindful of recodified N.J.A.C. 6A:23A-18.3(q) as a failure to comply may result in non-allowable costs. Additionally, APSSDs may apply to the executive county superintendent on an annual basis to hire staff or consultants in unrecognized job titles. As is the case under the current rules, staff members serving in unrecognized job titles without ECS approval will be restricted to the lowest maximum allowable salary in accordance with proposed N.J.A.C. 6A:23A-18.6(a)9. The proposed amendments at recodified N.J.A.C. 6A:23A-18.3(q) will align the rule with the definitions for clarification; the rule’s substance has not changed.
81. **COMMENT:** The commenter stated N.J.A.C. 6A:23A-18 should include a basis of salary guidelines for consultants (i.e., psychiatrists and physicians). The commenter also stated the Department previously used the maximum salaries for directors for consultant positions without Administrative Code provisions surrounding the expenditures. The commenter further stated the costs for a professional are no different than lawyers’ fees and questioned why one is capped and the other is not. (355)

**RESPONSE:** Psychiatrists and physicians with proper medical credentials are limited to the maximum allowable salary for chief school administrator/executive director/director. The Department maintains that the maximum allowable salary of $259,005, or the hourly breakdown of this amount, is sufficient compensation for those professionals.

82. **COMMENT:** The commenters supported the proposal at recodified N.J.A.C. 6A:23A-18.3(o)1ii to include an allowance of 35 more than the maximum allowable salary rate when publishing the maximum hourly rates for OTs, PTs, and SLSs contracted as purchased service providers or independent contractors. The commenters said the increase will allow APSSDs to deliver appropriate services to students with severe disabilities. (637 and 865)

**RESPONSE:** The Department thanks the commenters for their support.

83. **COMMENT:** The commenters expressed concern that the ability to acquire three quotes when choosing to contract with an approved clinic or agency, as required under proposed N.J.A.C. 6A:23A-18.3(o)1iii, is dependent on cooperation and responsiveness from approved clinics and agencies. The commenters recommended amending the proposed rule to allow APSSDs who “show proof of attempts” to acquire three quotes. (39, 100, 122, 154, 197, 203, 210, 220, 239, 313, 343, 344, 391, 407, 470, 472, 508, 629, 765, 775, 806, 845, and 864)

**RESPONSE:** The Department disagrees. Since there will be virtually no limit on the amount paid for OTs, PTs, and SLSs when contracting with a clinic or agency, the requirement to obtain three quotes from approved clinics or agencies will ensure that APSSDs engage in a deliberate process before contracting with whomever they choose, particularly with regard to contracting with related parties.

84. **COMMENT:** The commenter stated that the proposed amendments at N.J.A.C. 6A:23A-18.3(q), which will freeze maximum salaries for seven years, will hurt the quality of educational programs provided to students with disabilities. The commenter also stated the freeze on maximum salaries should be eliminated or there should be more of a buffer between the current maximum and the proposed maximum salary. The commenter also stated the maximum salary amounts have not been updated/increased during the past several years, except for the executive director level, yet the original intent of the Administrative Code was to provide annual increases for the maximum salary levels. The commenter further stated that increasing the current maximum salaries to where they should be and making those levels the proposed maximum salary still would institute a salary freeze but would allow for some increases to retain staff. (355)

**RESPONSE:** The Department disagrees that the proposed amendments at recodified N.J.A.C. 6A:23A-18.3(o) and (p), which will freeze the maximum allowable salaries at APSSDs for seven years, will hurt the quality of educational programs provided to students. The freeze of the maximum allowable salaries chart for positions other than
OTs, PTs, and SLS, was proposed, in part, to address a concern raised by the OLS audit that noted the maximum allowable salaries for APSSD administrators is out of alignment with salaries for public school administrators. The disparity is evident when comparing the median pay for a K-12 school district administrator in the 2015-2016 school year ($122,097) to the maximum salary allowable for an APSSD for the same year ($253,926). Not limited to administrative positions, APSSDs’ maximum allowable salaries for general education teachers significantly exceeded the average salary ($65,338) for a K-12 public school teacher in 2015-2016 in all counties. APSSDs in Middlesex County, for example, had a maximum allowable salary for general education teachers of $161,022 for 2015-2016. In 11 counties, the APSSD maximum allowable salary was at least double the median teacher salary in public K-12 schools. The Department maintains the salary guide is more than sufficient for APSSDs to retain qualified staff.

The proposed amendments and new rules also will make significant allowances for the increase of or payment in excess of the current maximum allowable salary that applies to certain related service professionals. Finally, proposed N.J.A.C. 6A:23A-18.3(r) will allow APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary for two non-administrative individual employees. That is, the proposed amendments includes a provision for instances where a school allows for a limited number of approvals for an APSSD that has a highly qualified staff member and would like to exceed the maximum salary. As a result, the Department anticipates that APSSDs will be able to employ qualified staff to provide the special education and related services to students within the proposed freeze and/or adjustments to the maximum salary guidelines.

85. **COMMENT:** The commenter requested the deletion of N.J.A.C. 6A:23A-18.3(r), which allows the Commissioner to approve a higher maximum salary for up to two employees per APSSD annually by June 30 if an APSSD has submitted an application by May 1. The commenter stated the provision needs to be deleted because the proposed time frame does not align with budgeting, which takes place in March/April. The commenter further stated the rule is problematic because the Department has not specified if the increase in salary follows the employee if he or she decides to accept employment in another school. (355)

**RESPONSE:** The Department disagrees. Recodified N.J.A.C. 6A:23A-18.3(r) is designed for the rare circumstance in which no more than two non-administrative staff members’ educational impacts are so valuable that it justifies payment of a salary that is higher than any other staff member at any other APSSD or public school. Since only two staff members per APSSD will qualify each year and approvals will be granted “in limited circumstances,” any necessary adjustment(s) to an APSSD’s budget resulting from the granting of a waiver will be minimal. Since an APSSD must apply for the approval to pay a salary in excess of the maximum allowable salary, and the approval is limited to two staff members per APSSD, an approval to exceed the maximum allowable salary will not follow an employee to another school, and the new APSSD can choose to submit its own application.

86. **COMMENT:** The commenters stated the proposal at N.J.A.C. 6A:23A-18.3(r) to cap at two the number of hardship approvals and the limit on the timing of the requests to once per year in May ignores the need that many APSSDs have if there are census increases in the middle of the fiscal year and/or there is a need for more specialized services. The
commenters recommended removing the maximum number of hardship exception approvals in a fiscal year and allowing for requests throughout the year. (39, 100, 122, 154, 197, 203, 210, 220, 239, 313, 343, 344, 391, 407, 428, 470, 472, 508, 629, 765, 775, 806, 845, and 864)

RESPONSE: The Department disagrees. Proposed N.J.A.C. 6A:23A-18.3(r) is designed for the rare circumstance in which no more than two non-administrative staff members’ educational impacts are so valuable that it justifies payment of a salary higher than the salary of any other staff member at any other APSSD or public school in the county. Otherwise, the maximum allowable salaries currently in effect are more than sufficient for APSSDs to retain qualified staff. Nothing in proposed N.J.A.C. 6A:23A-18.3(r) will prevent an APSSD from requesting a waiver throughout the year, but an application must be submitted in advance of the applicable school year and an approved salary will not be in effect until the following school year. Moreover, APSSDs should be mindful that midyear salary increases are governed by recodified N.J.A.C. 6A:23A-18.5(k).

87. COMMENT: The commenter said proposed N.J.A.C. 6A:23A-18.3(r), which would allow APSSDs to seek approval to exceed the maximum allowable salary for two individual non-administrative employees, is an important provision because APSSDs need to engage professionals who have unrecognized job titles such as a child psychiatrist or BCBA. The commenter also stated titles have an unrealistic salary cap of $63 per hour. The commenter further stated the restriction to two positions and the requirement to apply by May 15 for the next school year are arbitrary and needs identified in student IEPs should dictate the number of positions and the requests should be allowed throughout the school year since it is common for an APSSD to accept a student mid-school year. (89)

RESPONSE: Proposed N.J.A.C. 6A:23A-18.3(r) is designed for the rare circumstance in which no more than two non-administrative staff members’ educational impacts are so valuable that payment of a salary that is higher than any other staff member at any other APSSD or public school is justified. As a result, increasing the number of positions to more than two would not be consistent with the regulation, which unequivocally states that such waivers will be “granted in limited circumstances.” The Department disagrees that the maximum allowable salaries at APSSDs are unrealistic. The lowest maximum allowable salaries for APSSDs ranges from $70,440 in Salem County to $124,537 in Hudson County. The highest maximum allowable salary, which is for chief school administrator/executive director/director, is currently $259,005.

Nothing in proposed N.J.A.C. 6A:23A-18.3(r) will prevent an APSSD from requesting such a waiver throughout the year prior to the May 1 deadline, but an application must be submitted in advance of the applicable school year and an approved salary will not be in effect until the following school year. Moreover, APSSDs should be mindful that midyear salary increases are governed by recodified N.J.A.C. 6A:23A-18.5(k).

88. COMMENT: The commenter stated the proposal to prohibit new APSSDs from beginning operations until July 1 of the year after it is approved goes against common-sense business practices. The commenter also stated the new proposal, coupled with other limitations on opening a new APSSD that were put into place during the last few years, will prevent new APSSDs from opening in the future. (437)
RESPONSE: The Department disagrees. Generally speaking, it is logistically difficult for both APSSDs and sending school districts when an APSSD begins mid-school year. Except for the limited circumstances set forth below, the immediate need for a new APSSD is unlikely to occur mid-year, as most students’ IEPs are finalized at the start of the school year and placement decisions are made based on existing programs. Therefore, the proposed amendments at recodified N.J.A.C. 6A:23A-18.3(b) are designed not to limit the opening of new APSSDs but to ensure new APSSDs are successful when they open.

The proposal includes an exemption from the July 1 start date for an APSSD “operating in and affiliated with a public school district.” This provides flexibility for an APSSD that will operate within a school district and serve a specific student or small group of students if the need for the required services occurs mid-year.

89. COMMENT: The commenter stated proposed N.J.A.C. 6A:23A-18.4(h), which will prohibit new APSSDs from beginning operations until July 1 of the year after it is approved, imposes a hardship on APSSDs that are approved in July or August and want to begin operations in September. The commenter also stated the proposed rule will impose a hardship if there is a need for a new program or a program moves mid-year to another county and is considered a new school. The commenter also stated there is no similar provision for traditional public schools or charter schools, and the proposed rule should be deleted. (293)

RESPONSE: The Department disagrees. Generally speaking, it is logistically difficult for both APSSDs and sending school districts when an APSSD begins mid-school year. Except for the limited circumstances set forth below, the immediate need for a new APSSD is unlikely to occur mid-year, as most students’ IEPs are finalized at the start of the school year and placement decisions are made based on existing programs. Therefore, the proposed amendments at recodified N.J.A.C. 6A:23A-18.3(b) are designed not to limit the opening of new APSSDs but to ensure new APSSDs are successful when they open.

The proposal includes an exemption from the July 1 start date for an APSSD “operating in and affiliated with a public school district.” This provides flexibility for an APSSD that will operate within a school district and serve a specific student or small group of students if the need for the required services occurs mid-year.

90. COMMENT: The commenter opposed the provisions in proposed N.J.A.C. 6A:23A-18.4(h) to prohibit new APSSDs from beginning operations until July 1 of the year after it is approved because opening a new APSSD mid-school year does not cause disruption for sending school districts, APSSDs, or students. The commenter stated a new APSSD’s opening is dependent on a variety of factors, including construction delays, permitting processes, and coordination with sending school districts, and an APSSD should not have to wait another year to open if it is approved in August and all other issues have been resolved. (112)

RESPONSE: The Department disagrees. In general, it is logistically difficult for both APSSDs and sending school districts when an APSSD begins operation mid-year. Except for the limited circumstances set forth in the proposed rule’s exception, the immediate need for a new APSSD is unlikely to occur mid-year since most students’ IEPs are finalized at the start of the school year and placement decisions are made based on
existing programs. The proposed rule includes an exemption from the July 1 start date for an APSSD “operating in and affiliated with a public school district,” which will provide flexibility for an APSSD that will operate within a school district and serve a specific student or small group of students if the need for the required services occurs mid-year.

91. **COMMENT:** The commenter requested clarification of the proposed amendments at N.J.A.C. 6A:23A-18.4(h). The commenter stated the rule requires APSSDs to wait until the next school year to operate. The commenter stated it is implied the section applies to APSSDs already in existence that add campuses/types of classes during the school year. The commenter also stated the rule should include a time requirement by which the Commissioner would need to respond or should allow APSSDs to operate at any time during the year. The commenter further stated it is difficult to coordinate an APSSD’s opening when there could be a lag between operations and the opening of school. (355)

**RESPONSE:** The Department disagrees. In general, it is logistically difficult for both APSSDs and sending school districts when an APSSD begins operation mid-year. Except for the limited circumstances set forth in the proposed rule’s exception, the immediate need for a new APSSD is unlikely to occur mid-year since most students’ IEPs are finalized at the start of the school year and placement decisions are made based on existing programs. Proposed N.J.A.C. 6A:23A-18.4(h) includes an exemption from the July 1 start date for an APSSD “operating in and affiliated with a public school district,” which will provide flexibility for an APSSD that will operate within a school district and serve a specific student or small group of students if the need for the required services occurs mid-year. The proposed amendments at N.J.A.C. 6A:23A-18.4 expressly apply to a current APSSD that is adding additional classrooms to an existing approved education program at a new location or opening a new program, as they are considered a new APSSD pursuant to proposed N.J.A.C. 6A:23A-18.4(a)1.

The Department disagrees that the rule should include a time requirement by which the Commissioner must respond to a request for approval, as it would not provide enough flexibility for the Department to give the application for an APSSD the necessary consideration, especially considering the uniqueness of each program.

92. **COMMENT:** The commenter stated that the proposed amendments at recodified N.J.A.C. 6A:23A-18.5(a)7 will place the first $15,000 of attorneys’ fees for litigation into the administrative cost category, which will create a higher probability of financial failure of APSSDs. (355)

**RESPONSE:** The Department disagrees. Proposed N.J.A.C. 6A:23A-18.5(a)7i will require that APSSDs include the first $15,000 of any litigation in the calculation of the administrative cost category limitation. Any litigation costs beyond the first $15,000 will be accounted for outside of the cost category limits. Because APSSDs are currently limited to expending 25 percent on administrative costs, gradually decreasing to 22.5 percent by the 2021-2022 school year, the proposed rule is expected to encourage APSSDs to resolve concerns with sending school districts or the Department. Additionally, the proposed provision directly addresses a concern raised by the OLS audit of the Department that identified litigation costs of $836,000 in fiscal year 2011 and $554,000 in fiscal year 2012 for APSSDs that was included in the tuition paid by sending school districts, none of which was disallowed in the Administrative Code.
93. **COMMENT:** The commenters stated not allowing APSSDs to write-off any and all uncollected accounts arising from the provision of extraordinary services will encourage sending school districts and other public entities to delay or refuse payment, which will result in increased costly litigation. (51, 63, 109, 119, 194, 212, 247, 268, 301, 309, 311, 326, 341, 350, 427, 435, 464, 524, 525, 585, 598, 624, 634, 658, 667, 693, 722, 723, 725, 726, and 745)

**RESPONSE:** The Department disagrees. Recodified N.J.A.C. 6A:23A-18.5(a) will not prohibit APSSDs from writing off any and all uncollected accounts; rather, it sets reasonable standards for including such debts in the tuition charged to sending school districts. Since extraordinary services are typically charged to school districts outside the tuition, any bad debts stemming from extraordinary services should not subsequently be charged in tuition merely because they become uncollectable.

94. **COMMENT:** The commenter stated recodified N.J.A.C. 6A:23A-18.5(a)3 should be amended to increase the capitalization floor for fixed assets to $5,000 rather than the current $2,000. The commenter also stated the floor of $2,000 will be in place for more than 15 years without an inflation adjustment if the amount is not increased as part of this rulemaking. The commenter further stated the Federal government and many state agencies currently use a $5,000 threshold. The commenter recommended amending recodified N.J.A.C. 6A:23A-18.5(a)3 to mirror the current Federal capitalization floor, which automatically will adjust in the future. (293 and 355)

**RESPONSE:** The Department disagrees. The requirement for APSSDs to capitalize fixed asset expenditures of $2,000 or more is consistent with the requirements for school districts.

95. **COMMENT:** The commenter stated the proposed amendments at recodified N.J.A.C. 6A:23A-18.5(a)4i will require an APSSD to capitalize leasehold improvements to an existing structure and depreciate over the remaining lease term and any extensions. The commenter also stated management may have no intention of renewing all the lease term options, which means there would be a substantial portion of the remaining leasehold improvement cost not depreciated. The commenter said this would result in a large write-off in the year of lease termination and a spike in tuition. The commenter further stated an APSSD should have the discretion to include or exclude lease period extensions when assigning depreciation periods and to write off the remaining portion of the next book value of the leasehold improvement in the year of lease termination. (293 and 355)

**RESPONSE:** The Department disagrees. The amendment at N.J.A.C. 6A:23A-18.5(a)4i was proposed to deter APSSDs from charging the cost of leasehold improvements at the end of a lease’s term in the tuition charged to sending school districts, when public school students enrolled in the APSSD will never benefit from the improvements. While this may result in undepreciated leasehold improvements, allowing an APSSD to depreciate the leasehold improvements beyond the lease’s term would be contrary to the purpose for the proposed amendments at N.J.A.C. 6A:23A-18.5(a)4, which is to ensure that leasehold improvements benefit the school’s students. The Department disagrees that the proposed amendment will result in a large write-off in the year of lease termination and a spike in tuition, as any depreciation on a leasehold improvement assignable to a period subsequent to lease termination is prohibited by the rules, as proposed. Specifically, proposed N.J.A.C. 6A:23A-18.5(a)4iii will 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 proposed N.J.A.C. 6A:23A-18.5(a)4i or ii for any fiscal year. Proposed N.J.A.C. 6A:23A-18.5(a)4iv will prohibit an APSSD from depreciating a leasehold improvement(s) made to a structure that does not directly benefit public school placement students or that is in excess of amounts determined pursuant to proposed N.J.A.C. 6A:23A-18.5(a)4i, ii, or iii.

96. **COMMENT:** The commenter stated proposed N.J.A.C. 6A:23A-18.5(a)4iii indicates an APSSD cannot depreciate a structure that is not in service. The commenter also stated an APSSD’s structure may not be in use if it does not have a summer program; therefore, the definition of “in use” in the proposed rule should be further defined. The commenter further said the proposed rule should consider an APSSD’s structure to be “in use” regardless of whether the APSSD has a 10- or 12-month program. (293 and 355)

**RESPONSE:** The Department disagrees with the commenter’s interpretation of the proposed rule. The proposed rule will ensure that APSSDs do not include depreciation of a structure in the tuition charged to sending school districts when that structure is not in use for the APSSD. This does not include a structure that is used for student instruction or services during the months that school is in session.

97. **COMMENT:** The commenter stated clarification regarding proposed N.J.A.C. 6A:23A-18.5(a)4iv is necessary. The commenter also stated that the rule prevents an APSSD from depreciating a structure that does not directly benefit public school students being educated and questioned whether the regulation applies to an APSSD’s business office, which provides no direct benefit to students. (355)

**RESPONSE:** The Department disagrees that the regulation applies to an APSSD’s business office. N.J.A.C. 6A:23A-18.5(a)4iv is intended to ensure that structures that are being used for programs other than the APSSD are not charged in tuition to sending school districts. However, APSSDs should be mindful of N.J.A.C. 6A:23A-18.5(d), which requires APSSDs to obtain county office approval for the use of an administrative or business office at a location outside of the APSSD.

98. **COMMENT:** The commenter stated the proposed amendments at recodified N.J.A.C. 6A:23A-18.5(a)7 to replace the provision allowing the Commissioner to approve requests for the use of an alternative chart of accounts with a statement that the Department will not consider requests effective July 1, 2017, should not be adopted. The commenter also stated the use of the new accounting software package also should be reconsidered since the requirement is not feasible or cost-effective for APSSDs that are part of a larger organization. (293)

**RESPONSE:** The Department disagrees. Only one APSSD has ever used the provision allowing the Commissioner to approve requests for the use of an alternative chart of accounts. Since that APSSD is already approved to do so, and the amendments proposed at recodified N.J.A.C. 6A:23A-18.5(a)7 include a provision allowing APSSDs that received approval prior to July 1, 2017, to continue using an alternative chart of accounts, the amended regulation will have no impact on APSSDs.

The Department has already released a chart of accounts crosswalk for APSSDs for the 2017-2018 school year. The Department also is prepared to offer guidance, training, and technical assistance to APSSDs, accountants, and auditors as the chart of accounts is implemented and if the proposed code is adopted.
The Department is not introducing an accounting software package, but rather a web-based financial reporting system consistent with the reporting requirements for APSSDs. The web-based financial reporting system is not a subject of the proposed rulemaking; however, the Department disagrees that the reporting system is not feasible for APSSDs that are part of a larger organization as the Department is changing the system for reporting and not the reports that APSSDs will be required to provide to the Department for compliance purposes. As with the new chart of accounts, and all of the proposed amendments and new rules, the Department is committed to providing guidance, training, and technical assistance as implementation of the changes proceeds in the coming school years.

99. **COMMENT:** The commenter supported the provision in proposed N.J.A.C. 6A:23A-18.5(a)7i that will include the first $15,000 in litigation fees in the administrative cost category. However, the commenter objected to the other provisions in the proposed rule and in proposed N.J.A.C. 6A:23A-18.5(a)7ii that will apply the rule to $15,000 per case and to redefine “litigation” to include civil suits and to mean a suit brought by or against an APSSD in State or Federal court and also at State and Federal agencies where a docket or tracking number is assigned. The commenter recommended amending proposed N.J.A.C. 6A:23A-18.5(a)7i to delete “or other costs per litigation” in the first sentence and “per litigation and” in the second sentence. The commenter also recommended amending proposed N.J.A.C. 6A:23A-18.5(a)7ii to omit civil suits. (293)

**RESPONSE:** The Department thanks the commenter for the support as the provision was proposed to address a concern raised by the OLS audit of the Department that identified litigation costs of $836,000 in fiscal year 2011 and $554,000 in fiscal year 2012 for APSSDs that was included in the tuition paid by sending school districts, none of which was disallowed by Administrative Code. The Department disagrees with the commenter’s suggestions as they would contradict the proposed amendment’s purpose, which is to encourage APSSDs to resolve concerns with sending school districts or the Department. A large majority of APSSDs’ litigation costs is the result of administrative cases that challenge non-allowable costs in a tuition calculation. Therefore, excluding administrative matters or civil suits from the definition of “litigation” for the purpose of N.J.A.C. 6A:23A-18.5(a)7i would not be inclusive of all of an APSSD’s litigation spending. The proposed amendments at N.J.A.C. 6A:23A-18.5(a)7 will require APSSDs to fit their initial (up to $15,000) litigation costs per litigation per fiscal year within the allowable percentage of tuition that may be used for administrative costs. Thus, an APSSD must either limit the total number of cases it pursues, eliminate other administrative costs, increase its instructional costs, or a combination of the three -- any of which would further the goals of the proposed amendments and new rules. The commenter’s suggestion to delete “per litigation” would be contrary to the proposed rule’s intent, as APSSDs would have no incentive to resolve matters prior to litigation or to engage in other administrative efficiencies to offset litigation expenses.

100. **COMMENT:** The commenter stated that the Department has not provided important clarifications or issued a chart of accounts. The commenter further stated it is impossible for APSSD accountants and auditors to understand the proposed changes without more details, such as account definitions and assigned costs categories. (862)

**RESPONSE:** The Department disagrees. APSSDs and their auditors and accountants have been aware of proposed amendments to the regulations that will impact the chart of
accounts, such as proposed N.J.A.C. 6A:23A-18.5(a)7i and ii, since the proposed amendments and new rules were first discussed by the State Board on November 2, 2016. Since then, the Department has responded to numerous comments requesting clarification or changes to the proposed rulemaking, and has proposed Department-initiated changes that ultimately resolve commenters’ concerns. Moreover, the Department has already released a 2017-2018 chart of accounts crosswalk so APSSDs can implement it for their budgetary planning. However, the proposed rulemaking will make targeted changes to the system for determining the tuition charged by APSSDs. Other than the targeted changes, the basic system for calculating APSSD tuition remains the same. To the extent that implementation requires further questions than those addressed during the regulatory process, the Department is ready to assist APSSDs, accountants, and auditors with guidance, training, and technical assistance.

101. COMMENT: The commenter requested clarification regarding recodified N.J.A.C. 6A:23A-18.5(c) and proposed N.J.A.C. 6A:23A-18.5(c)8 that requires APSSDs to have a contract with each employee and for all benefits to be detailed in the contract. The commenter stated the amount of turnover in aide positions is extremely high, which makes the proposal an added administrative burden when administrative costs percentages are decreasing. The commenter also stated that most businesses do not have this requirement. The commenter requested clarification regarding benefits, specifically whether the contract should include all benefits offered by an APSSD or only the benefits applicable to the particular staff member. The commenter stated the APSSD’s handbook would serve in this capacity if the rules are meant to cover all of the benefits offered by an APSSD. The commenter further stated the administrative burden on APSSDs will increase if the rules are meant to include only the benefits applicable to the particular staff member. (355)

RESPONSE: The employment contract required by recodified N.J.A.C. 6A:23A-18.5(c) must include the benefits applicable to the particular staff member, but does not need to recite all benefits generally available at the APSSD. APSSDs should be mindful that fringe benefits must be in accordance with N.J.A.C. 6A:23A-18.6(a)23. The Department disagrees that this is an undue administrative burden because the contracts will provide sufficient financial documentation for audit and desk review purposes, which will streamline the regulatory oversight of APSSDs.

102. COMMENT: The commenter stated recodified N.J.A.C. 6A:23A-18.5(f)1 through 12 separately detail premium-only plans, cafeteria plans, and Section 125 plans but they are all covered under Section 125 plans and should be revised. (355)

RESPONSE: The Department disagrees as recodified N.J.A.C. 6A:23A-18.5(f) is meant to be inclusive of all the employee fringe benefits listed. Reference to only Federal law may exclude plans available under other laws.

103. COMMENT: The commenter stated recodified N.J.A.C. 6A:23A-18.5(f)1 allows an employee to receive a payment for waiver of health benefits and requires the APSSD to maintain on file evidence that the employee had other valid health insurance during the year. The commenter stated “during the year” should be changed to “annually” since the former implies an APSSD would have to track open enrollment period of each employee’s insurance carrier, which would be an enormous administrative task. (355)

RESPONSE: The Department disagrees that this is an enormous administrative task, as
the regulation requires that an employee provide proof of other valid health insurance coverage during the fiscal year to the APSSD to receive payment for waiver of health insurance coverage.

104. **COMMENT:** The commenter expressed support for the proposed amendments at recodified N.J.A.C. 6A:23A-18.5(h), which will require the Department to annually publish each APSSD’s audited financial statements and associated report or documents. The commenter stated the most important provision is the annual publication of the audited financial statements because it will provide taxpayers and school districts with much needed information regarding the type and amounts of expenses occurred by an APSSD, the school’s average daily enrollment, and all related party transactions. The commenter further stated the public will be able to analyze and compare how each APSSD spends funds that make up the certified tuition rate charged to school districts. The commenter also stated the rule’s provisions will provide the public with access to the types and amounts of costs incurred by an APSSD that originally were part of the certified tuition rate but were determined by the Department to be non-allowable costs, which may result in a revised certified tuition rate charged. (298)

**RESPONSE:** The Department thanks the commenter for the support.

105. **COMMENT:** The commenter stated the amendments proposed at recodified N.J.A.C. 6A:23A-18.5(h) to place a nonprofit APSSD on conditional status if the school does not eliminate an unrestricted fund deficit within three years will cause an APSSD to experience a more rapid decline in its financial position because the APSSD will not be allowed to accept new students. The commenter also stated the proposed amendments are discriminatory to smaller APSSDs or APSSDs that are located in, or accept students from, low-income/urban areas because the APSSDs do not have the development staff or volunteers necessary to conduct strong fundraising efforts.

The commenter further said the expansion of school facilities and programs, which generate unrestricted revenues, is a factor in an APSSD maintaining an unrestricted surplus. The commenter also said the proposed amendments will make it more difficult for an APSSD to replace or improve outdated facilities for larger and improved programs, and APSSDs are left with few options if they cannot expand.

The commenter recommended the Department further amend the last sentence of recodified N.J.A.C. 6A:23A-18.5(h), which, as proposed, would require an APSSD be placed on conditional approval status until a deficit unrestricted fund balance is eliminated if the APSSD fails to eliminate the deficit by the end of year three, to replace “by the end of year three” with “by the end of a three-year period and does not show evidence of making good-faith efforts to decrease the balance.” (293)

**RESPONSE:** The Department disagrees. N.J.A.C. 6A:23A-18.5(h) will apply only to APSSDs that have both a positive public school placement restricted working capital fund balance and also report a net deficit unrestricted fund balance for more than three consecutive years. In other words, the rule will apply to APSSDs that have the means to eliminate deficits but do not do so. Deficits typically arise from expenditures in excess of revenue. Unrestricted fund balance deficits materialize as a result of a nonprofit APSSD incurring costs contrary to N.J.A.C. 6A:23A-18.1. Since the associated costs may not be included in the tuition rate charged to sending school districts, a nonprofit APSSD can avoid being placed on conditional approval by not including non-allowable costs in
tuition charged to sending school districts or by finding other funding sources to support costs deemed non-allowable within the required three-year period.

106. **COMMENT:** The commenter stated that the proposed amendments at N.J.A.C. 6A:23A-18.5(h) will put an APSSD on conditional status if deficits in unrestricted fund balances are not eliminated after three years, which will create a higher probability of financial failure of APSSDs. *(355 and 795)*

**RESPONSE:** The Department disagrees. Unrestricted fund balance deficits typically materialize as a result of a nonprofit APSSD incurring costs contrary to N.J.A.C. 6A:23A-18.1. Since the associated costs may not be included in the tuition rate charged to sending school districts, a nonprofit APSSD must find other funding sources to support costs deemed non-allowable or limit its expenses to allowable costs.

107. **COMMENT:** The commenter stated the proposed amendments at recodified N.J.A.C. 6A:23A-18.5(i) and 18.6(a)66 limiting unused sick benefit payouts to one percent of an employee’s current salary will unintentionally cause employees to adopt a “use or lose” mentality, which will increase staff absenteeism and cause a staffing disruption. *(89, 293, 355, and 561)*

**RESPONSE:** The Department disagrees. The proposed amendments at N.J.A.C. 6A:23A-18.5(i) merely update the existing provisions for clarification and to refer to the most recent standard of practice as set forth by the Financial Accounting Standards Board (FASB). Regarding the commenter’s disagreement with the proposed amendments at N.J.A.C. 6A:23A-18.6(a)66, concerns with chronic absenteeism or misuse of sick time is a personnel issue for the APSSD to consider in its evaluations of employees. Moreover, nothing in proposed N.J.A.C. 6A:23A-18.6(a)66 will prohibit accumulation of sick pay during a term of employment; the proposed rule will only limit the payout of sick days in a single year to a reasonable amount of one percent of an employee’s pay.

108. **COMMENT:** The commenters suggested changing the proposal at recodified N.J.A.C. 6A:23A-18.5(i) and 18.6(a)66 to a cap on the total payout similar to public schools, such as up to 50 percent of unused sick days per year up to $15,000 payable only at the time of voluntary termination of employment or per an APSSD’s employee policy manual. The commenter further suggested including a provision that grandfathers current accrued sick benefits permitted under current rules since APSSDs are contractually required to pay the amounts. *(293 and 355)*

**RESPONSE:** The Department disagrees. The proposed amendments at N.J.A.C. 6A:23A-18.5(i) merely update the existing provisions for clarification and to refer to the most recent standard of practice as set forth by FASB. Moreover, nothing in proposed N.J.A.C. 6A:23A-18.6(a)66 will prohibit accumulation of sick pay during a term of employment; the proposed rule will only limit the payout of sick days in a single year to a reasonable amount of one percent of an employee’s pay.

109. **COMMENT:** The commenter stated recodified N.J.A.C. 6A:23A-18.5(i) should be amended further because the FASB references are outdated and inconsistent within Department-permitted accounting. *(293)*

**RESPONSE:** The Department disagrees. The FASB references in the proposed rule are up-to-date and include “as amended and supplemented” to indicate that APSSDs must
follow the most recent FASB standards for accumulating and carrying over from year to year unused sick and/or vacation leave, in addition to other more specific requirements set forth in N.J.A.C. 6A:23A-18.

110. **COMMENT:** The commenter requested the deletion of N.J.A.C. 6A:23A-18.5(i) because it is contradictory and irrelevant. The commenter stated the rule requires an APSSD that allows employees to accumulate and carryover from year to year unused sick and/or vacation leave to do so per the FASB 43 accounting standard. The commenter stated that all FASB references should be removed since FASB has been recodified into Accounting Standards Codification (ASC). FASB 43 was replaced by ASC 710. The commenter also stated the reference does not make sense as ASC 710 does not allow sick days to be accrued but deals with the booking of a liability for unused vacation days but Administrative Code does not allow for these types of accrual. (355)

**RESPONSE:** The Department disagrees. The proposed amendments at N.J.A.C. 6A:23A-18.5(i) merely update the existing provisions for clarification and refer to the most recent standard of practice as set forth by a statement of the FASB. The proposed amendments also indicate that amendments and supplements, including codification in the Accounting Standards Codification, should be referenced when determining the appropriate generally accepted accounting principles (GAAP) standard for this rule. Furthermore, ASC 710 does address the accrual of sick pay benefits.

111. **COMMENT:** The commenter stated the proposal to prohibit APSSDs from carrying bad debt will result in the closure of APSSDs because sending school districts will have an incentive to not make tuition payments and APSSDs will have no recourse. The commenter also stated APSSDs will need increased legal services to deal with contract non-compliance by sending school districts, but another proposed provision severely limits the amount APSSDs can spend on legal fees. (437)

**RESPONSE:** The Department disagrees as the proposed amendments at recodified N.J.A.C. 6A:23A-18.6(a)29 do not prohibit an APSSD from writing off uncollected amounts for their own financial purposes pursuant to laws prescribed by the Internal Revenue Code (IRC). Recodified N.J.A.C. 6A:23A-18.6(a)29, as proposed, merely sets reasonable limits on the “bad debts” that may be included in the tuition charged to sending school districts. To the extent this comment is directed at a prior version of the proposed amendments that excluded uncollected accounts receivable “from a State agency or entity, sending district board of education, charter school board of trustees, or renaissance school” from allowable bad debts, the regulation as proposed for amendment no longer contains this exclusion as APSSDs still must demonstrate that they made “a reasonable effort … to collect such accounts receivable.” A “reasonable effort” is a sufficient measure to prevent an APSSD from including the amounts for which the APSSD failed to timely bill as a “bad debt” in the tuition charged to sending school districts.

112. **COMMENT:** The commenter questioned the proposed amendment at N.J.A.C. 6A:23A-18.6(a)18 that will reduce from $3,000 to $1,500 the limit on the costs of food/beverages for activities such as staff meetings, parent teacher meetings, workshops and professional development seminars. The commenter stated the Department should consider increasing this threshold to a percentage instead of a dollar threshold, if the goal is to reduce costs, and encouraging in-house seminars and workshops as they are
often times less expensive than sending staff members out (i.e. conference charges, including food and beverage and travel expenses). (355)

**RESPONSE:** The Department disagrees. Including only $1,500 of the costs of food/beverages for activities such as staff meetings, parent teacher meetings, workshops and professional development seminars in tuition charged to sending school districts is reasonable. APSSDs may provide such food or beverages at their own discretion but may not include them in the tuition charged to sending school districts.

113. **COMMENT:** The commenter stated the proposed amendment at N.J.A.C. 6A:23A-18.6(a)27 to include as non-allowable costs the interest costs on long-term loans or mortgages if one of three conditions apply rather than all three would preclude an APSSD from refinancing long-term mortgages for major building improvements, which would leave APSSDs with no means of financing capital improvements. The commenter recommended the Department not adopt the amendment at N.J.A.C. 6A:23A-18.6(a)27ii to replace “and” with “or.” (293)

**RESPONSE:** The Department disagrees. The proposed amendment at N.J.A.C. 6A:23A-18.6(a)27ii will clarify that interest costs on loans are non-allowable when any of the three circumstances set forth in N.J.A.C. 6A:23A-18.6(a)27 occur, which is consistent with the Department’s interpretation of the rule. Logically, the circumstances outlined in this provision could never occur at the same time, so the current conjunction “and” must be replaced with “or.” The proposed amendment will have no effect on the interest costs that may be included in allowable costs.

114. **COMMENT:** The commenter requested the deletion of the proposed amendment at N.J.A.C. 6A:23A-18.6(a)27 to replace “or” with “and” to require one of three conditions to be met rather than all three. The commenter stated APSSDs have signed agreements and made arrangements based on current Administrative Code and APSSDs leasing from school districts cannot own the improvements and, therefore, cannot collateralize the fixed assets in the loan. The commenter further stated APSSDs will never be able to have allowable interest costs on leasehold improvements. (355)

**RESPONSE:** The Department disagrees. The proposed amendment at N.J.A.C. 6A:23A-18.6(a)27ii clarifies that interest costs on loans are non-allowable when any of the three circumstances set forth in N.J.A.C. 6A:23A-18.6(a)27 occur, which is consistent with the Department’s interpretation of the rule. The circumstances outlined in this provision could never occur at the same time, so the current conjunction “and” must be replaced with “or.” In short, the proposed amendment will have no effect on the interest costs that may be included in allowable costs, as the proposed amendment is merely a clarification of the intended meaning and the consistent interpretation of the rule.

115. **COMMENT:** The commenter stated an APSSD entered into a long-term debt arrangement that will last for 25 years with the understanding the interest would be an allowable expense and included in the tuition calculation. The commenter stated if the interest is not allowed to be included in tuition, as proposed under N.J.A.C. 6A:23A-18.6(a)27, the APSSD will have tremendous difficulty meeting its debt obligations in future years. The commenter suggested in phasing in during the next five year restrictions on new debt incurred going forward. (526)
RESPONSE: The Department disagrees. The proposed amendment at N.J.A.C. 6A:23A-18.6(a)27 ii clarifies that interest costs on loans are non-allowable when any of the three circumstances set forth in N.J.A.C. 6A:23A-18.6(a)27 occur, which is consistent with the Department’s interpretation of the rule. The circumstances outlined in this provision could never occur at the same time, so the current conjunction “and” must be replaced with “or.” In short, the proposed amendment will have no effect on the interest costs that may be included in allowable costs, as the proposed amendment is merely a clarification of the intended meaning and the consistent interpretation of the rule.

116. COMMENT: The commenter stated recodified N.J.A.C. 6A:23A-18.6(a)29, as proposed, does not include a mechanism to write off bad debts related to extraordinary services and include them as an allowable expense. The commenter stated bad debts on extraordinary services should be treated as an allowable cost or the Department should provide another mechanism to assist APSSDs in collecting a bad debt on extraordinary services. (293)

RESPONSE: The Department disagrees. The proposed amendments at recodified N.J.A.C. 6A:23A-18.6(a)29 do not prohibit an APSSD from writing off uncollected amounts for their own financial purposes pursuant to laws prescribed by the IRC. Recodified N.J.A.C. 6A:23A-18.6(a)29, as proposed, merely sets reasonable limits on the “bad debts” that may be included in the tuition charged to sending school districts. The proposed amendments will prohibit APSSDs from including in tuition the write-off of uncollected accounts receivable “that arise out of the APSSD’s provision of extraordinary services” because extraordinary services are billed separately from tuition costs, pursuant to recodified N.J.A.C. 6A:23A-18.3(a)5. Because extraordinary services are not included in tuition costs, the write-off of uncollected extraordinary services billings should not be included in tuition costs.

117. COMMENT: The commenters stated that the proposed amendments at N.J.A.C. 6A:23A-18.6(a)29 will prohibit the write-off of bad debt that arises from a State agency, sending school district, charter school, or renaissance school, which will create a higher probability of financial failure of APSSDs. (355, 867)

RESPONSE: N.J.A.C. 6A:23A-18.6(a)29 does not prohibit the write-off of bad debt that arises from a State agency or entity, sending district board of education, charter school board of trustees, or renaissance school.

118. COMMENT: The commenter opposed the proposed amendments at recodified N.J.A.C. 6A:23A-18.6(a)29 and stated they are contrary to sound business practices. The commenter also stated an APSSD should be able to include as allowable costs the write off of uncollected accounts arising from the provision of extraordinary services or amounts owed by State entities, sending school districts, and other public schools. The commenter stated the proposed amendments would have a major impact on some APSSDs cost accounting and would inappropriately mix privately funded investments and gains with those financed with public funds. The commenter further stated the proposed provisions would encourage public entities to delay or refuse payments of amounts owed to APSSDs. (112)

RESPONSE: Recodified N.J.A.C. 6A:23A-18.6(a)29, as proposed, merely sets reasonable limits on the “bad debts” that may be included in the tuition charged to sending school districts. The proposed amendments prohibit APSSDs from including in
tuition the write-off of 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, because those costs are either billed separately from tuition costs, pursuant to recodified N.J.A.C. 6A:23A-18.3(a)5, or should not be included in tuition costs. Since extraordinary services are not included in tuition costs, the write-off of uncollected extraordinary services billings should not be included in tuition costs. The proposed amendments do not include a prohibition from including uncollected accounts receivable arising “from a State agency or entity, sending district board of education, charter school board of trustees, or renaissance school.” However, APSSDs must still demonstrate “a reasonable effort … to collect such accounts receivable,” which is a sufficient measure to prevent an APSSD from merely including the amounts for which the APSSD failed to timely bill as a “bad debt” in the tuition charged to sending school districts.

119. **COMMENT:** The commenter requested clarification regarding whether the limit of three full-time equivalents in proposed N.J.A.C. 6A:23A-18.6(a)67 is per entity or per location/campus. The commenter also asked why the additional restriction is stipulated if there already is a proposed drop in the administrative percentage. (355)

**RESPONSE:** The limit on the number of full-time equivalent administrative positions in N.J.A.C. 6A:23A-18.6(a)27 will be applied per APSSD.

120. **COMMENT:** The commenter stated the proposed rulemaking is discriminatory to APSSDs that take in or are located in low-income/urban areas because the APSSDs produce little to no income from fundraising efforts. (355)

**RESPONSE:** The Department disagrees that the proposed regulations are discriminatory as applied to APSSDs that operate in low-income and/or urban areas. The system for determining the tuition paid by sending school districts to APSSDs is based on all costs required for student instruction that is consistent with student IEPs, inclusive of all costs required to implement IEPs and related services, and that are reasonable and are based on goods actually received and placed in service and/or services rendered. Thus, the tuition received by APSSDs are sufficient to cover the costs of providing the students with a free appropriate public education within the meaning of the IDEA. An APSSD would need to provide additional fundraising only for costs that go above and beyond what is necessary and reasonable to ensure the students are educated. Examples of such costs include: a salary paid to a director above $259,005 per year, luxury vehicles provided for individual employee use that exceed the limits set forth in the proposed rulemaking, lobbying, salary for a teacher who is not certified to teach, and others the Department has determined would constitute an unreasonable use of public funds.

121. **COMMENT:** The commenter stated a limit on travel costs is appropriate but an exception to the travel cost limitation at N.J.A.C. 6A:23A-18.6(a)68 should be included for staff members’ professional development costs to ensure all necessary costs for staff training remain covered and allowable. (112)

**RESPONSE:** The Department thanks the commenter for the support of the limit on travel costs. Proposed N.J.A.C. 6A:23A-18.21 will allow APSSDs to apply for a waiver of the travel expenditures limitation specifically when the costs of necessary or required professional development opportunities or training will result in non-allowable costs.
122. **COMMENT:** The commenter stated the proposed rulemaking will make compensation for consultation services by personnel who retired from an APSSD as a non-allowable cost for two years after the date of retirement. The commenter also stated the Department’s explanation that the proposed regulation will ensure the certified actual cost per student is for efficient, effective, and fiscally prudent operation of the APSSD is illogical and deserves further explanation. The commenter further stated educators with many years of experience have much to offer individuals who fill the retirees’ shoes and public schools are allowed to hire retirees as interim superintendents, principals, substitute teachers, etc. The commenter also questioned if the practice will be stopped in public schools as of July 1, 2017. (200)

**RESPONSE:** The Department disagrees. Proposed N.J.A.C. 6A:23A-18.6(a)21 is intended solely to ensure that APSSDs are not using public funds to employ a person who is collecting retirement benefits as a result of his or her retirement from the APSSD for more than two years after that retirement. APSSDs can choose to continue to employ retired employees receiving retirement benefits and pay them a salary indefinitely. But the cost of such salaries, in addition to the payment of retirement benefits, are not an allowable cost that may be included in the cost of public school tuition because doing so is not a responsible and prudent use of public school funds.

There are restrictions on the return of retired persons to employment in the school district from which they retired, as well as on employment after retirement with another public entity. Detailed information on the rules that apply to individuals enrolled in State retirement systems can be found in the New Jersey Division of Pension and Benefits Fact Sheet #86, Post-Retirement Employment Restrictions.

123. **COMMENT:** The commenter stated proposed N.J.A.C. 6A:23A-18.6(a)71, which would include as non-allowable costs the costs of the salary, benefits, or other compensation provided to an APSSD employee or contractor/consultant upon retirement after two calendar years has expired since the individual began retirement, could be a violation of the Employee Retirement Income Security Act (ERISA) and Internal Revenue Service (IRS) regulations. The commenter further stated the proposed provision needs to be studied further to ensure it does not violate ERISA and IRS regulations and suggested payments of benefits under existing tax-qualified retirement plans would need to be grandfathered since they are allowed under current rules. (293)

**RESPONSE:** The Department disagrees. N.J.A.C. 6A:23A-18.6(a)27 is intended solely to ensure that APSSDs are not using public funds to employ a person who is collecting retirement benefits as a result of his or her retirement for more than two years after that retirement. APSSDs can continue to employ retired employees receiving retirement benefits and pay them a salary indefinitely, but the cost of such salaries -- in addition to the payment of retirement benefits -- simply is not an allowable cost that may be included in the tuition paid by sending school districts because it is not a responsible and prudent use of public school funds.

124. **COMMENT:** The commenter opposed proposed N.J.A.C. 6A:23A-18.6(a)71. The commenter stated that the proposed rule would require APSSDs to stop paying salary and other compensation to all employees who receive benefits under the APSSDs’ tax-qualified retirement plans, even though many of the employees – including those who reach the age of 59 1/2 – are permitted by the terms of their plans and the IRC to receive the benefits, and some of the employees – five percent owners who reach the age of 70
are required to do so. The commenter also stated that the proposed rule would impose an arbitrary limitation on APSSDs’ ability to retain otherwise qualified employees and consultants who reach these ages and, by doing so, would expose APSSDs to potential liability under State and Federal laws against age discrimination. The commenter further stated that the proposed rule would effectively force older employees to terminate their employment without a legitimate reason to do so, which is bad public policy.

The commenter stated that the Department’s prior explanation for N.J.A.C. 6A:23A-18.6(a)71 that school districts should not be required to “bear costs for APSSD retirees” misstates that for which school districts pay. The commenter stated that school districts do not pay for retirees but, through tuition, pay for the services provided by APSSD employees whose work must be supported by time records. The commenter stated that because documentation that an employee has actually worked must be available for the costs to be allowable it would exclude “costs for APSSD retirees.”

The commenter also stated that the Department misconstrues applicable IRC provisions. The commenter stated that the Department is correct that New Jersey State-administered retirement systems generally do not permit payment of retirement benefits without complete severance from the employer because the pension systems are established as governmental defined benefit plans in accordance with IRC Section 401(a) and 414(d), and in reference to the State Department of the Treasury, Division of Pension and Benefits Fact Sheet #86, Post-Employment Restrictions. The commenter further stated that IRC Section 401(a)(14) generally requires (unless a participant otherwise elects) that a retirement plan cannot delay distributions later than 60 days after the close of the plan year in which the latest of the following occurs: the participant’s 65th birthday or the normal retirement age specified in the plan, whichever is earlier, the 10th anniversary of the year in which the participant began plan participation, or the participant’s termination of employment with the employer. The commenter stated that in accordance with the IRC, statutory provisions governing the New Jersey Teachers Pension and Annuity Fund (TPAF) provide that pension benefits are delayed – not paid – until after termination of employment, and referenced the following statutory provisions: N.J.S.A. 18A:66-43, under which the TPAF board of trustees must retire the member upon attainment of stated age, N.J.S.A. 18A:66-7(d), which requires TPAF membership to cease upon retirement, and N.J.S.A. 18A:66-53.2.a, which requires, with certain exceptions, retirement allowances to be canceled upon re-employment in a position requiring membership in retirement system. The commenter stated that the prohibition against payment of retirement benefits during employment is not mandated with respect to employer plans authorized under IRC Section 401(k), that employers may establish the plans with different provisions other than in IRC Section 401(a), and that provisions related to simultaneous employment and receipt of benefits are different, including that Section 401(k)(2)(B) permits withdrawal distributions from such plans during employment at or after age 59 1/2 in the event of a defined “hardship.” The commenter stated that many APSSDs provide IRC Section 401(k) qualified retirement plans for their employees and permit employees to take withdrawal distributions at or after age 59 1/2, as permitted by the IRC.

The commenter further stated that “five percent owners” of entities that are sponsors of qualified retirement plans are required to receive distributions under such plans regardless of their employment status, and that a participant who owns more than a five percent share in the entity must begin taking annual plan distributions on the April 1
following the year in which the participant reaches age 70 1/2, regardless of employment status. The commenter stated that in the case of a five percent owner, the IRC requires that tax-qualified plan distributions begin at age 70 1/2 even if by choice or necessity the five percent owner continues to provide services to the employer. The commenter stated that this requirement to take distributions does not apply to members of New Jersey’s State-administered retirement systems.

As a result of proposed N.J.A.C. 6A:23A-18.6(a)71, as proposed, the commenter stated employers will effectively be forced to terminate the employment of any owner at age 70 1/2 who complies with the requirement to take a withdrawal distribution, and to terminate any other employee who chooses to take a distribution at age 59 1/2 or who does so in the event of hardship, because the cost of the person’s employment will be a non-allowable cost. The commenter further stated that the rule, as proposed, will force employees to choose whether to remain employed or take the distribution they are entitled to by the terms of the retirement plan and the IRC, and that five percent owners will be forced to terminate their employment to take the required distribution. The commenter claimed that the effect on employment will be age-discrimination lawsuits against APSSDs if they must terminate these employees, and against the State for enacting the rule.

The commenter also claimed that the proposed new rule is arbitrary and capricious because employees who are permitted or required to take distributions under the IRC will be forced to terminate their employment. The commenter also claimed that the proposed rule has no rational basis because the Department’s explanation of the rule is based on a misguided view that the same rules apply to State-administered retirement plans and the retirement plans available to APSSDs. (112 and 862)

RESPONSE: The Department disagrees. This regulation is intended solely to ensure that APSSDs are not using public funds to employ a person who is collecting retirement benefits as a result of his or her retirement for more than two years after that retirement. The Department contends the commenter is reading the rule more broadly than the plain language of the regulation. The only circumstance in which proposed N.J.A.C. 6A:23A-18.6(a)71 becomes applicable is when an employee or contractor/consultant is receiving retirement benefits “as a result of his or her retirement from the APSSD.” It does not apply to the receipt of benefits that are not the result of retirement, such as distributions that may be permitted or required to be received prior to retirement. As a result, the proposed rule will not have an effect on any employee, including older employees, who has not retired. For this reason, all of the commenter’s discussion of the allowed or required distributions from retirement plans to APSSD employees prior to retirement under the IRC is irrelevant to the proposed rule because it does not address such distributions prior to retirement.

The Department disagrees that it misstated what school districts pay for in its prior comment. The cost of retirement plans for APSSD employees is an allowable cost that may be included in the tuition charged to sending school districts by APSSDs. APSSDs also may include the cost of retirement plans in tuition without requiring their employees to also contribute to the cost of the retirement plans, as required for public school employees. Thus, many retirees of APSSDs are being paid from retirement plans funded in prior years by public dollars. Moreover, if a “retiree” is still employed at the APSSD and earning a salary, the school district is both paying the cost of the “retiree’s”
employment at the APSSD, in addition to having contributed to the retirement benefits simultaneously paid to the “retired” employee.

The IRC is not at issue with regard to the proposed rule. Rather, proposed N.J.A.C. 6A:23A-18.6(a)(7) focuses on expenses at APSSDs that are unreasonable and should not be allowed. Regardless of whether the differences at public schools and APSSDs is prescribed by the IRC, or by any other requirement, the Department has proposed the rule to rectify a discrepancy in APSSDs’ use of public funds in a way that is not permitted for public school districts. The proposed regulation is to prevent APSSDs from paying a salary with public funds to a person who is retired. It is simply fiscally imprudent for any school to use public funds, which are intended to benefit students’ education, to pay a salary to an employee when that person is also receiving retirement benefits as a result of their retirement that was also funded through public funds.

However, the Department recognizes that small, family run schools may need a period of transition when an employee with substantial institutional knowledge retires. Therefore, an APSSD may continue to include the cost of the salary of an employee while he or she receives retirement benefits as a result of retirement for a period of two years to effectuate this transition.

Moreover, APSSDs may choose to continue to employ retired employees receiving retirement benefits and pay them a salary indefinitely. But the cost of such salaries, in addition to the payment of retirement benefits, will not be an allowable cost to be included in the tuition paid by a sending school district.

125. **COMMENT:** The commenter opposed the proposed amendment at recodified N.J.A.C. 6A:23A-18.8(c) that would have deleted “(except for buildings and/or land)” from the requirement that any gain or loss on the sale of fixed assets must be netted against or, if applicable, added to the total allowable costs to determine the certified actual cost per student. The commenter stated it would be burdensome and unfair to eliminate the exception for buildings and/or land. The commenter further stated the allowance of depreciation does not justify the recapture of gain and providing school districts with windfall gains in excess of the depreciation tuition allowance will have an immediate and drastic adverse impact. The commenter further stated the land exclusion should not be deleted from the rule. (380)

**RESPONSE:** Current proposed N.J.A.C. 6A:23A-18.7 and 18.8 do not include the amendments opposed by the commenter, and the commenter has subsequently updated his comment to address the amendments proposed at N.J.A.C. 6A:23A-18.18 that now govern the proceeds from the sale of real property, which addressed this comment. The commenter’s new concerns will be addressed directly in response to the next comment.

126. **COMMENT:** The commenter expressed support for the Department’s amendments at Proposal Level to allow an APSSD to use all of the proceeds from the sale of a building and land toward a new school or, if the proceeds have not been reinvested, to distribute the gains to sending school districts as reimbursement for depreciation payments. The commenter also suggested the new school should have a fully depreciable basis set at the sales price. If the basis is reduced for past appreciation, the commenter stated the past depreciation should not be recaptured if the sales proceeds remain after the new purchase. (380)
RESPONSE: The Department thanks the commenter for the support of the amendments to proposed N.J.A.C. 6A:23A-18.18 to first utilize the proceeds from sale of facilities to finance the purchase of new facilities before otherwise using the remaining amounts, which will benefit public school students attending APSSDs at the new facilities, and to require APSSDs to return a portion of excess sale proceeds to sending school districts. N.J.A.C. 6A:23A-18.18 explicitly sets forth a method for calculation of basis in new purchased property when the buyer is an APSSD that is a less-than-arm’s-length buyer or a related party to the selling APSSD only in proposed N.J.A.C. 6A:23A-18.18(a):6. For all other purchases and sales of capital and non-capital assets, the proposed amendments require an independent valuation of the acquired assets and for the selling APSSD to provide the Department with a copy of the independent valuation of the capital assets and the sale agreement, which includes, at a minimum, 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 within 30 days of the sale. However, N.J.A.C. 6A:23A-18.5 sets forth the bookkeeping and accounting standards that apply to APSSDs, which require APSSDs to maintain accounts in accordance with GAAP as established by the FASB and recognized as authoritative by the American Institute of Certified Public Accountants, except as already modified in N.J.A.C. 6A:23A-18. Because APSSDs that fail to follow appropriate guidelines for depreciation may be subject to non-allowable costs, pursuant to N.J.A.C. 6A:23A-18.6(a):14, APSSDs should be guided by GAAP in determining the appropriate basis to apply to real property and ensure that the determination is documented for audit and desk review purposes.

127. COMMENT: The commenter stated the proposed rulemaking allows sending school districts to become partners in not just APSSD buildings that are purchased and constructed with fundraised dollars, but also the undepreciated land on which the buildings are located. The commenter stated the proposal allows depreciation costs and interest payments in the tuition formula to compensate for the fair market rental value of the building, yet tenants do not ordinarily share in sales profits. The commenter also stated it is unfair to propose a partnership that accounts for gains but not losses because there is no connection between land and the services provided. (380)

RESPONSE: The Department appreciates the comment, but proposed N.J.A.C. 6A:23A-18.18 and the amendments proposed at Proposal Level focus on ensuring the proceeds from the sale of real property is utilized to benefit public school students placed at APSSDs, not on comparisons to tenant/landlord or partnership relationships. The proposed amendments therefore balance the interests of the APSSDs in real property ownership and the Department in ensuring tuition costs benefit students. The Department also disagrees that there is no connection between real property owned by the APSSD and the services provided to students attending the APSSDs, as tuition costs may include costs of property ownership such as the depreciation of property, interest costs on loans, the cost of improvements to the property, and other expenses, and the real property used for the APSSD’s programs benefit the students placed by sending school districts.

128. COMMENT: The commenter requested the deletion of provisions at N.J.A.C. 6A:23A-18.7(d) that require an APSSD to net the gain or loss from the sale of buildings or land against the certified actual cost per pupil in one year. The commenter also stated the provision needs to be deleted because a significant gain on sale has the potential to wipe out the majority of expenses and leave an APSSD with no tuition rate in the second year because an APSSD is trying moving its location or improving facilities. The commenter
also stated a significant loss on the sale would conversely drive up costs to the Department. (355)

RESPONSE: The Department disagrees. The tuition charged to sending school districts includes the depreciation of property, interest costs on loans, the cost of improvements to the property, and other expenses. APSSDs’ ability to charge the costs to school districts is balanced to ensure that public school students benefit from the costs. The Department proposed at Proposal Level to delete recodified N.J.A.C. 6A:23A-18.7(d) and 18.8(c) and, instead, proposed amendments at N.J.A.C. 6A:23A-18.18. With regard to real property, the proposed amendments at N.J.A.C. 6A:23A-18.18 strike a balance between the Department’s and the commenters’ concerns. The proposed amendments are directly analogous to the requirements that school districts first utilize the proceeds from sale of facilities to finance the purchase of new facilities before otherwise using the remaining amounts, which will benefit public school students attending APSSDs at new facilities. The proposed amendments also will require APSSDs to return excess sale proceeds to sending school districts but will limit the amount to allowable accumulated depreciation, recapturing some, but not all, of the expenditures by sending school districts on the real property. The balance of the proposed amendments at N.J.A.C. 6A:23A-18.18 will require APSSDs to provide reasonable documentation to assist the Department in ensuring the sale of APSSD assets constitute appropriate transactions.

129. COMMENT: The commenter recommended the Department not adopt the amendments proposed at recodified N.J.A.C. 6A:23A-18.7 because requiring all gains and losses on the sale of real estate to be included in the cost per student calculation. The commenter stated the section, as proposed, would have a major impact on the cost accounting of some APSSDs and would inappropriately mix privately funded investments with those financed with public funds. The commenter alternatively recommended either allowing gains or losses to be rolled over into other assets to be used for public school purposes or allowing an exception for assets obtained with privately raised funds, where sources other than tuition are documented. (112)

RESPONSE: The proposed amendments do not include requiring that all gains and losses on the sale of real property be included in the certified actual cost per student. The proposed amendments at N.J.A.C. 6A:23A-18.18 will allow APSSDs to first utilize the proceeds from the sale of real property to acquire replacement real property and then will require the return of any balance, up to allowable accumulated depreciation, to sending school districts. In this way, the proposed amendments balance APSSD’s interest in real property with the Department’s interest in ensuring the costs of real property ownership, some of which may have been included in the tuition charged to sending school districts, benefits public school students attending APSSDs.

130. COMMENT: The commenter recommended including the corrective action plan as part of the audit report (i.e., “management’s responses to recommendations”). The commenter stated the inclusion is already in place at other state and Federal agencies and it would address recommendations early in the process and reduce administrative burden for both the Department and APSSDs. (355)

RESPONSE: The Department disagrees. Management’s responses to recommendations made by an auditor that are typically included in audited financial statements are not a sufficient replacement for a corrective action plan submitted to the Commissioner.
131. **COMMENT:** The commenters supported the proposal at N.J.A.C. 6A:23A-18.12 to establish a roundtable working group to discuss issues affecting APSSDs. (637 and 865)

**RESPONSE:** The Department thanks the commenters for their support.

132. **COMMENT:** The commenters recommended the Department establish an advisory council comprised of Department officials, accounting firms, and APSSDs to ensure clarity and consistency among all stakeholders as the proposed amendments and new rules to N.J.A.C. 6A:23A-18 are implemented. The commenters stated the council would hear implementation concerns, attempt to address them, and identify ways to resolve discrepancies. (39, 100, 122, 154, 197, 203, 210, 220, 239, 313, 343, 344, 391, 407, 428, 437, 470, 472, 508, 629, 765, 775, 806, 845, and 864)

**RESPONSE:** The Department will provide training and technical assistance to APSSDs, accountants, and auditors to facilitate implementation of the amendments and new rules proposed at N.J.A.C. 6A:23A-18. However, the Department has provided significant clarification in response to the comments during the regulatory process. The suggestion to create an “advisory council” may be encompassed by proposed N.J.A.C. 6A:23A-18.12, and the Commissioner may create such a working group in the future.

133. **COMMENT:** The commenter requested clarification regarding proposed N.J.A.C. 6A:23A-18.16(a)1v, which will include revenues, appropriations, and supporting documents as part of the fiscal and program information that must be submitted to the Department. The commenter stated the provision is ambiguous and needs to be further defined as to the type of information required. (355)

**RESPONSE:** The Commissioner-prescribed format of the fiscal and program information will provide further detail on the categories set forth in N.J.A.C. 6A:23A-18.16(a)1v.

134. **COMMENT:** The commenters stated APSSDs that might relocate should be allowed to use gains from the sale of a property toward a new school. (2, 3, 4, 8, 11 through 16, 18, 19, 21, 23, 24, 25, 27 through 30, 32, 36, 37, 38, 40 through 47, 50, 52, 53, 55, 56, 58, 60, 61, 62, 64, 66 through 70, 72, 73, 76, 77, 79, 80, 81, 85 through 88, 90, 92 through 96, 98, 101 through 106, 111, 114, 115, 117 through 120, 122, 123, 124, 128, 129, 131 through 137, 141 through 144, 146, 148 through 151, 153, 155 through 159, 161, 162, 163, 165 through 174, 177, 178, 180 through 185, 189, 190, 192, 193, 195 through 199, 201 through 204, 206, 207, 209, 211 through 214, 216, 217, 218, 221 through 225, 227 through 231, 233 through 238, 242 through 245, 248, 250 through 262, 264, 265, 267, 270 through 274, 276 through 279, 281, 283, 284, 285, 287 through 291, 294, 297, 299, 300, 302, 303, 305, 306, 307, 310, 311, 312, 315, 319, 321 through 324, 327, 328, 329, 331 through 335, 338, 339, 342, 345 through 349, 351 through 354, 356 through 359, 361, 363, 365, 368 through 373, 377, 378, 379, 381, 382, 384 through 390, 392 through 395, 397, 399 through 406, 408, 409, 410, 412, 413, 414, 416 through 422, 425, 426, 429 through 432, 436, 442 through 446, 449, 450, 452, 454, 455, 457 through 463, 465 through 469, 471, 473, 475, 476, 478, 480, 485, 486, 487, 489, 491, 493 through 497, 499 through 506, 509, 510, 512, 514, 516, 517, 518, 520, 521, 522, 524, 528 through 540, 542, 543, 544, 547, 548, 550 through 559, 562 through 566, 568 through 571, 573, 575 through 581, 583, 584, 586 through 599, 601, 603, 604, 605, 607, 609, 612, 613, 615, 616, 618, 621, 622, 625, 626, 627, 630, 632, 635, 638, 640, 642 through 646, 648 through 656, 660 through 666, 668 through 675, 677,
RESPONSE: The proposed amendments at N.J.A.C. 6A:23A-18.18(c) specifically permit APSSDs to use all of the proceeds from the sale of real property for the acquisition of real property placed in service for the express purpose of operating the APSSD.

135. COMMENT: The commenters stated the Department has yet to provide answers about whether a nonprofit APSSD can sell its current facility and use the proceeds to purchase better classrooms and therapy spaces. (107, 147, 175, 795, and 862)

RESPONSE: The Department disagrees, as proposed N.J.A.C. 6A:23A-18.18(c)3 and 4 specifically allow both nonprofit and for-profit APSSDs to use the proceeds from sale of real property to acquire real property to be owned by the APSSD and to be placed in purpose for the express purpose of operating the APSSD.

136. COMMENT: The commenter opposed N.J.A.C. 6A:23A-18.18 as proposed for amendment. The commenter stated although the proposal would allow APSSDs to use the proceeds from the sale of fixed assets to purchase a new building, the proposal would require the entire gain from the proceeds of the sale to be used to purchase a new building, including appreciation of the new building and gains related to funds raised through fundraising, capital campaigns, and depreciation charged to programs. The commenter also stated that the portion of the gain to be deducted should not exceed the depreciation charged to school districts. The commenter further stated the remaining gain should be placed in a nonprofit APSSD’s unrestricted fund balance to be dedicated to providing additional programs and services that enhance education and the well-being of students attending APSSDs. (89)

RESPONSE: N.J.A.C. 6A:23A-18.18, as proposed for amendment, will not require APSSDs to use the entire gain from the proceeds of the sale of real property to purchase a new building. However, an APSSD that does not utilize all proceeds from sale to purchase a new building must return a portion of the proceeds, limited to the allowable accumulated depreciation, to sending school districts. Gain is not a factor in N.J.A.C. 6A:23A-18.18, which addresses proceeds. The Department disagrees with the commenter’s suggestion because an APSSD with remaining proceeds after purchasing replacement property and returning required amounts to sending school districts may retain that amount in its public school placement restricted working capital fund as long as it does not exceed the limitations in N.J.A.C. 6A:23A-18.8. The proposed section balances the Department’s goals to ensure the costs of real property included in tuition charged to sending school districts benefit public school students, and the concerns of an APSSD in its interest in real property.

137. COMMENT: The commenter stated the proposed rulemaking is silent on whether nonprofit APSSDs will be able to use private funds to purchase or improve buildings. The commenter also stated it would be unfair to require gains from the sale of a building
RESPONSE: The Department disagrees since nonprofit organizations may always use private funds to purchase or improve buildings. The Department also disagrees that the proposed amendments will require gains from the sale of a building to be reimbursed to school districts. The proposed amendments will require an APSSD to distribute up to the allowable accumulated depreciation out of the proceeds from the sale of real property that are not utilized to purchase replacement property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD. The amended section balances the Department’s goals to ensure the costs of real property included in tuition charged to sending school districts benefit public school students with the concerns of an APSSD in its interest in real property.

138. COMMENT: The commenters stated the proposed rulemaking will restrict nonprofit APSSDs from investing in new facilities because they will be unable sell an existing property and put any gain toward a new property. The commenters also stated nonprofit APSSDs will be unable to raise money for capital projects through private fundraising and, instead, would be required to use revenue from the sale and fundraising to lower tuition. (576 and 814)

RESPONSE: The Department disagrees that the proposed rulemaking will restrict APSSDs from investing in new facilities. The proposed amendments at recodified N.J.A.C. 6A:23A-18.18 will allow APSSDs to use the total proceeds from the sale of real property, including the gain, 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 disagrees that the proposed amendments will require nonprofit APSSDs to use revenue from the sale and fundraising to lower tuition, as the proposed amendments only require an APSSD to distribute up to the allowable accumulated depreciation out of the proceeds from the sale of real property that are not utilized to purchase replacement property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD. The Department does not agree that APSSDs will be unable to raise money for capital projects through private fundraising due to the proposed amendments, which balance the Department’s goals to ensure the costs of real property included in tuition charged to sending school districts benefit public school students with the concerns of an APSSD in its interest in real property.

139. COMMENT: The commenter stated the Department’s proposal at N.J.A.C. 6A:23A-18.18 to allow a nonprofit APSSD selling property to use all of the sale’s proceeds to acquire a new building implies, but is not clear, that the sale’s total gain, including depreciation charged to school districts, funds raised through a capital campaign or fundraising and appreciation of the building’s fair market value, would reduce the basis of the new building for depreciation on the new building as an allowable cost. The commenter also said since the Department’s proposal requires the amount of sales proceeds to be refunded to sending school districts to be equal to, but not exceed, the property’s allowable accumulated depreciation, only the accumulated depreciation charged as allowable costs should reduce the basis of the new building.

The commenter also stated the portion of the gain attributable to privately raised funds that were used to purchase a new building should not reduce the new building’s basis. The commenter said the portion of the gain due to appreciation of the real
property’s market value should not reduce the basis of the new building but, instead, should be placed in a nonprofit APSSD’s unrestricted fund or in a for-profit APSSD’s retained earnings. The commenter further stated the building’s basis would not be increased if its fair market value decreased and there was a loss on the sale.

The commenter recommended changing the proposal to read: “if the selling APSSD acquires real property using the proceeds from the sale of real property, that the accumulated depreciation charged as an allowable cost should reduce the basis of the new building. The remaining proceeds may be transferred to the non-profit APSSD’s unrestricted fund and the for-profit APSSD’s retained earnings.” (293)

RESPONSE: The Department disagrees. N.J.A.C. 6A:23A-18.18 only explicitly sets forth a method for calculation of basis in new purchased property when the buyer is an APSSD that is a less-than-arm’s-length buyer or a related party to the selling APSSD in N.J.A.C. 6A:23A-18.18(a)6. For all other purchases and sales of capital and non-capital assets, the proposed amendment and new rule requires an independent valuation of the acquired assets and that the selling APSSD provide the Department with a copy of the independent valuation of the capital assets and the sale agreement, which includes, at a minimum, 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 within 30 days of the sale. N.J.A.C. 6A:23A-18.5 sets forth the bookkeeping and accounting standards that apply to APSSDs, which require APSSDs to maintain accounts in accordance with GAAP as established by the FASB and recognized as authoritative by the American Institute of Certified Public Accountants, except as already modified in N.J.A.C. 6A:23A-18. Because APSSDs that fail to follow appropriate guidelines for depreciation may be subject to non-allowable costs, pursuant to N.J.A.C. 6A:23A-18.6(a)14, APSSDs should be guided by GAAP in determining the appropriate basis to apply to real property and ensure that this determination is documented for audit and desk review purposes.

The Department disagrees that appreciation of APSSD property should result in increased fund balance or in increased retained earnings balances maintained by an APSSD; instead, proposed N.J.A.C. 6A:23A-18.18 strikes an appropriate balance between the interests of the Department in the appropriate use of public school funds and the APSSDs’ interests in the sale of real property.

Additionally, it is not proper to increase a building’s depreciable basis for a loss on the sale of disposed real property as a loss on the sale of APSSD real property is not an allowable cost (see N.J.A.C. 6A:23A-18.18(b)).

140. COMMENT: The commenter stated proposed N.J.A.C. 6A:23A-18.18(c) requires the amount of proceeds from an APSSD’s sale of land or buildings to be refunded to sending school districts when the APSSD is not purchasing a new facility and for the refund to equal the property’s allowable accumulated depreciation. The commenter stated N.J.A.C. 6A:23A-18.18(c) also allows the remaining proceeds to be transferred to the APSSD’s working capital fund within the limitations of the Administrative Code section, which prohibits a nonprofit APSSD’s restricted working capital fund from exceeding 15 percent of an APSSD’s actual annual allowable costs in a fiscal year. The commenter further stated the proposal would force an APSSD to also refund to school districts the appreciation on the building and proceeds that are the result of a capital campaign or
fundraising since the working capital fund of many APSSDs already is at 15 percent. The commenter also stated there is no provision for school districts to share in a loss on the sale of real property and any appreciation should be retained by nonprofit APSSDs.

The commenter also stated the portion of the gain attributable to privately raised funds used to purchase a new building should not be returned to school districts, which already are benefitting since they will be refunded all depreciation that was charged through tuition on the building during the time the APSSD owned the building. The commenter said the portion of the gain due to the appreciation of the real property’s market value should be placed in the APSSD’s unrestricted fund instead of refunded to school districts since school districts would not be charged if the building’s fair market value decreased and there was a loss on the building’s sale.

The commenter also stated a nonprofit APSSD will utilize the funds in accordance with its mission statement to enhance other programs for students, which will further reduce administrative costs allocated to Department programs and could potentially reduce or eliminate any deficit in the unrestricted fund balance, if one existed.

The commenter further stated the portion of gain attributable to privately raised funds used to purchase a new building should not reduce the new building’s basis. The commenter further suggested the Department amend N.J.A.C. 6A:23A-18.18(c)4ii(3) to read “[r]emaining proceeds may be transferred to the APSSD’s unrestricted fund” and to delete the reference that the transfer is subject to the limitations at N.J.A.C. 6A:23A-18.18. The commenter said the suggested amendments agree with the Department’s proposal to require the amount of sale proceeds to be refunded to sending school districts in an amount equal to the property’s allowable accumulated depreciation and are in line with the proposed rules for for-profit APSSDs. (293)

RESPONSE: The proposed amendments and new rule at recodified N.J.A.C. 6A:23A-18.18 are intended to ensure that costs for real property included in the tuition charged to sending school districts are utilized to benefit public school students placed at APSSDs. The tuition charged to sending school districts may include the depreciation of real property, interest costs on loans, the cost of improvements to the property, and other expenses related to ownership. APSSDs’ ability to charge these costs to sending school districts is balanced to ensure that public school students benefit from the costs. The proposed amendments and new rule at N.J.A.C. 6A:23A-18.18 limit the amount to be returned to the sending school districts to the allowable accumulated depreciation. This allows sending school districts to recapture some, but not all, of the accumulated expenditures made by sending school districts on the APSSD real property when the property will no longer benefit public school students, but does not include all expenses sending school districts may have paid through tuition. Thus, the proposed amendments at N.J.A.C. 6A:23A-18.18 strike a balance between Department and APSSD concerns.

The Department agrees that proposed N.J.A.C. 6A:23A-18.8(a) prohibits a non-profit APSSD’s public school placement restricted working capital fund from exceeding 15 percent of the APSSD’s actual allowable costs in a fiscal year. The Department does not, however, share the commenter’s concerns. If all of the proceeds from sale on replacement real property are used, APSSDs will not be required to return either allowable accumulated depreciation or public school placement restricted working capital to sending school districts, as the property will serve the Department’s goals of benefiting public school students placed there. The only instance where an APSSD may have to
return more than the allowable accumulated depreciation to sending school districts is if:

1) the APSSD does not expend the total amount of sale proceeds on replacement real property; and 2) the proceeds remaining after purchase of replacement property and return of allowable accumulated depreciation to sending school districts exceed the limitations in N.J.A.C. 6A:23A-18.8(a). The Department contends this is unlikely unless APSSDs are merely disposing of real property, rather than replacing it with new or upgraded facilities designed to benefit students. Such activity would be contrary to the intent to ensure that costs for real property included in the tuition charged to sending school districts are utilized to benefit public school students placed at APSSDs. However, an APSSD should plan accordingly if concerned its public school placement restricted working capital fund may exceed the limitations in N.J.A.C. 6A:23A-18.8(a) due to the sale of real property.

141. **COMMENT:** The commenters stated some APSSDs have not charged their full approved tuition rate to make their services more affordable. The commenter also recommended the Department acknowledge these efforts by allowing at N.J.A.C. 6A:23A-18.18(c)3 and 4 an exception to the requirements of the distribution of APSSD real estate sales proceeds to sending school districts that are not used to purchase new real estate if the APSSD has not charged sending school districts their full approved tuition rate. (39, 100, 122, 154, 197, 203, 210, 220, 239, 313, 343, 344, 391, 407, 428, 437, 470, 472, 508, 765, 775, 806, 845, and 864)

**RESPONSE:** The Department disagrees as the requirement that an APSSD return the accumulated allowable depreciation does not include all costs of ownership of the real property that may have been paid by sending school districts in tuition. The commenters’ proposal is unworkable because, depending on the amount of time a property was owned and the different types of costs of real property that may be included in tuition, it may be impossible to determine the exact amount of the costs of the ownership of real property that may have been included in tuition costs in the past. Thus, the Department’s proposal is a practical balance between the Department’s concerns that tuition be used to benefit students and APSSDs’ concern with ownership of real property.

142. **COMMENT:** The commenter opposed proposed N.J.A.C. 6A:23A-18.18(c)4ii(3), which will allow a nonprofit APSSD that sells real property to transfer remaining proceeds to the APSSD’s working capital account within the limitations of N.J.A.C. 6A:23A-18.18 for use at the discretion of the APSSD’s management. The commenter said the proposed rule is unfair because many school districts already have received a return of the tuition paid for depreciation. The commenter also stated the nonprofit APSSD’s management should be permitted to put the excess proceeds in the APSSD’s unrestricted account just as for-profit APSSDs are permitted to keep excess proceeds in retained earnings. (380)

**RESPONSE:** The Department disagrees. APSSDs that use all of the proceeds from sale on replacement real property will not be required to return either allowable accumulated depreciation or public school placement restricted working capital to sending school districts since the property will serve the Department’s goal of benefiting public school students placed there. The only instance when an APSSD may have to return more than the allowable accumulated depreciation to sending school districts is if: 1) the APSSD does not expend the total amount of sale proceeds on replacement real property; and 2) the proceeds remaining after purchase of replacement property and return of allowable accumulated depreciation to sending school districts exceed the limitations in N.J.A.C. 6A:23A-18.8(a). The Department contends this is unlikely unless APSSDs are merely
disposing of real property, rather than replacing it with new or upgraded facilities designed to benefit students. Such activity would be contrary to the intent to ensure that costs for real property included in the tuition charged to sending school districts are utilized to benefit public school students placed at APSSDs. However, an APSSD should plan accordingly if concerned its public school placement restricted working capital fund may exceed the limitations in N.J.A.C. 6A:23A-18.8(a) due to the sale of real property.

143. **COMMENT:** The commenter stated the proposal to require APSSDs to file salary and benefit disclosure statements, which will be public records, is burdensome and redundant. The commenter also stated APSSDs already supply the information to the Department on the required annual audit and in the annual fiscal and program information report. The commenter further stated the proposed requirement will be cost prohibitive because it will require a large administrative expenditure to produce the statements at the same time as an audit even though the proposed rulemaking places further limitations on administrative costs. The commenter also stated the same requirement is not in place for public schools. (437)

**RESPONSE:** Proposed N.J.A.C. 6A:23A-18.19, which will require an APSSD to file a management disclosure of information statement with the Department providing information on salaries, pension, and other information, directly addresses concerns outlined in the OLS audit of the Department about nepotism and related party transactions at APSSDs. The proposed annual disclosure statement will not prohibit any of the transactions, but merely encourages transparency so APSSDs can be held accountable to other stakeholders, including the Department and sending school districts paying tuition. The proposed section also will facilitate compliance determinations on Administrative Code provisions that specifically prohibit certain types of nepotism and/or related party transactions. Finally, the disclosure statements will bring APSSDs into closer alignment with the disclosure requirements for public school officials, who must file an annual disclosure statement as set forth in N.J.A.C. 6A:28-3.1.

144. **COMMENT:** The commenter opposed the proposal to require APSSDs to file salary and benefit disclosure statements because APSSDs already supply the information to the Department via other methods, which already place an administrative burden on APSSDs. The commenter further stated making the annual disclosure statement publicly available will cause personnel issues for APSSDs and will increase costs because employees will have access to confidential salary information and be able to use it when negotiating salaries. (293)

**RESPONSE:** The Department disagrees. Proposed N.J.A.C. 6A:23A-18.19, which will require an APSSD to file a management disclosure of information statement with the Department providing information on salaries, pension, and other information, directly addresses concerns outlined in the OLS audit of the Department about nepotism and related party transactions at APSSDs. The proposed annual disclosure statement will not prohibit any of the transactions, but merely encourages transparency so APSSDs can be held accountable to other stakeholders, including the Department and sending school districts paying tuition. The proposed section also will facilitate compliance determinations on Administrative Code provisions that specifically prohibit certain types of nepotism and/or related party transactions. Finally, the disclosure statements will bring APSSDs into closer alignment with the disclosure requirements for public school officials.
The salary information at APSSDs is not confidential as they are an approved school subject to the Department’s oversight and the records APSSDs provide to the Department, which include the salaries of APSSD employees, are government records available for public access pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.

145. **COMMENT:** The commenter requested the Department clarify and narrow the provisions of proposed N.J.A.C. 6A:23A-18.19 to provide a more reasonable disclosure requirement. The commenter stated the proposed provisions regarding the annual disclosure statements could be interpreted to require an excessive amount of information about entities that have no real relationship with any APSSD. The commenter stated the provision at N.J.A.C. 6A:23A-18.19(b) that disclosure statements “shall include, but not be limited to” is too vague and open-ended. The commenter stated the provision should include exactly what information may be required. The commenter also stated that “related staff” and “business interests” are not defined and “staff members” potentially includes every employee. The commenter further stated that “related parties” are not subject to Department regulations and “vendors” can run the gamut from Google to a local cleaning surface, all of which might refuse to provide the required information. (112)

**RESPONSE:** The annual management disclosure of information statement required by N.J.A.C. 6A:23A-18.19 is reasonable. The requirement directly addresses concerns outlined in the OLS audit about nepotism and related party transactions at APSSDs. The proposed annual disclosure statement will not prohibit any of these transactions but merely encourages transparency so APSSDs can be held accountable to other stakeholders, including the Department and sending school districts paying tuition. The proposed section also will facilitate compliance determinations on Administrative Code provisions that specifically prohibit certain types of nepotism and/or related party transactions. Finally, the disclosure statement brings APSSDs into closer alignment with the disclosure requirements for public school officials. The annual financial disclosure statement will provide further detail on the form provided by the Commissioner, and the Department remains available to provide guidance and technical assistance to implement this regulation.

146. **COMMENT:** The commenter requested the Department clarify proposed N.J.A.C. 6A:23A-18.19(d) to state all annual disclosure statements that are on file with the Department shall be considered public records. The commenter stated the proposed rule needs to be clarified to avoid any suggestion that APSSDs, which are private entities, are subject to OPRA. (112)

**RESPONSE:** The regulation does not attempt to make APSSDs subject to OPRA. However, as APSSDs are approved schools subject to the Department’s oversight, the records they provide to the Department are government records available for public access pursuant to OPRA. The proposed rule clarifies that the annual disclosure statements also constitute public records.

147. **COMMENT:** The commenter stated that the proposed amendments at N.J.A.C. 6A:23A-18.19 will require an annual disclosure statement of salaries to be made publically available, which could drive personnel and administrative costs up and labor hours down. The commenter suggested that APSSDs should not be required to prepare annual disclosure statements. (355)
RESPONSE: The Department disagrees. Proposed N.J.A.C. 6A:23A-18.19, which will require an APSSD to file a management disclosure of information statement with the Department providing information on salaries, pension, and other information, directly addresses concerns outlined in the OLS audit of the Department about nepotism and related party transactions at APSSDs. The proposed annual disclosure statement will not prohibit any of the transactions, but merely encourages transparency so APSSDs can be held accountable to other stakeholders, including the Department and sending school districts paying tuition. The proposed section also will facilitate compliance determinations on Administrative Code provisions that specifically prohibit certain types of nepotism and/or related party transactions, which is expected to lower, not increase, administrative costs for APSSDs and the Department. Finally, the disclosure statement will bring APSSDs into closer alignment with the disclosure requirements for public school officials. In summary, the Department believes the proposed amendment will ensure greater transparency in addition to making the desk reviews of audited financial statements and other regulatory functions of the Department easier for both the Department and APSSDs.

148. COMMENT: The commenter requested the deletion of the provisions in N.J.A.C. 6A:23A-18.20 that require a nepotism policy to be included in the employee handbook and compares the nepotism policy to the current statutory policy. The commenter also stated that APSSDs are not public schools and the policy is discriminatory toward family owned APSSDs. (355)

RESPONSE: The Department disagrees that N.J.A.C. 6A:23A-18.20 is discriminatory toward family owned APSSDs as the proposed section is designed to address concerns raised by the OLS audit of the Department that school districts and charter schools are required to implement a nepotism policy, but Administrative Code does not impose the same conditions on APSSDs. The Department recognizes that many APSSDs are small, family owned and operated entities that often employ multiple family members. The Department is not concerned with regulating the employment of a relative at an APSSD as long as the relative is paid a salary commensurate with his or her qualifications and experience and comparable to a person of like experience and education. The proposed section addresses the concern of the employment of a relative at an APSSD who is not properly qualified or licensed, or who receives a salary and benefits that are not comparable to a person of like experience and education.

149. COMMENT: The commenter requested the Department amend the heading and language of proposed N.J.A.C. 6A:23A-18.20 to replace references to “nepotism” with “family related employment.” The commenter did not oppose the section’s requirements but opposed the use of “nepotism” because the term wrongly assumes the family relationships in many APSSDs are accompanied by inappropriate preferences. (112)

RESPONSE: The Department thanks the commenter for the support of the proposed section as it is designed to address concerns raised by the OLS audit that mentioned school districts and charter schools are required to implement a nepotism policy but Administrative Code does not impose the same conditions on APSSDs. The Department recognizes that many APSSDs are small, family owned and operated entities and often employ multiple family members. The Department is not concerned with regulating the employment of a relative at APSSDs as long as the relative is paid a salary commensurate with his or her qualifications and experience and comparable to a person of like experience and education.
experience and education. The proposed section solely is concerned with nepotism, that is, the employment of a relative at an APSSD who is not properly qualified or licensed, or who receives a salary and benefits that are not comparable to a person of like experience and education. For this reason, “nepotism” is the only term that appropriately describes the area the Department intends to regulate in proposed N.J.A.C. 6A:23A-18.20.

150. **COMMENT:** The commenters opposed rules that make it more difficult for APSSD staff to get specialized training, which is damaging to children. The commenters also stated APSSD staff work with some of the most challenging students and, therefore, need ample training and support. (1 through 5, 8, 10 through 16, 18 through 21, 23, 24, 25, 27 through 32, 34, 36, 37, 38, 40 through 47, 50 through 53, 55, 56, 58 60 through 70, 72 through 88, 90, 92 through 98, 101 through 106, 109, 110, 111, 114, 115, 117 through 120, 122, 123, 124, 126 through 129, 131 through 137, 141 through 144, 146, 148 through 153, 155 through 174, 176 through 186, 189 through 199, 201 through 207, 209, 211 through 218, 221 through 225, 227 through 238, 241 through 245, 247, 248, 250 through 262, 264 through 279, 281, 283, 284, 285, 287 through 291, 294 through 297, 299 through 303, 305, 306, 307, 309 through 312, 315, 317, 319 through 324, 326 through 329, 331 through 335, 337 through 342, 345 through 354, 356 through 359, 361, 365 through 374, 377, 378, 379, 381, 382, 384 through 390, 393 through 406, 408, 409, 410, 412 through 422, 425, 426, 427, 429 through 433, 435, 436, 439, 442 through 446, 448, 449, 450, 452 through 455, 457, 458, 460 through 469, 471, 473, 475, 476, 478, 480, 482 through 489, 491, 493 through 497, 499 through 506, 509, 510, 512, 513, 514, 516, 517, 518, 520, 521, 522, 524, 525, 527 through 540, 542 through 548, 550 through 560, 562 through 566, 568 through 571, 573 through 581, 583 through 599, 601 through 605, 607, 609 through 616, 618, 621 through 628, 630, 632, 634, 635, 636, 638 through 656, 658, 660 through 675, 677 through 695, 697 through 702, 704, 706 through 710, 712 through 716, 718 through 728, 731 through 734, 736 through 740, 742 through 746, 748, 749, 751, 754, 755, 757, 758, 760 through 765, 767 through 771, 773, 774, 776 through 784, 786, 787, 789, 790, 791, 793, 794, 796 through 802, 804, 807 through 835, 837 through 846, 848 through 851, 854, 855, 856, and 870)

**RESPONSE:** The Department disagrees that the proposed amendments and new rules make it more difficult for APSSD staff to get specialized training. The proposed travel regulations will provide more flexibility for APSSDs to choose how to allocate travel spending within the maximum allowable cost of the lesser of .25 percent of total allowable costs or $20,000. Moreover, the Department has proposed to allow APSSDs to apply for a waiver of the limits on travel expenditures specifically for the costs of staff attendance at necessary or required professional development opportunities or training that will result in non-allowable costs at N.J.A.C. 6A:23A-18.21(d). As a result, APSSDs should have more flexibility to provide necessary or required training to staff members.

151. **COMMENT:** The commenter stated the Department has not provided answers about whether teachers and therapists can access specialized training needed to provide high-quality services. (107, 147, 175, 795, and 862)

**RESPONSE:** Proposed N.J.A.C. 6A:23A-18.21 will remove many of the specific travel regulations that apply to public school districts and, instead, will provide ample flexibility for APSSDs to choose how to allocate spending, including on staff training, as long as it falls within the lesser of .25 percent of an APSSD’s total allowable costs in the current fiscal year or $20,000. Moreover, the proposed amendments allow APSSDs to apply for a
waiver of the limits on travel expenditures specifically for the costs of necessary or required professional development opportunities or training. As a result, APSSDs should have ample flexibility to provide necessary or required training to staff members.

152. **COMMENT:** The commenter stated specialized training is essential as new techniques have proven to be effective in helping children with learning challenges find new ways to acquire knowledge. The commenter also stated not to offer specialized training is discriminatory to students with disabilities. (254)

**RESPONSE:** The proposed amendments do not prevent APSSDs from offering specialized training. To the extent this comment is regarding proposed N.J.A.C. 6A:23A-18.21, which governs travel expenditures, APSSDs will be able to apply for a waiver of the travel expenditures limitation specifically when the costs of necessary or required professional development opportunities or training will result in non-allowable costs.

153. **COMMENT:** The commenters stated the Department’s proposals regarding travel (deletion of current N.J.A.C. 6A:23A-18.5(a)34 and 35 and proposed new N.J.A.C. 6A:23A-18.21) raise several issues for APSSDs because the proposals will limit travel and conferences for APSSD staff. The commenters stated the APSSD student population often requires special staff training, including cardiopulmonary resuscitation (CPR), restraints, and other lifesaving skills, but the proposed limitation on travel will not permit adequate staff training and that could result in quality of care issues and potential litigation. (293 and 355)

**RESPONSE:** The Department disagrees that the proposals will limit travel and conferences for APSSD staff. Proposed N.J.A.C. 6A:23A-18.6(a)68 and proposed N.J.A.C. 6A:23A-18.21 are intended to simplify compliance with travel regulations for APSSDs and monitoring for the Department, while also controlling the amount of travel costs that may be charged in tuition paid by sending school districts. School districts are subject to limits on travel that specifically identify types of prohibited and allowed travel and sometimes require multiple levels of review by school staff to ensure compliance. Rather than requiring APSSDs to implement the rigorous travel policies that apply to school districts and disfavor certain types of travel expenditures, the Department proposes to set a generous, simplified, and absolute limit on expenditures of the lesser of .25 percent of an APSSD’s total actual allowable costs in the current fiscal year or $20,000. Additionally, proposed N.J.A.C. 6A:23A-18.21(e) includes a waiver of the limits on travel expenditures specifically for the costs of necessary or required professional development opportunities or training. As a result, APSSDs should have ample flexibility to provide necessary or required training to staff members.

154. **COMMENT:** The commenter stated APSSD staff need to travel to carry out their jobs and fulfill student IEPs, including travel between school locations, for field trips, to worksites, or related to student curriculum. The commenter further said the Department’s proposal at N.J.A.C. 6A:23A-18.21 would limit community-based and home-based programming for students with more severe disabilities.

The commenter recommended changes to the proposal to prevent capitated travel costs from including costs incurred by employees during the performance of regular assigned job functions within the educational process or the costs of conferences with the same purpose. The commenter also recommended the Department amend proposed N.J.A.C. 6A:23A-18.21(d), which would limit 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, to raise the cap to 0.0035 of total allowable costs, not to exceed $30,000 per APSSD. (293)

RESPONSE: The Department disagrees that the proposals will limit travel and conferences for APSSD staff. Proposed N.J.A.C. 6A:23A-18.6(a)68 and proposed N.J.A.C. 6A:23A-18.21 are intended to simplify compliance with travel regulations for APSSDs and monitoring for the Department, while also controlling the amount of travel costs that may be charged in tuition paid by sending school districts. School districts are subject to limits on travel that specifically identify types of prohibited and allowed travel and sometimes require multiple levels of review by school staff to ensure compliance. Rather than requiring APSSDs to implement the rigorous travel policies that apply to school districts and disfavor certain types of travel expenditures, the Department proposes to set a generous, simplified, and absolute limit on expenditures of the lesser of .25 percent of an APSSD’s total actual allowable costs in the current fiscal year or $20,000. Additionally, proposed N.J.A.C. 6A:23A-18.21(e) includes a waiver of the limits on travel expenditures specifically for the costs of necessary or required professional development opportunities or training. As a result, APSSDs should have ample flexibility to provide necessary or required training to staff members.

Proposed N.J.A.C. 6A:23A-18.21 will not limit expenses for mileage 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. Instead, such expenses are excluded from the definition of “travel expenditures” and, therefore, will not count toward the total limit on “travel expenditures” set forth in proposed N.J.A.C. 6A:23A-18.21(d). The balance of proposed N.J.A.C. 6A:23A-18.21 will provides APSSDs with more, not less, flexibility.

155. COMMENT: The commenter stated the provision in proposed N.J.A.C. 6A:23A-12.21 stating the travel should not include that carried out in the performance of regularly assigned job functions would prevent APSSDs from reimbursing employees for work-related expenses such as home-based programming and community-based instruction. (89)

RESPONSE: Proposed N.J.A.C. 6A:23A-18.21 will not exclude the cost of travel carried out in the performance of regularly assigned job functions from the certified actual cost per student. The proposed section will exclude those amounts from the definition of “travel expenditures” and, thus, from the limitations set forth in proposed N.J.A.C. 6A:23A-18.21(d). Therefore, APSSDs will be able to include such costs as long as they comply with the balance of regulations applying to all travel costs in the regulations.

156. COMMENT: The commenter requested the deletion of N.J.A.C. 6A:23A-18.21(b) because the restrictions on travel preclude management and staff members from performing their job functions and, therefore, prevent students from attaining what is specified in their IEPs. The commenter cited examples of necessary travel, including a director travelling between locations/campuses, a job coach travelling to a work site, and a teacher traveling to an inclusion program. (355)
RESPONSE: The Department disagrees. Proposed N.J.A.C. 6A:23A-18.21(b) will not prohibit expenditures for travel carried out in the performance of regularly assigned job functions, such as, but not limited to, travel between commonly owned APSSDs. Instead, the proposed rule will exclude such travel for regularly assigned job functions from the definition and, therefore, the limitation of “travel expenditures.” As a result, the proposed rule will provide more, not less, flexibility for travel conducted in the performance of regularly assigned job functions.

157. COMMENT: The commenter stated proposed N.J.A.C. 6A:23A-18.21(g)5 disallows maintaining a certification that is not required as a condition of employment. The commenter said the proposal presents an issue for paraprofessional aides, which represent the majority of APSSD staff, as they benefit from having restraints training and CPR and other forms of life-saving and injury-prevention certification. The commenter stated N.J.A.C. 6A:23A-18.21(g)5 should be amended to allow the trainings. (355)

RESPONSE: Proposed N.J.A.C. 6A:23A-18.21(g)5 is intended to ensure APSSDs do not include in tuition the cost of a staff member maintaining a certification that is not a required condition of employment. If restraints training, CPR, and other forms of life-saving and injury-prevention certifications are necessary for paraprofessionals, and cannot be met by other staff members, APSSDs should make such certifications a condition of employment for paraprofessionals and the associated costs will be considered allowable pursuant to N.J.A.C. 6A:23A-18.21(g)5.

158. COMMENT: The commenter stated all conferences for APSSD employees should be eliminated to reduce spending and to prevent teachers from being taken out of the classroom for conference attendance. The commenter also stated any professional development that is needed can be provided by the APSSD’s administrators. (316)

RESPONSE: The Department disagrees as training for staff members providing services to students placed at APSSDs is an appropriate expenditure of the tuition paid by sending school districts as long as the costs are not in excess of reasonable limits. Proposed N.J.A.C. 6A:23A-18.21 is a reasonable limitation on those expenditures.

159. COMMENT: The commenters supported the proposed regulations at N.J.A.C. 6A:23A-18.22 requiring 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 programs. (637 and 865)

RESPONSE: The Department thanks the commenter for the support of the proposed section, which is intended to ensure behavior modification programs implemented at APSSDs are appropriate.

160. COMMENT: The commenter stated proposed N.J.A.C. 6A:23A-18.22 prohibits behavior modification from including the provision of cash or checks to students but the proposed section does not clearly state what methods can be used to reward students. The commenter recommended allowing debit cards to be used as a means of rewarding students and further defining the use of food in the proposed section. (293)

RESPONSE: The Department disagrees that the proposed section should clearly state what forms of behavior modification may be used as the determination of the services
and supports provided to students should be adaptable based on a student’s particularized needs. Requiring APSSDs to “adopt a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD’s behavior modification program” sets reasonable goals and limits on behavior modification programs, while leaving professionals with the flexibility to adopt programs that work for students’ specific needs. As cash or check payments will be prohibited under the proposed section, the provision of debit cards to students will be deemed a non-allowable cost.

161. COMMENT: The commenter requested the Department define what is meant by “regular basis” as used in proposed N.J.A.C. 6A:23A-18.22(b)2, which prohibits behavior modification from including the replacement of meals or components of meals on a regular basis outside of special achievements outlined in the policy required in proposed N.J.A.C. 6A:23A-18.22(a). The commenter stated, for example, a student who consistently performs well and earns pizza each week could fall under the criteria of “regular” while a student who earns the reward only twice a year would not. The commenter further questioned why food costs for behavior modification would be assigned as instructional or other support services while the use of electronics for the same purpose (i.e., allowing a student to play a game on an iPad) is considered instructional costs when both would be on a student’s IEP and serve educational purposes. (355)

RESPONSE: Proposed N.J.A.C. 6A:23A-18.22(b)2 is intended to assure students at APSSDs receive a nutritious meal as required by N.J.A.C. 6A:23A-18.23. Whether replacement of meals or components of meals is on a regular basis will depend on the facts and circumstances of the individual case, and on the second part of the regulation that the replacement of meals to not be outside of special achievements outlined in the policy described in N.J.A.C. 6A:23A-18.22(a). APSSDs should refer to the chart of accounts applicable to APSSDs for details on where the costs of behavior modifications should be charged.

162. COMMENT: The commenter expressed concern with the proposed limitations on food service reimbursement and stated the proposed changes are not realistic or reflective of the way food often is utilized by APSSDs. The commenter stated the limitation on food services and costs seems to not take into account that many APSSD students receive instructions that utilize food, such as behavioral reinforcers, feeding studies, or to help students tolerate new tastes and textures. (526)

RESPONSE: Proposed N.J.A.C. 6A:23A-18.23 is intended to bring APSSDs into closer alignment with the child nutrition requirements that ensure appropriate dietary guidelines and meal patterns for meals served to students. The proposed section addresses meals, defined as “the provision of breakfast and/or lunch to students.” The Department maintains the proposed rules will ensure students receive nutritious meals while more closely aligning the meal costs included in tuition charged to sending school districts with public school levels. Proposed N.J.A.C. 6A:23A-18.22 will govern APSSDs using food for behavior modification.

163. COMMENT: The commenters stated APSSDs use food as part of instruction and it is unfair to exclude food costs from tuition. (3, 5, 8, 10 through 13, 16, 18, 19, 21, 23, 24, 25, 27, 28, 29, 31, 32, 34, 38, 40 through 43, 46, 47, 50 through 53, 55, 56, 58, 60 through 70, 72, 73, 75 through 84, 86, 87, 88, 90, 93 through 96, 101 through 106, 109, 111, 115, 117 through 120, 122, 123, 126 through 129, 131 through 137, 141
Food costs are not excluded from tuition under the proposed rulemaking. Proposed N.J.A.C. 6A:23A-18.23 will adopt reasonable limitations for including the cost of meals in tuition to ensure that students are receiving meals during the school day in accordance with the same dietary guidelines as their peers in public schools. The proposed rules also will ensure that students who qualify for the Child Nutrition Program (CNP), or who would qualify if they attended a nonprofit or public school, receive the benefit of free or reduced-price meals.

If food is used for an instructional program for students instead of meals, APSSDs should document this use so their independent auditors are able to verify that food expenditures are not being used for meals.

If food is used for behavior modification programs, APSSDs will be required under proposed N.J.A.C. 6A:23A-18.22 to adopt a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD’s behavior modification program.

164. COMMENT: The commenter stated that the Department has yet to provide answers about whether the reimbursement for school breakfast/lunch programs will be sufficient for APSSDs that provide specialized food and feeding to medically fragile students. (107, 147, 175, 795, and 862)

RESPONSE: The Department has revised N.J.A.C. 6A:23A-18.23(a)1iv and 2iii to clarify that expenditures for medically fragile students that exceed the total allowable food service costs net of reimbursement and/or sales solely due to substitutions to meals when the student’s disability restricts his or her diet will not be considered non-allowable costs.
165. **COMMENT:** The commenter stated that food services at APSSDs cannot be considered or regulated through the narrow lens of school nutrition programs. (863)

**RESPONSE:** The Department disagrees. Both public school districts and APSSDs serve students with a variety of needs related to special education, medical, and related services, including specialized dietary requirements that result from a student’s disability. Accordingly, the United States Department of Agriculture has provided regular guidance to participants in the CNP on the accommodations to be provided to applicable students and how that may be accomplished within the program. While bringing APSSDs closer to the requirements for public school food programs, proposed N.J.A.C. 6A:23A-18.23 will not require APSSDs to adhere to every Federal and State law and regulation governing the CNP, but will set reasonable standards for the provision of meals to students in school. The Department’s goals in adopting this section are: first, to ensure that the meals provided to public school students at school, whether attending a school in a school district or an APSSD, are appropriate and nutritious such that they support the student’s success in education; and second, that the public funds used to support child nutrition are utilized in an efficient and meaningful way. The Department is confident that the proposed section works toward these goals, along with the clarification that substitutions to meals when the disability restricts the student’s diet will not result in non-allowable costs.

166. **COMMENT:** The commenter expressed support for the proposal to not include food services as part of an APSSD’s tuition. The commenter said a different fee should be developed based on food necessity and category and medical insurance could pay for feeding tubes depending on severity of need. (48)

**RESPONSE:** The Department thanks the commenter for the support, but the proposed amendments do not remove food services from an APSSD’s tuition. Pursuant to proposed N.J.A.C. 6A:23A-18.23, expenditures for medically fragile students that exceed the total allowable food service costs net of reimbursement and/or sales solely due to substitutions to meals when the student’s disability restricts their diet will not be considered non-allowable costs.

167. **COMMENT:** The commenter stated proposed N.J.A.C. 6A:23A-18.23 removes the mechanism for school districts to waive the cost for school lunches provided by APSSDs, which permits student meals to be allowed in the cost of tuition. The commenter further stated only nonprofit APSSDs can be reimbursed through the CNP and for-profit APSSDs can have some of the most economically disadvantaged and marginalized students in the State. The commenter said the proposal will cause an undue burden on students in for-profit APSSDs and on the schools. (561)

**RESPONSE:** N.J.A.C. 6A:23A-18.23 will allow APSSDs to include the cost for school lunches in the cost of tuition within the reasonable limitations in the proposed section, which will bring APSSDs closer to the meals programs at public school districts. The Department agrees that only non-profit APSSDs may participate in the CNP; however, N.J.A.C. 6A:23A-18.23 will not require for-profit APSSDs to participate in CNP but will limit the charges to students to the same amounts limited under the CNP, and still will allow APSSDs to include total food service costs to students that do not exceed the section’s limitations. As a result, the proposed section will provides APSSDs with significant flexibility to provide nutritious meals to students and will not cause an undue burden on students in for-profit APSSDs.
168. COMMENT: The commenter stated proposed N.J.A.C. 6A:23A-18.23 to prohibit APSSDs from having food service costs (net of reimbursement and/or sales) that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture (NJDA), but the NJDA’s current daily price listed is unclear. The commenter also stated proposed N.J.A.C. 6A:23A-18.23 is unclear because it does not specify what costs are to be included and the methodology used to calculate the allowable costs. The commenter said proposed N.J.A.C. 6A:23A-18.23 does not mention that an APSSD approved for the Community Eligibility Provision (CEP) option is exempt from the CNP. The commenter further said the proposed section precludes an APSSD from obtaining a waiver from sending school districts to opt-out of the CNP reimbursement system as allowed in the past and recommended the practice be continued.

The commenter stated current N.J.A.C. 6A:23A-18.5(a)20, which already imposes numerous provisions regarding the cost of breakfast and lunch for students, should be maintained for the following reasons:

- APSSDs already are subject to numerous procedures that they will continue to follow to be in compliance with the NJDA’s nutritional guidelines, which are insured by onsite monitoring;
- Many APSSD students are from low-income/urban areas and proposed N.J.A.C. 6A:23A-18.23 will make it impossible for many APSSDs to provide breakfast and lunch to students, which will be harmful to them;
- If the intention of proposed N.J.A.C. 6A:23A-18.23 is to limit the “total food service costs,” which currently include salaries and benefits for lunch aides who puree food, feed medically fragile students, and assist in the lunch process, the section’s provisions will make it impossible to feed students; and
- Public schools have other sources of income (i.e., the general fund) to cover deficits in the food program, but APSSDs do not have the same revenue sources. (293)

RESPONSE: The Department disagrees that proposed N.J.A.C. 6A:23A-18.23 is unclear as to what costs are to be included. N.J.A.C. 6A:23A-18.23 is intended to bring APSSDs into closer alignment with the child nutrition requirements that ensure appropriate dietary guidelines and meal patterns for meals served to students. The proposed new section addresses meals, which are defined as “the provision of breakfast and/or lunch to students.” The Department maintains the proposed section will ensure students receive nutritious meals while more closely aligning the meal costs included in tuition charged to sending school districts with public school levels. The Department disagrees that food costs will have any effect on services to students, as APSSDs are already required to appropriately charge students for meals. The proposed section also recognizes that APSSDs may have higher food costs than public schools, by allowing APSSDs to use the higher maximum daily price schedule for high school published by the NJDA, regardless of whether an APSSD serves high school aged students.

If the NJDA’s daily price schedules, which are utilized by every public school in the State, are confusing to APSSD administrators, they can contact NJDA for guidance.

The CEP is a part of the CNP and does not exempt schools from the program’s requirements. However, APSSDs that qualify for CEP should receive funding from the CNP and, therefore, should be well within the total food service cost limitation set forth in proposed N.J.A.C. 6A:23A-18.23(a)1iv.
The proposed section also will offer significant flexibility for APSSDs to offer meal programs to their students since it limits only allowable costs for meals. As with all non-allowable costs, APSSDs will be able to serve meals in excess of the costs set forth in the proposed section, but the excess costs will not be included in the tuition charged to sending school districts. As meals provided by APSSDs are funded through public funds, it is appropriate that the meals are aligned to the nutritional guidelines followed by all public schools in the State.

Additionally, the Department has revised N.J.A.C. 6A:23A-18.23(a)1iv and 2iii to clarify that expenditures for medically fragile students that exceed the total allowable food service costs net or reimbursement and/or sales solely due to substitutions to meals when the student’s disability restricts his or her diet will not be considered non-allowable costs.

169. **COMMENT:** The commenter opposed the provisions in proposed N.J.A.C. 6A:23A-18.23(a)2 that would limit the allowable food service costs, net the amounts charged to students, of for-profit APSSDs to the maximum daily price schedule for a high school. The commenter stated the schedule is unlikely to reflect the actual cost of providing meals for students in accordance with applicable child nutrition guidelines and, therefore, is not an appropriate measure.

The commenter further suggested the Department amend the rule to replace “food service costs” with “meal costs” if the maximum daily price schedule for a high school remains the standard. The commenter stated the price schedule refers to the price charged to students in public schools for meals, while “food service costs” include costs beyond meal costs that are not reflected in the price charged to students, such as labor and other operational costs.

The commenter also stated replacing “food service costs” with “meal costs” would recognize that APSSDs use food as part of their instructional programs in ways that are unrelated to child nutrition. The commenter also requested that the Department add a provision at proposed N.J.A.C. 6A:23A-18.23 to consider food services costs relating to the provision of instructional programs as allowable instructional costs. (112)

**RESPONSE:** The Department disagrees. Proposed N.J.A.C. 6A:23A-18.23 refers to the maximum daily price schedule for a high school published annually by the NJDA, which reflects adherence to the child nutrition guidelines. The Department maintains that this is an appropriate limitation on food service costs.

Proposed N.J.A.C. 6A:23A-18.23 addresses only the cost of meals, defined as “the provision of breakfast and/or lunch to students.” The cost of food used for instructional programs should be included in total food costs, but in a separate account number in the chart of accounts, so they will not be included in the amount that may not exceed the limit in proposed N.J.A.C. 6A:23A-18.23(a)1iv and 2iii. Food costs for behavior modification programs that meet the requirements of proposed N.J.A.C. 6A:23A-18.22 should be recorded with behavior modification programs.

170. **COMMENT:** The commenter stated that proposed N.J.A.C. 6A:23A-18.23(a) will prohibit total food service costs from exceeding the maximum daily price schedule for a high school, which is unrealistic and ultimately will push APSSDs away from
participating in a program that ensures students, including children from low-income families, will not go hungry. The commenter further stated total food service costs should continue to be covered as long as procurement guidelines in securing a food service vendor are followed. (355)

RESPONSE: The Department disagrees. Proposed N.J.A.C. 6A:23A-18.23 is analogous to the requirements that apply to public schools regarding food costs for students. Specifically, the proposed section will require nonprofit APSSDs to participate in the CNP and receive Federal funding to offset the cost of food service at the APSSD. Both nonprofit and for-profit APSSDs will be required to charge students the same reduced and/or paid meal prices applicable to public school students under the CNP. Moreover, the proposed section will provide more flexibility to APSSDs than to public schools by allowing APSSDs’ net food costs (i.e., total food costs minus the required charges to students who are able to pay) to exceed the maximum daily price schedule for a high school published by the NJDA. As a result, the proposed section is reasonable and proportional and will ensure the provision of food to all APSSD students, including students from low-income families.

171. COMMENT: The commenter asked whether the Dietary Guidelines for Americans approved by the NJDA, as referenced in N.J.A.C. 6A:23A-18.23(a), pertain to food used by an APSSD for behavior modification. (355)

RESPONSE: N.J.A.C. 6A:23A-18.23 will apply to the provision of meals at APSSDs, which are defined in N.J.A.C. 6A:23A-18.1 as “the provision of breakfast and/or lunch to students.” Pursuant to proposed N.J.A.C. 6A:23A-18.22, behavior modification programs may not include “[t]he replacement of meals or components of meals on a regular basis outside of special achievements,” and the use of a behavior modification program must adhere to the balance of the requirements in N.J.A.C. 6A:23A-18.22.

172. COMMENT: The commenter stated proposed N.J.A.C. 6A:23A-18.23(a)2 requires for-profit APSSDs to charge students for reduced-price and/or paid meals. The commenter also stated for-profit APSSDs cannot utilize NJDA systems to ensure students who utilize Temporary Assistance for Needy Families (TANF) or Medicaid or are under foster care receive free lunch. The commenter stated allowing for-profit APSSDs to utilize NJDA systems would relieve an administrative burden and also ensure each student receives adequate and appropriate nutrition. The commenter further stated non-profit APSSDs typically send applications to parents and receive free or reduced-price information per the application, but parents of impoverished students are less likely to respond on the application and, therefore, this at-risk population will be asked to pay full price for lunch even though they should be receiving free or reduced-price meals. (355)

RESPONSE: Federal law does not allow for-profit schools to participate in the CNP administered by the NJDA. In recognition of the possibility that a for-profit APSSD may serve a student who would otherwise qualify for participation in the program, N.J.A.C. 6A:23A-18.23 will allow APSSDs to provide free or reduced-priced meals to such students and include the costs in the tuition charged to sending school districts. The reluctance of parents to complete a form for a free or reduced-price meal is not limited to APSSDs and cannot be resolved by the proposed rulemaking, but APSSDs should work with parents and sending school district staff to facilitate the process for qualifying for a free or reduced price meal. The Department maintains that the provisions will provide APSSDs with flexibility to provide appropriate, nutritious meals to students.
Agency-initiated Change:

1. The Department proposes at N.J.A.C. 6A:23A-18.23(a)1iv and 2iii amendments that will ease compliance with the proposed new rules. Proposed N.J.A.C. 6A:23A-18.23(a)1iv will require nonprofit APSSDs to not have total food service costs (net of the reimbursement and/or sales) that exceed the maximum daily price schedule for a high school published annually by the NJDA and states excess expenditures are non-allowable costs. Proposed N.J.A.C. 6A:23A-18.23(a)2iii will place the same requirements on for-profit APSSDs.

APSSDs serve students who have special needs and some of the students receive meal substitutions because a disability restricts their diets (for example, requires the use of a feeding tube). The Department does not intend for such costs, to the extent they exceed the proposed limitations in N.J.A.C. 6A:23A-18.23(a), to result in the inability of an APSSD and the sending school district to ensure that students’ special needs are accommodated. The proposed amendment will ensure that APSSDs can accommodate the needs of such students and that sending districts will be sure their students receive a nutritious meal. The proposed amendment will be beneficial to APSSDs, sending school districts, and, most importantly, students who attend APSSDs.

Therefore, the Department proposes to amend N.J.A.C. 6A:23A-18.23(a)1iv and 2iii to add “except for where they are solely attributable to substitutions to meals when the disability restricts the child’s diet” after “[e]xcess expenditures shall be deemed non-allowable costs.” The proposed amendments are as follows:

1. Nonprofit APSSDs shall:
   iv. Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)1iii 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, except for where they are solely attributable to substitutions to meals when the disability restricts the child’s diet.

2. For-profit APSSDs shall:
   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, except for where they are solely attributable to substitutions to meals when the disability restricts the child’s diet.
TO: Members, State Board of Education

FROM: Kimberley Harrington
Acting Commissioner

SUBJECT: N.J.A.C. 6A:23A-18


REASON FOR ACTION: Amendments

SUNSET DATE: April 6, 2024

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 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.


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

This section defines the terms used specifically in the subchapter.

The Department proposes to recodify the section as new N.J.A.C. 6A:23A-18.2.

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 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 APSSD 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 APSSD 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 APSSD 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 to recode this section as new N.J.A.C. 6A:23A-18.3.

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 N.J.A.C. 6A:23A-18.3(a)3ii through vii 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 June 30, 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 Department also proposes to recodify current N.J.A.C. 6A:23A-18.3(e)2i and 2ii as N.J.A.C. 6A:23A-18.3(e)2ii and iii, respectively. 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 Department also proposes to recodify current N.J.A.C. 6A:23A-18.3(f)3i and ii as N.J.A.C. 6A:23A-18.3(f)3ii and iii, respectively. 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), 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)i, 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)ii, 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 amendments at recodified N.J.A.C. 6A:23A-18.2(j), 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 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)1iii 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 to recodify N.J.A.C. 6A:23A-18.3(r) as N.J.A.C. 6A:23A-18.3(q). 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 to recodify this section as new N.J.A.C. 6A:23A-18.4.

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 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 recodify this section as new N.J.A.C. 6A:23A-18.5.

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 “replenishment 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 APSSDs 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 the contract to include all fringe benefits. The proposed regulations will ensure employment contracts contain all relevant information. The Department also proposes to recodify N.J.A.C. 6A:23A-18.5(c)5, 6, and 7 as N.J.A.C. 6A:23A-18.5(c)6, 7, and 9, respectively.

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 (HSAs); 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 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 recodify this section as new N.J.A.C. 6A:23A-18.6.

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 benefit 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 contact 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 recodify N.J.A.C. 6A:23A-18.6(a)33 as new N.J.A.C. 6A:23A-18.6(a)32.

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 no longer are necessary because of the travel cost section at proposed new N.J.A.C. 6A:23A-18.21.
The Department proposes to recodify N.J.A.C. 6A:23A-18.6(a)36 through 68 as N.J.A.C. 6A:23A-18.6(a)33 through 65, respectively.

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 to recodify this section as new N.J.A.C. 6A:23A-18.7.

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 to recodify this section as new N.J.A.C. 6A:23A-18.8.

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.

The Department proposes to recodify this section as new N.J.A.C. 6A:23A-18.9.

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 recodify this section as new N.J.A.C. 6A:23A-18.10.

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 set forth in 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 APSSDs may be appealed to the State Board of Education.

The Department proposes to recodify this section as new N.J.A.C. 6A:23A-18.11.

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.


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 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.

The Department proposes to recodify this section as N.J.A.C. 6A:23A-18.13.

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.

The Department proposes to recodify this section as N.J.A.C. 6A:23A-18.14.

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 to recodify this section as N.J.A.C. 6A:23A-18.15.

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 recodify this section as N.J.A.C. 6A:23A-18.16. 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 APSSSDs 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 recodify this section as N.J.A.C. 6A:23A-18.17.

The Department also proposes to add that it may place on conditional approval an APSSD that fails to provide requested documentation. The proposed amendments 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 to recodify this section as N.J.A.C. 6A:23A-18.18.

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 based 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 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 in the definition of travel expenditures.

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 0.25 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, except for where the costs are solely attributable to substitutions to meals when the disability restricts the child’s diet.

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 APSSDs 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 proposed amendments follows (additions indicated in boldface *thus*; deletions indicated in brackets [thus]):
CHAPTER 23A,
FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES

SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES
6A:23A-18.1 Scope and Purpose
6A:23A-[18.1] 18.2 Definitions
6A:23A-[18.2] 18.3 Tuition rate procedures
6A:23A-[18.3] 18.4 New approved private schools for students with disabilities and enrollment requirements
6A:23A-[18.4] 18.5 Bookkeeping and accounting
6A:23A-[18.5] 18.6 Non-allowable costs
6A:23A-[18.6] 18.7 Surcharge
6A:23A-[18.7] 18.8 Public school placement restricted working capital fund
6A:23A-[18.8] 18.9 Calculation of student attendance
6A:23A-[18.9] 18.10 Audit requirements
6A:23A-[18.10] 18.11 Appeals
6A:23A-[18.11] 18.12 Roundtable work group
6A:23A-[18.12] 18.13 Out-of-State or New Jersey Department of Human Services approved private schools for students with disabilities
6A:23A-[18 13] 18.14 Inspection of records
6A:23A-[18.14] 18.15 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans
6A:23A-[18.15] 18.16 Fiscal and budget information
6A:23A-[18.16] 18.17 Failure to comply with Department directives
6A:23A-18.18 Sale of assets of an approved private school for students with disabilities
6A:23A-18.19 Annual disclosure statement
6A:23A-18.20 Nepotism
6A:23A-18.21 Travel
6A:23A-18.22 Behavior modification
6A:23A-18.23 Child nutrition
CHAPTER 23A. FISCAL ACCOUNTABILITY, EFFICIENCY
AND BUDGETING PROCEDURES

SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS
FOR STUDENTS WITH DISABILITIES

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.

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” means 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. Is not part of the employee's executed contracted salary;
2. Is not part of the employee's base salary in the subsequent school year;
3. Is arbitrary and not based on any specific criteria or qualifications; [and] or
4. Is paid solely at the discretion of management.

"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.

"Compensation increases" means any additional payment(s) made to an employee after the start of the fiscal year that would appear on the employee's W-2 and/or should result in a Form 1099 being issued to the employee.

"Conditional approval status" means the [approved private school for students with disabilities] 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 APSSD officers, APSSD directors/trustees, consultants, and/or individuals providing services to the APSSD at any time or to 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.

"Keyman life insurance" means insurance on staff members for which the [school] APSSD is the beneficiary of the life insurance policy.

“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.
"Related services" means the type of services defined in N.J.A.C. 6A:14-1.3.

"School year" means the time period [a school] 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. Based on all costs required for student instruction from July 1 through June 30;
   ii. Consistent with the students' individualized education programs (IEP);
   iii. Inclusive of all costs required to implement all students' IEPs and all related services, except as set forth in (a)5 below;
   iv. Reasonable, that is, ordinary and necessary and not in excess of the cost 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. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23A-[18.4(a)1118.5(a)11.

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)2i 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.
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. Maintain bookkeeping and accounting records by class type and school location for the school year;

2. Charge a separate tuition rate for each class type served;

3. Prepare, in the Department-prescribed format, the audited costs by class type for the first two years that tuition is charged by class type, [in order for] 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. Direct costs.
(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 are incurred for a common or joint purpose, but are not readily assignable to [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 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. Direct costs for each program as determined pursuant to (c) above; and

2. Indirect costs, [in accordance with an equitable allocation plan approved by the Commissioner, or] 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. Direct costs for each program as determined pursuant to (c) above;

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. A budget reflecting projected costs, working capital fund or surcharge, estimated enrollment, and the requested tuition rate based on this information;

ii. A detailed [explanation of] 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)] (p) above.

(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. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

(t) For students who are transitioning back to a program of the sending district board of education, **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. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

(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.**
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 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 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 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. Fiscal and programmatic data;
2. Projected allowable cost items and projected enrollments;
3. A projected budget that reflects administrative costs not in excess of, and instructional costs not less than, the percentages identified in N.J.A.C. 6A:23A-[18.2(a)3]18.3(a)3 and as defined in the chart of accounts;
4. A report of all funding resources;
5. An affidavit of compliance; and
6. A statement of assurance as required by the Office of Special Education Programs.

(f) If the Commissioner, or his or her designee, approves the tentative tuition rate 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) 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.

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. Cash receipts journal;
   ii. Cash disbursement journal;
   iii. General ledger;
   iv. Tuition ledger;
   v. Payroll journal; and
   vi. Fixed asset inventory.

9. An [approved private school for students with disabilities] 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. The specific dollar amount or percentage of original contracted salary to be paid pursuant to (a)14ii above.

15. An [approved private school for students with disabilities] 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. Eligibility for all employees;

ii. Basis by which the pay is earned;

iii. The amount of the awards by plan(s);

iv. The maximum number of awards to be given by plan(s) for each year; and

v. The date of [board] approval and date of initiation of the plan(s).

16. [A] 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. Dates of employment;
3. Work [hours] **hours/durational term of employment**;
4. Certification(s) and/or degree(s) held;
5. **Certification(s) required for the job title**;
6. A job description;
7. The job title; [and]
8. **All fringe benefits; and**
9. The salary.

(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. Life insurance;
3. Type(s) and qualification for retirement plan(s);
4. Severance pay;
5. Vacation;
6. [Long term] **Long-term** disability;
7. Sick day and personal day benefits;
8. Premium-only plans;
9. Cafeteria plans;
10. Section 125 plans;
11. Tuition reimbursement; [and]
12. Health savings accounts (HSAs), medical savings accounts (MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs) established and maintained within applicable laws 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 carry over 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. Is in accordance with (a)14 or 15 above; or
5. Has been approved by the Department after review of a formal written request to the [Assistant] Commissioner, [Division of Finance] 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. Director;
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.

**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. The outcome(s) of any Federal, State, or local referendum, initiative, or similar activity; or
   
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. Whether the challenge serves the public interest;

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. **On donated goods and assets**;

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. The cost of keyman insurance except where a term insurance policy is required by a lender as collateral for a loan;

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

26. Interest costs on loans when:
   
i. Interest is in excess of the general prevailing rate at the time the loan was taken;

   ii. The loan is a less-than-arm's length/related party transaction [which] **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. The loan is used for other than financing of fixed assets;

ii. The loan is not secured by the fixed asset being financed; [and] or

iii. The interest costs are on the portion of the loan term that exceeds the recovery period for depreciation of the fixed asset securing the loan;

28. A loss incurred on the sale or exchange of fixed assets between related parties;

29. The write-off of uncollected accounts receivable (bad debts) [before]:

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: [(extraordinary services; or)

(1) Extraordinary services;

(2) Services to students placed by an out-of-State agency; or

(3) Services to private placement students;

[[iii. From a State agency or entity, sending district board of education, charter school board of trustees, or renaissance school.]]

30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;

31. Retirement plan costs that are:

i. Not in conformance with the Employee Retirement Income Security Act of 1974, P.L. 93-406[,] and its successor legislation, and that exceed costs allowed by the Internal Revenue Service;

ii. For a non-qualified retirement plan(s);

iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see [Internal Revenue Code] 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 
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. Not paid in accordance with the fringe benefits criteria in (a)23 above; and 
viii. If applicable, not in conformance with a church plan as defined in ERISA;

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

[33.] 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;

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

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];

36. Payment of Federal, State, and local income taxes on income other than
tuition;

37. [Any cost] Costs associated with travel to and from the officer's or
employee's home and the school or agency;

38. [All] Costs for all personal expenses, such as a personal travel expense or
repair on a personal vehicle;

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;

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;

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 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. Cost of purchasing/lease purchasing buildings, equipment, or other goods from related parties in excess of the original cost to the related party, less depreciation calculated using the straight line method;

iv. Cost of personal services paid to a related party when [such] 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. Not reasonably related to the value of the services or benefits received;
   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;

[58.] **55.** Cost of employee severance pay:
   i. In excess of four weeks' salary; and
   ii. If, in addition, the cost of a buyout of the employee's contract;

[59.] **56.** Cost of a buyout of an employee contract:
   i. In excess of 90 days’ salary; and
   ii. If, in addition, the cost of the employee's severance pay;

[60.] **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. A criminal history clearance prior to starting employment or;

ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;

[66.] **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).

N.J.A.C. 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] APSSDs, 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)]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.
N.J.A.C. 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
this subchapter, a decision by the Commissioner’s designee shall not constitute final
agency action.

N.J.A.C. 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.

(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.


(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.

N.J.A.C. 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) The monitoring process may include, but is not limited to, all financial information required in this subchapter.

(c) After the monitoring process is completed, a report shall be written and sent to the [approved private school for students with disabilities] 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. Objective and strategies for correcting each noncompliance item; and
   2. The date(s) by which noncompliance will be corrected.

(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.


(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. The number of students served;
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].

N.J.A.C. 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.

N.J.A.C. 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] [[APSSD that has chosen to cease operations as an APSSD 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] [[and acquiring]] 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 [[allocating]] 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 [independently
performed] independent valuation of the acquired assets;

3. [[Establish the buying APSSD’s tentative beginning book value for each
acquired asset. The buyer and seller each]] **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] and
documented by Internal Revenue Service Form 8594 or successor form.

4. Agree to an independent valuation of the acquired assets for the purposes of
establishing depreciable basis to the buyer. The buying and selling APSSDs
shall enter into a written agreement allocating the total consideration
provided to the selling APSSD based upon the independently performed
valuation of the acquired assets. The agreement shall establish the buying
APSSD’s tentative beginning book value for each acquired asset. To
determine the actual depreciable or amortizable book value (basis), the
tentative beginning book value of depreciable or amortizable assets so
acquired shall be adjusted downward to the extent accumulated depreciation
has been charged to tuition by the previous owner.

(b) In the event of a bulk sale of capital assets from an APSSD that has chosen to cease
operations as an APSSD to another APSSD, the buying APSSD shall receive from
the selling [school must provide] APSSD a final financial report within 90 days of the
sale showing the disposition of its assets and any corresponding tuition refund(s) to the
The board of education. In the event of a bulk sale of capital assets from an APSSD that has chosen to cease operations as an APSSD to another APSSD, the buying APSSD shall determine the actual depreciable or amortizable book value (basis) of the acquired assets. The buying APSSD shall document the beginning book value to the Department within 90 days of the asset acquisition and in a format that details the purchase price allocated to the asset or group of assets in accordance with the buy/sell agreement, the method of calculation of annual depreciation or amortization, and the period over which the asset or group of assets will be depreciated or amortized.

1. In the event of a sale to another APSSD of capital assets that is not considered a bulk sale of assets, the seller and the purchaser shall maintain records of the original cost, depreciable or amortizable basis, and the accumulated depreciation on the seller’s books. If the buyer and seller are related parties, the seller’s original cost shall be used to establish the buyer’s depreciable or amortizable basis. The depreciable or amortizable basis shall include an adjustment in the form of a reduction for accumulated depreciation or amortization taken by the seller. The buyer may depreciate or amortize the adjusted basis as permitted by N.J.A.C. 6A:23A-18.5(a)3.

2. If the buyer and seller are not related parties, the consideration paid by the buyer shall establish the buyer’s depreciable or amortizable basis. The buyer may depreciate or amortize the adjusted basis as permitted by N.J.A.C. 6A:23A-18.5(a)3.]

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 as provided for 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

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:
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;

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;

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

Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.8.

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

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:


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 (0.25) 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. 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)1iii 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, except for where they are solely attributable to substitutions to meals when the disability restricts the child’s diet.

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, except for where they are solely attributable to substitutions to meals when the disability restricts the child’s diet.
   
(b) The cost of meals for staff shall not be included in the certified actual cost per student.