

Frequently Asked Questions for *N.J.A.C. 6A:23A-18.1 et seq.*

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A. General Questions

- A1. Do the amendments and new rules at *N.J.A.C. 6A:23A-18* include deadlines or timetables for the Department's approval or response?

No, timelines for the Department's responses are not 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. The Department recommends that in order 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.

- A2. Can the corrective action plan required by *N.J.A.C. 6A:23A-18.15(d)* be addressed as part of management's responses to recommendations in the APSSD's audit report?

No, 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.

- A3. Can the Department establish an advisory council comprised of Department officials, accounting firms, and APSSDs to ensure clarity and consistency among all stakeholders as new regulations *N.J.A.C. 6A:23A-18* are implemented in order to hear implementation concerns, attempt to address them, and identify ways to resolve discrepancies?

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

- A4. We note that DOE has historically provided documents in a prescribed format, such as attendance records, time sheets, and annual fiscal information forms. Will such forms be updated to accommodate the new requirements?

The above mentioned forms do not require a revision either because the requirements for those forms did not change or because the data collected in them will be collected by web-based data collection in the future. APSSDs should continue to allocate employees' time on timesheets based on the amount of time working for the APSSD or for any other entity, but need not be allocated on the timesheet based on the program to which the cost is allocated. Please also note that the annual fiscal information forms will be a part of the web-based data collection.

B. Advertising Costs - *N.J.A.C. 6A:23A-18.2* and *18.5(a)*

- B1. What costs must fall within the limitation on "advertising costs?"

The new definition of "advertising costs" in *N.J.A.C. 6A:23A-18.2* refocuses the definition 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. For more information, please see the [Chart of Accounts](#).

- B2. Does the website for parent information, parent portals, or other mediums designed to provide information to parents fall under “advertising?”

No, it does not. Websites that are for parent information are not considered “advertising costs” which are “associated with promoting, marketing, or public relations.” For more information, please see the [Chart of Accounts](#).

- B3. What account should the APSSD use to record expenses such as a website for parent information, parent portals, or other mediums designed to provide information to parents that do not meet the definition of “advertising costs” as set forth in N.J.A.C. 6A:23A-18.2?

The APSSD should use account 11-000-251-335 to record expenses for the website for parent information, parent portals, or other mediums designed to provide information to parents and not meeting the definition of “advertising costs.”

C. Calculation of Tuition – N.J.A.C. 6A:23A-18.3

- C1. Please provide an explanation of expenditures and the tuition formula pursuant to N.J.A.C. 6A:23A-18.3(a)3.

N.J.A.C. 6A:23A-18.3(a)3 sets the maximum administrative cost percentage and the minimum instructional cost percentage to be included in the calculation of tuition. The previous rules required costs for programs at Approved Private Schools for Students with Disabilities (APSSDs) to include minimum instructional costs of 55 percent and maximum administrative costs of 25 percent. The amendments to N.J.A.C. 6A:23A-18.3(a)3 adjust the administrative and instructional costs limits over the course of five school years by .5 percent each year. The defined percentages for each school year are as follows:

- For the 2016-2017 school year, minimum instructional costs of 55 percent and maximum administrative costs of 25 percent;
- 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.

At the end of the five-year phase-in, this amendment will have reallocated the current level of overhead administrative expenditures toward the instructional needs of students.

- C2. Since *N.J.A.C.* 6A:23A-18.3(k) states the Commissioner will issue an approval of the final tuition rate charged following satisfactory compliance review of an audit report review, can the Department define what that entails and set a timeline for completion?

N.J.A.C. 6A:23A-18.3(k) merely clarifies 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.

D. Individualized Education Programs (IEPs) – *N.J.A.C.* 6A:23A-18.3

- D1. Will the new regulations prevent APSSDs from providing the education and related services required by students' IEPs?

No, APSSDs must continue to abide by the IEP for the student placed at the school, as determined by the student's sending district.

- D2. Is one-to-one nursing a service approved by the Office of Special Education Policy and Procedure (OSEPP)?

No, as of July 1, 2017, the OSEPP is no longer approving agencies for one-to-one skilled nursing. School Districts and APSSDs may contract with agencies listed on the Department of Human Services Medical [Provider Directory](#). Please note that such agencies do not qualify as "approved clinics or agencies" within the meaning of *N.J.A.C.* 6A:23A-18.3(o)1iii.

E. Employment Contracts, Terms, and Conditions – *N.J.A.C.* 6A:23A-18.2, -18.3, -18.5

- E1. Will the definition of "bonus" at *N.J.A.C.* 6A:23A-18.2 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 or payment for the waiver of health care coverage?

No, the new definition of "bonus" will not disallow additional payments to employees for stipends for added job responsibilities, or for the waiver of health care coverage. APSSDs should include the payment in the employee's executed contract or an addendum 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 regulations that apply to the specific type of payment for such payments to be considered allowable.

- E2. May an APSSD define an employee's full-time work hours as more than 35 hours per week?

Yes, the inclusion of "or more per week over the term outlined in the employment contract" in *N.J.A.C.* 6A:23A-18.2 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.

- E3. *N.J.A.C.* 6A:23A-18.5(c) requires the inclusion of fringe benefits in employees' contracts. Since contracts were issued to staff for the upcoming 2017-18 year, can an addendum page be attached to the contract noting the fringe benefits, or it is necessary to reissue all new contracts?

Attaching addendums to the existing employment contracts is acceptable as long as there is documentation of fringe benefits for each individual employee as required per *N.J.A.C.* 6A:23A-18.5(c).

- E4. In *N.J.A.C.* 6A:23A-18.5(c)3, what is meant by durational term of employment?

N.J.A.C. 6A:23A-18.5(c)3 “/durational term of employment,” refers to the number of months in a year the employee reports to work (i.e., whether an employee is a 10-month vs. a 12-month employee).

- E5. What is the CPI rate that will be applied to speech, OT and PT in the maximum salary guide for 2017-2018?

Speech language specialists, occupational therapists, and physical therapists amounts are increased annually by the NJ CPI consistent with *N.J.A.C.* 18A:23A-18.3(o). For 2017-18, the NJ CPI increase is 0.30%. This amount will be updated annually. Please also see the current [Maximum Salaries](#).

- E6. Is a stipend for coaching considered a “bonus?”

A stipend for coaching is not considered a “bonus” pursuant to *N.J.A.C.* 6A:23A-18.2. APSSDs should either include an addendum to the teacher’s contract that sets forth the terms and conditions for the stipend or issue two separate contracts to the employee for each of their job titles, that meets all of the requirements set forth in *N.J.A.C.* 6A:23A-18.2 for it not to be considered a “bonus,” which means the APSSD must 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.

- E7. If a teacher receives a stipend for coaching, should the school issue two separate contracts to the employee?

APSSDs should either include an addendum to the teacher’s contract that sets forth the terms and conditions for the stipend or issue two separate contracts to the employee for each of their job titles, that meets all of the requirements set forth in *N.J.A.C.* 6A:23A-18.2 for it not to be considered a “bonus,” which means the APSSD must 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.

- E8. If an employee has more than one job responsibility, including a stipend for coaching, or a different type of related service provided to a student, to what accounts should that be charged?

For APSSD employees serving in more than one job responsibility, the cost of that job responsibility should be divided and charged appropriately to each applicable category. For example, a special education cognitive mild teacher’s salary should be accounted for

in Account Number 11-201-100-101, but if that teacher also has a contract for coaching and receives a stipend for that work, the cost of the stipend should be accounted for in Account Number 11-402-100-100.

- E9. Can an aide’s contract have the titles of both instructional paraprofessional and one-to-one aide, even if that individual does not currently serve in one of those titles? Can the job description of an instructional paraprofessional contain the description of a one-to-one aide even if that individual does not perform one-to-one aide services during the year? Can the timesheet also use more than one title for all paraprofessionals, even if they are not utilized as one of those titles during the year?

For all positions, two different job titles must be reflected in separate contracts. Additionally, consistent with current practice, since extraordinary services are not included in the calculation of the certified actual cost per student, the costs of services provided must be disaggregated. If a job title or responsibilities change during the course of a school year, the APSSD should create a new contract. For professionals serving in roles that are billed separately, their timesheets should reflect those differences.

F. Related Services - *N.J.A.C. 6A:23A-18.3(a)5*

- F1. Please explain the changes to *N.J.A.C. 6A:23A-18.3(a)5*.

N.J.A.C. 6A:23A-18.3(a)5, 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. *N.J.A.C. 6A:23A-18.3(a)1iii* requires 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, the new regulations at *N.J.A.C. 6A:23A-18.3(a)5* allows 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.

- F2. What does the Department mean by “limited exception” and “typically provided” in reference to related services and who will determine if a related service is to be provided during the school day?

The “limited exception” referenced is detailed in the rule’s second sentence: “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.”

The sending district IEP team is responsible for determining the student’s education and related services.

G. Exceeding Tentative Rate by More Than 10% - *N.J.A.C. 6A:23A-18.3(a)2*

- G1. Must an APSSD notify sending school districts that there will be a rebill greater than 10 percent when the APSSD does not intend to charge the rebill?

N.J.A.C. 6A:23A-18.3(a)2 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 *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.

G2. How has *N.J.A.C. 6A:23A-18.3(a)2* changed?

N.J.A.C. 6A:23A-18.3(a)2 already requires 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 to provide the reason for the increase. The amendments to this regulation clarify when notice must be given.

If an APSSD does not provide the notification, the APSSD will not be allowed to charge an increase of more than 10 percent.

N.J.A.C. 6A:23A-18.3(a)2ii now requires 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. This additional information should be available to and considered by APSSDs prior to determining that they must charge a final tuition rate that is more than 10 percent above the tentative tuition rate.

H. Instructional and Administrative Cost Percentages -*N.J.A.C. 6A:23A-18.3(a)3*

H1. Should the cost of extraordinary services be included in the instructional numerator and the total cost denominator when calculating the minimum and maximum percentages in *N.J.A.C. 6A:23A-18.3(a)3*?

No, the cost of extraordinary services should not be added to the calculation of instructional costs included in tuition, because extraordinary services costs are not included in tuition.

H2. Since the amount of turnover in aide positions is extremely high, do *N.J.A.C. 6A:23A-18.5(c)* and *N.J.A.C. 6A:23A-18.5(c)8* require APSSDs to execute employment contracts with each of these employees and which detail all benefits received?

Yes, APSSDs must have a contract with each of these employees. The employment contract required by *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, and may include them merely by reference to the APSSD’s policies. APSSDs should be mindful that fringe benefits must be in accordance with *N.J.A.C. 6A:23A-18.6(a)23*.

- H3. May the costs associated with having a principal, which is a requirement, be included in the instructional cost category?

No. 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.

I. APSSD Facilities – N.J.A.C. 6A:23A-18.3 and -18.5

- I1. Does N.J.A.C. 6A:23A-18.3(g)l, which 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, account for time when the shared space is idle?

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.

- I2. Will the Department be creating a Cost Category Worksheet for the new chart of accounts so that an APSSD can monitor whether its administrative and instructional percentages will be allowable?

The Department will not be creating a cost category worksheet for APSSDs to track their costs throughout the year, but APSSDs wishing to create their own should start with [Exhibit D – Crosswalk Cost Category Assignments for Calculation of Cost Percentages](#), found on the [Chart of Accounts](#) page.

- I3. Why does N.J.A.C. 6A:23A-18.5(a)3 limit the capitalization floor for fixed assets to \$5,000 rather than the current \$2,000?

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

- I4. May an APSSD capitalize a large purchase of fixed assets, each costing under \$2,000?

An APSSD may choose to capitalize a bulk purchase of fixed assets that has a total cost over \$2,000. Please note that other item-specific depreciation rules should still be followed (e.g. leasehold improvements, vehicles), and the balance of the regulations including the “reasonableness” provision in N.J.A.C. 6A:23A-18.2(a)1iv. Additionally, APSSDs should maintain documentation sufficient for the review of the auditor and desk reviewer.

- I5. Please explain the requirement that an APSSD capitalize leasehold improvements to an existing structure and depreciate over the remaining lease term and any extensions.

The new regulation N.J.A.C. 6A:23A-18.5(a)4i was adopted 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 new rules at N.J.A.C. 6A:23A-18.5(a)4, which is to ensure that leasehold improvements benefit the school's students.

- I6. Will the *N.J.A.C. 6A:23A-18.5(a)4i* result in a large write-off in the year of lease termination and a spike in tuition?

The Department disagrees that the new regulation 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. Specifically, *N.J.A.C. 6A:23A-18.5(a)4iii* prohibits 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 new *N.J.A.C. 6A:23A-18.5(a)4i* or *ii* for any fiscal year.

N.J.A.C. 6A:23A-18.5(a)4iv prohibits 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*.

- I7. Since management may have no intention of renewing all the lease term options, there may be a substantial portion of the remaining leasehold improvement cost not depreciated. Does an APSSD have the discretion to include or exclude lease period extensions when assigning depreciation periods and to write off the remaining portion of the net book value of the leasehold improvement in the year of lease termination?

No, *N.J.A.C. 6A:23A-18.5(a)4iii* prohibits 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 new *N.J.A.C. 6A:23A-18.5(a)4i* or *ii* for any fiscal year. *N.J.A.C. 6A:23A-18.5(a)4iv* also prohibits 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*. See response to question number I6.

- I8. New *N.J.A.C. 6A:23A-18.5(a)4iii* indicates an APSSD cannot depreciate a structure that is not in service. An APSSD's structure may not be in use if it does not have a summer program. Should an APSSD's structure be considered "in use" regardless of whether the APSSD has a 10- or 12-month program?

The new 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.

- I9. Does *N.J.A.C. 6A:23A-18.6(a)70* limit costs associated with depreciation of leasehold improvements?

Yes, costs that do not conform to the requirements set forth in *N.J.A.C. 6A:23A-18.5(a)4* are non-allowable. *N.J.A.C. 6A:23A-18.6(a)70* outlines specific instructions for including certain costs of leasehold improvements in the tuition charged to school districts. *N.J.A.C. 6A:23A-18.5(a)4* ensures that costs charged back to school districts based on a related party's improvement of leased property are appropriate by disallowing costs included in the tuition charged to school districts based on improvement of a leased structure that are not utilized by the APSSD or do not directly benefit public school students are appropriately allocated.

- I10. If an APSSD whose lease is terminated due to an action over which they have no control, may it ask for an exception to the new requirements on amortizing leasehold improvements in the final year of the lease?

An APSSD experiencing an Act of God or other action over which they have control may request an exception from those rules from the Department. Any school with such an issue should contact the Department for guidance on how to submit such a request.

- I11. Does *N.J.A.C. 6A:23A-18.5(a)4iv* apply to an APSSD's business office which provides no direct benefit to students?

No, the Department disagrees that the structure, or portion thereof, housing an APSSD's business office does not benefit students. *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.

- I12. Will business and administrative offices outside the school premises need to be approved if they are opened after July 1, 2017?

Yes, pursuant with *N.J.A.C. 6A:23A-18.5(d)*, an APSSD that operates its educational program outside of a public school district shall request Departmental approval to purchase or rent an administrative or business office at a location outside of the 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 or upon renewal or extension of the lease for that space. Any new administrative office after July 1, 2017, whether replacing a current separate facility or an entirely new separate facility, must be approved. At the Department's request:

- The county office of education may conduct an on-site facility review to determine if there is sufficient space at the APSSD's educational facility for these operations; and/or
- The APSSD shall submit to the Commissioner, or his or her designee, documents that substantiate the need for additional space.

- I13. Must APSSDs with existing approval for a business office outside the school premises be approved under *N.J.A.C. 6A:23A-18.5(d)*.

No, previously approved (prior to July 1, 2017) leased or purchased administrative or business office space remain approved as an allowable cost through the term of ownership of the space, or of the lease agreement for the space.

- I14. How should an APSSD apply for approval of a business office location outside of a school location? Is there a form and what is the procedure?

Please be aware that under regulations prior to July 1, 2017 such approvals were required for related party rentals or purchases of space. Beginning July 1, 2017, regulations permit previously approved rentals or purchases of space to continue as approved allowable costs for the duration of occupancy of the administrative or business office space where owned by the APSSD, or for the term of the lease that was operative as of June 30, 2017. Approval must again be obtained only before the location of the owned space is changed, or before the lease term renews or a new lease is executed.

All leases or purchases that have not been approved prior to July 1, 2017, whether related party or arms-length transactions, must be approved by the county office during 2017-18 to be considered an allowable cost for 2017-18. To clarify, approval must be obtained sometime during 2017-18 for the cost to be considered allowable for the entirety of 2017-18. The Department will publish the process along with the required form for APSSDs to apply for approval pursuant to *N.J.A.C. 6A:23A-18.5(d)*. The approval must be obtained sometime during the 2017-18 school year.

- I15. Must the approval required by *N.J.A.C. 6A:23A-18.5(d)* be completed by July 1, 2017?

No. Please refer to question I14 above.

J. Tuition Rate Charged - *N.J.A.C. 6A:23A-18.3(l)*

- J1. Is the independent auditor or APSSD management responsible for determining the “tuition rate charged” in *N.J.A.C. 6A:23A-18.3(l)*?

APSSD management is responsible for determining the “tuition rate charged” by the APSSD; however, the “tuition rate charged” must not exceed the certified actual cost per student as calculated by the independent auditor.

K. Maximum Allowable Salaries and Recognized Position Titles - *N.J.A.C. 6A:23A-18.3(o), (p), and (q)*

- K1. Will the new rules at *N.J.A.C. 6A:23A-18* allow for salary increases for professionals at APSSDs who have a direct impact on instruction and provide direct services to students?

Yes, the current maximum salaries provide room for salary growth for most teachers and other professionals who provide education and related services to students. The new rules for therapists described in the response to question number K2 provide additional allowances for those positions.

- K2. What are the new rules for calculating the maximum allowable salary for therapists?

With regard to therapists, the Department has made three special allowances for the maximum salaries in occupational therapist (OT), physical therapist (PT), and speech language specialist (SLS) positions, as follows:

- 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) in accordance with *N.J.A.C. 6A:23A-18.3 (o)1i*;
- Pursuant to *N.J.A.C. 6A:23A-18.3(o)1ii*, the published total hourly rates for OTs, PTs, and SLSs contracted by an APSSD as purchased service providers or independent contractors includes an allowance of 35 percent more than the maximum allowable salary plus the annual CPI increase.
- *N.J.A.C. 6A:23A-18.3(o)1iii* allows 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 amount of the quotes, APSSDs 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 APSSDs choose to contract with a related party for the OT, PT, and SLS services, the related party must be the lowest quote.

The Department has already posted [maximum salary charts](#) that reflect the change for these three position titles.

K3. Are APSSDs required to utilize a fee-bidding process for OTs, PTs and SLSs?

No, APSSDs are not required to utilize a fee-bidding process for SLSs, OTs and PTs. *N.J.A.C. 6A:23A-18.3(o)1* permits APSSDs to pay an approved clinic or agency for contracted services at a rate above the maximum allowable salary published rate, as long as the APSSD acquires quotes according to the following provisions:

- 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
- Provides documentation of the three quotes required by *N.J.A.C. 6A:23A-18.3(o)1iii(1)* to the Department upon request.

K4. Is the Department freezing the salaries of APSSD employees?

The majority of APSSD employees are paid a salary that is less than the 2016-2017 allowable regulatory maximum salary charged into tuition. For those employees, for 2017-2018 and forward, the Department is not freezing the actual salary paid those employees at the 2016-2017 level. What is frozen is the regulatory maximum allowable salary schedule. To clarify, this means that for 2017-2018 school year and thereafter, the allowable salary of an APSSD employee may continue to increase annually up to the published regulatory allowable maximum per the maximum salary schedule.

The Department has instituted a hold of the 2016-2017 maximum allowable salaries which represent the highest salary by position title that an APSSD may pay employees and include in the tuition charged to public schools. Only the salaries of occupational therapists, physical therapists and speech language specialists will increase over the 2016-2017 maximum allowable salaries. The [maximum salary listing for 2017-2018](#) is also available. Please also refer to question number K5.

- K5. Why is the Department holding maximum allowable salaries at the 2016-2017 levels for seven years?

The cap on maximum allowable salaries is for seven years to directly correspond with the seven years the regulations will remain in effect. The new rule requires the Department to initiate, in approximately five years, a study to examine 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 new rule also will enable the Department, as part of the study, to seek and/or include input from an APSSD representative(s).

- K6. Can the Department remove the maximum number of salary hardship exception approvals in a fiscal year and allow for requests throughout the year as opposed to once per year in May?

No, *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 *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)*.

- K7. May an APSSD pay its employees a salary above the maximum allowable salary?

Generally, an APSSD may not pay its employees above the maximum allowable salary and include the cost in the calculation of the certified actual cost per student, except as specifically set forth in the regulations.

N.J.A.C. 6A:23A-18.3(r) allows APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary for two non-administrative individual employees. The new 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.

- K8. Will the Department consider requests for approval of a salary above the maximum allowable salary in the 2017-2018 school year as the deadline of May 1 in *N.J.A.C. 6A:23A-18.3(r)* has passed?

Yes, this year the Department will consider requests for approval of a salary above the maximum allowable salary in the 2017-2018 school year pursuant to *N.J.A.C. 6A:23A-18.3(r)*, as the deadline of May 1 had passed by the time the regulations were adopted. Such a hardship request is limited to non-administrative positions and should be made following the rules for approval set forth in *N.J.A.C. 6A:23A-18.3(r)*, including addressing the criteria listed in the rule, except for the May 1 deadline. Requests for the 2018-2019 school year should be made in accordance with the rules, including by the May 1 deadline.

- K9. Is a board-certified behavior analyst (BCBA) one of the positions that will receive an increase in the maximum published salaries pursuant to *N.J.A.C. 6A:23A-18.3(o)1i*?

No, BCBA is not one of the positions that will receive an increase in the maximum salaries pursuant to *N.J.A.C. 6A:23A-18.3(o)i*, the 35 percent for purchased service providers or independent contractors, or the allowances for contracting with approved clinics or agencies.

However, please note that *N.J.A.C. 6A:23A-18.3(r)* allows APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary to two non-administrative individual employees.

- K10. Are behaviorists held to the lowest maximum salary during the hold on maximum allowable salaries?

No, as reflected on the listing of recognized position titles, behaviorists holding a special education endorsement issued by the Department are limited to the maximum allowable salary for special education teachers.

In addition, *N.J.A.C. 6A:23A-18.3(r)* allows APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary to two non-administrative individual employees.

- K11. What category does the position title of BCBA fall under on the maximum salary listing?

While the position title of BCBA is reflected on the recognized position title listing, this position title does not have an associated endorsement issued by the Department and set forth in the regulations governing certification at *N.J.A.C. 6A:9B*. As a result, there is no certified staff position to provide a basis for the calculation of a maximum salary for such a job title, and a BCBA holding no other certificate falls under the lowest maximum salary category in accordance with *N.J.A.C. 6A:23A-18.2(q)* and 18.6(a)6 and 9. However, if the BCBA also holds an endorsement issued by the Department and the job responsibilities are aligned with that endorsement, the maximum salary category would match the endorsement (i.e., a BCBA with a learning disability teacher consultant (LDTC) endorsement would fall under the Learning Disability category).

Please also note that *N.J.A.C. 6A:23A-18.3(r)* allows APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary to two non-administrative individual employees.

- K12. Are nurses one of the positions that will receive an increase in the maximum salaries pursuant to *N.J.A.C. 6A:23A-18.3(o)i*?

No, nurses are not one of the positions that will receive an increase in the maximum salaries pursuant to *N.J.A.C. 6A:23A-18.3(o)i*, the 35 percent for purchased service providers or independent contractors, or the allowances for contracting with approved clinics or agencies.

However, please note that *N.J.A.C. 6A:23A-18.3(r)* allows APSSDs to seek Commissioner approval for the payment of salaries above the maximum allowable salary to two non-administrative individual employees.

- K13. Is there clarification in the Administrative Code regarding non-certified staff and the appropriate use of the approved titles listing?

Pursuant to *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 *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 approved 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*.

For information regarding BCBA's and behaviorists, please refer to the response to question numbers K9 and K10.

- K14. The positions of Technology Coordinator and Family Liaisons/Community Parent Involvement Specialist are listed on the Chart of Accounts. Are these recognized job titles? If not, does it require a certification or degree? Is an APSSD allowed to use this unrecognized administration job titles as long as the salary is no more than the lowest maximum?

The Chart of Accounts for Salaries of Technology Coordinators has been revised as "Salaries of Education Technology" for APSSDs to clarify that this is not a recognized position title for APSSDs. The Chart of Accounts does not create recognized position titles. Instead, APSSDs should continue to refer to the [Recognized Position Titles](#) list to confirm allowable job titles. Educational Technology Coordinator and Family Liaisons/Community Parent Involvement Specialist positions do not require a Department-issued certification. But as stated in question number K13, the salary of any other person who is serving in an approved 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*.

- K15. Why has the Department not provided job descriptions for approved job titles as set forth in *N.J.A.C. 6A:23A-18*, and provided clarification regarding non-certified staff and the appropriate use of approved job titles?

The Department is not responsible for creating job descriptions for recognized position titles; APSSDs must create job descriptions that match their employees' duties. However, *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:9B* or a bachelor's or master's degree pursuant to the definitions for "director," "assistant director," and "business manager" in *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 (ECS) on an annual basis to hire staff or consultants in unrecognized job titles. As is the case under the prior rules, staff members serving in approved unrecognized job titles without ECS approval will be restricted to the lowest maximum allowable salary in accordance with new regulation *N.J.A.C. 6A:23A-18.6(a)9*. The new regulation at *N.J.A.C. 6A:23A-18.3(q)* will align the rule with the definitions for clarification since the rule's substance has not changed.

K16. What is the maximum allowable salary for psychiatrists and physicians?

Psychiatrists and physicians with proper medical credentials are limited to the maximum allowable salary for chief school administrator/executive director/director.

K17. May an APSSD merely show "good faith" of its attempts to acquire three quotes when choosing to contract with an approved clinic or agency, as required under *N.J.A.C. 6A:23A-18.3(o)1iii*?

No, when contracting with a clinic or agency above the maximum allowable salary, the APSSD must meet the requirement to obtain three quotes from approved clinics or agencies.

K18. There is a listing of approved New Jersey providers and clinical nursing services for medically fragile students, is it acceptable to obtain a psychiatrist from that listing if three quotes are obtained?

According to the regulations at *N.J.A.C. 6A:23A-18.3(o)1iii* and *N.J.A.C. 6A:23A-18.3(o)1iii*, when contracting with a clinic or agency, an APSSD may pay a rate above the maximum allowable salary as long as the APSSD obtains three quotes and contracts with the lowest of the three quotes. According to the underlying regulations at *N.J.A.C. 6A:14-5.1(c)iii* and *5.1(c)v*, an APSSD may contract for related services and for speech-language services when the APSSD cannot hire its own speech-language specialist.

Counseling is an approved service under the clinic/agency approval process. The service is provided by certified school psychologists or certified school social workers. Individual professional practitioners, such as psychiatrists, are not approved through the clinic/agency process. For a list of approvable services see *N.J.A.C. 6A:14-5.1(c)*.

K19. Do the new requirements for Business manager, Director and Assistant director, requiring that they hold a master's degree and/or a specific certification apply to those persons currently holding a position at an APSSD?

The new requirements do not apply to persons "employed or otherwise serving as" business manager, director, or assistant director "for the APSSD prior to July 1, 2017."

K20. After the effective date of the rules adopted in July 2017, must a business manager hold a master's degree in a particular field; *and* a certified public accounting certificate; *and* a standard school administrator's certificate issued in accordance with NJDOE regulations?

No, a business manager must hold a master's degree in business, accounting, finance, economics, or a related field from an accredited institution; *or* 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.

L. New APSSDs - N.J.A.C. 6A:23A-18.4

- L1. Does the *N.J.A.C.* 6A:23A-18.4(h) prohibit new APSSDs from beginning operations until July 1 of the year after it is approved?

Yes, with the exception of an APSSD operating in and affiliated with a public school district, *N.J.A.C.* 6A:23A-18.4(h) provides that an APSSD shall not begin operations before July 1 of the school year immediately following the school year in which the APSSD received approval to operate.

- L2. Does the new section apply to APSSDs already in existence that add campuses/types of classes during the school year?

The new regulations at *N.J.A.C.* 6A:23A-18.4 expressly apply to an existing 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.

- L3. Does the new rule include a time requirement by which the Commissioner would need to respond or at least allow APSSDs to open and operate at any time during the year?

Although APSSDs must open July 1, the new school application process includes defined timelines which enables flexibility for the Department to provide the applicants with the necessary consideration, especially considering the uniqueness of each program.

M. Chart of Accounts

- M1. After the effective date of the new regulations, will APSSDs be able to use an alternative chart of accounts?

APSSDs that are approved to use an alternative chart of accounts prior to July 1, 2017 may continue to do so pursuant to *N.J.A.C.* 6A:23A-18.5(a)7. However, after July 1, 2017, no APSSDs without prior approval will be able to begin using an alternative chart of accounts.

- M2. Will there be guidance provided for the revised chart of accounts?

Yes, in addition to the published [COA crosswalk](#), the Department has also published a [COA narrative](#) and will provide technical support to APSSDs' staff.

- M3. Will special teachers (physical education, music, art, etc.) now be listed with the paraprofessionals in Object Code 106 and not with the Teachers in code 101?

No, teachers are recorded in 11-XXX-XXX-101.

- M4. Should APSSDs lump together all extended school year (ESY) program expenses in account number 11-221-XXX-XXX instead of separately reporting by program types for the 10-month program (i.e., outside of the program codes of Cognitive Mild, Autism, etc.)?

No, extended school year programs should be reported by program type along with the expenses for the entire school year.

- M5. Are seminar and conference registration fees included in the Travel – All Other accounts?

Yes, seminar and conference registration fees are included in the Travel - All Other account number 11-XXX-XXX-580.

- M6. What does Mass severance mean in reference to account numbers 11-000-291-297 and 298?

Mass severance refers to payments made for mass severance packages offered to a group of employees.

- M7. In the Function code 230, there is no "advertising-unrestricted" account. Where do the costs for websites used for school closings and school information get charged? How about descriptive brochures?

Websites that provide information on school closings and school information for parents or employees are not included in "advertising costs." Those public relations costs that are not "advertising costs" as set forth in *N.J.A.C. 6A:23A-18.2* and are not subject to the 0.5 percent cap, such as a website used for information on school closings and for parents or employees, should be posted to object code 335. For example, public relations costs associated with the APSSD's public outreach made in response to a specific, isolated incident directly related to a specific operation of the APSSD is outside of the general advertising costs of the APSSD and are posted in account number 11-000-251-335.

For APSSD's, *N.J.A.C. 6A:23A-18.2* defines advertising costs as the costs associated with promoting, marketing, or public relations for the APSSD's programs and/or services. As defined, "advertising costs" are posted in account number 11-000-230-891. Total annual advertising costs incurred for items defined above allowable for tuition are limited to 0.5 percent of the approved private school's actual allowable costs not including those advertising costs.

- M8. I see there is still an account for Health Benefits for Retired Staff. Is there a limit on the number of years that a retired staff member can get benefits for?

Please refer to the explanation at Compensation after Retirement - *N.J.A.C. 6A:23A-18.6(a)71*.

- M9. Under Food supplies, what is the distinction between 11-000-310-611 Supplies - all other and 11-000-310-612 Food for Instruction?

Account number 11-000-310-611 - Supplies and Materials – All Other includes the cost for raw materials used in food preparation or ready-to-serve food. Account number

11-000-310-612, Supplies and Materials – Instructional includes the cost items for instructional purposes such as swallowing techniques.

- M10. Since the updated chart of accounts has distinctions by disability, should all of the costs associated with mixed classrooms be broken out by disability? For example, would the salary of a teacher of students with disabilities (TOSD) teaching a mixed classroom be broken out by disability in the chart of accounts?

Yes, instructional costs should be reported by program type.

- M11. What is a “service worker”?

The position title of service worker is typically used to refer to Food Service Worker. This may also be used to refer to Custodial Service Worker.

- M12. Must an APSSD that charges only one tuition rate allocate its costs based on program pursuant to the Chart of Accounts?

Yes, all APSSDs, regardless of whether the school charges tuition based on program type, must allocate its costs based on program type as set forth in the Chart of Accounts. APSSDs with specific questions on a particular allocation method should reach out to Department staff for guidance on how to do so.

- M13. How should an APSSD allocate instructional wages and related benefits among the program categories in the chart of accounts?

Generally speaking, APSSDs should allocate salaries and benefits based on each classroom for each program type. For example, the salaries and benefits of the classroom teacher and any instructional aides located in an APSSD’s preschool disabled classroom should be allocated to the program type in which the student is placed (preschool disabled), regardless of any other disability classification that may apply to an individual student. For employees that serve classes of more than one program, such as an art, music, or physical education teacher, it would be appropriate to allocate the cost of salaries and benefits of the teacher based on percentage of time spent with each program..

- M14. The revised Exhibit D - Statement of Cost Category Assignments for Cost Percentages, issued July 10, 2017, reflects that Behavior modification’s category was changed from instructional costs to its own category. Would you please advise if this is correct?

Exhibit D - Statement of Cost Category Assignments for Cost Percentages was revised to properly reflect behavior modification costs is in its own category.

- M15. What account numbers should be used to record field trip costs?

The nature of the field trip and the student population included in the trip determines what account to use for field trip costs. Program codes 201 through 216 and program code 222, with object code 800 (11-2XX-100-800) may be utilized for instructional (non-vocational class – program code 320 – see below) class field trips. 11-320-100-800 is for Special Education Vocational Classes. Vocational classes offered in the APSSD must be provided by teachers holding the appropriate vocational certificate. APSSDs may only

include the cost of field trips that bear a direct instructional relationship to the vocational class in this program code. 11-401-100-800 includes admission costs to field trips which are purely recreational. School-sponsored activities must be under the guidance and supervision of the LEA or other school entity staff, designed to provide students with experiences as motivation, enjoyment, and improvement of skills.

- M16. What account numbers should be used to record music teachers and orientation and mobility instructors?

Music teachers and orientation and mobility instructions are recorded in 11-2XX-100-101 depending on the program type (i.g. cognitive mild, 11-201-100-101 and behavior disability, 11-209-100-101). Please be reminded that all instructors must hold the proper certification. Please refer to the [Chart of Accounts](#) for further information.

- M17. Where are employer's contributions to Medicare recorded?

All FICA taxes, including employer Social Security and Medicare contributions, should be recorded in object code 220 – Social Security Contributions.

- M18. What account number should be used to record lead testing in 2016-2017 and 2017-2018?

For the 2016-2017 school year, APSSDs should use account 11-000-262-800 for lead testing. For the 2017-2018 school year, APSSDs should use account 11-000-261-421 for lead testing. Costs for lead testing should be reported net of all reimbursement received from the Department.

- M19. Please explain the amendment at *N.J.A.C.* 6A:23A-18.5(a)7 regarding litigation costs.

New *N.J.A.C.* 6A:23A-18.5(a) 7i requires 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 new rule is expected to encourage APSSDs to resolve concerns with sending school districts or the Department prior to, or instead of, litigation.

For further information regarding this change, please refer to the [Chart of Accounts](#) published on the Department's website for APSSDs.

- M20. Why does new *N.J.A.C.* 6A:23A-18.5(a)7ii define "litigation" to include civil suits, suits brought by or against an APSSD in state or federal court and state and federal agencies where a docket or tracking number is assigned?

A large majority of APSSDs' litigation costs is the result of administrative cases against the Department challenging audits or desk reviews that an APSSD has included a non-allowable cost in its 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 capture all APSSDs' spending in this area.

M21. If litigation costs exceed \$15,000 what account number is used?

The COA was updated to include code provisions of *N.J.A.C. 6A:23A-18.5(a)7i* and *ii* as it relates to litigation costs. In accordance with the regulations:

- The first \$15,000 of attorney's fees or other costs per litigation and per fiscal year of costs incurred by the APSSD must be recorded in account number 11-000-230-336 - Undistributed Expenditures - Support Services - General Administration - Legal Services – Litigation.
- Costs for litigation above the first \$15,000 per litigation and per fiscal year should be recorded in account number 11-000-230-337 and Undistributed Expenditures - Support Services - General Administration - Legal Services - Litigation.

For further information, please refer to the [Chart of Accounts](#) published on the Department's website for APSSDs.

M22. Will the 2017-2018 Prescribed Financial Report be revised to reflect the new chart of accounts numbers?

Yes, the [Prescribed Financial Report for 2017-2018](#) has been updated.

N. Employee Benefits

N1. Why are employee fringe benefits that are types of "Section 125 plans" listed separately in *N.J.A.C. 6A:23A-18.5(f)1* through 12?

N.J.A.C. 6A:23A-18.5(f) is meant to be inclusive of all the employee fringe benefits. Reference to only federal law may exclude plans available under other laws.

N2. How do the amended regulations change the payment of health benefit waivers?

N.J.A.C. 6A:23A-18.5(f)1i limits the payment of health insurance coverage waivers to \$5,000 per fiscal year. Additionally, *N.J.A.C. 6A:23A-18.5(f)1ii* requires the employee to provide, and the APSSD to keep on file, "documented evidence the employee had other valid health insurance coverage during the fiscal year."

N3. Who must provide the documentation required for an APSSD to make a payment for waiver of health insurance coverage pursuant to *N.J.A.C. 6A:23A-18.5(f)1*?

The regulation requires that the employee provide documented evidence the employee had other valid health insurance coverage during the fiscal year, and APSSDs must maintain that evidence on file.

O. Unrestricted Fund Deficits - *N.J.A.C. 6A:23A-18.5(h)*

O1. Please explain the change to *N.J.A.C. 6A:23A-18.5(h)*.

N.J.A.C. 6A:23A-18.5(h) requires a nonprofit APSSD with a positive public school placement restricted working capital fund balance, but reporting a net deficit unrestricted fund balance, to eliminate the deficit within three years. In simpler terms, it requires

APSSDs with the means to do so, to reduce deficits that typically arise from expenditures in excess of revenue, in particular, 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 avoid including non-allowable costs in tuition charged to sending school districts or find other funding sources to support costs deemed non-allowable. Nonprofit APSSDs that do not comply with this provision will be placed on conditional approval.

- O2. Will placing APSSDs on conditional status, according to *N.J.A.C. 6A:23A-18.5(h)*, for failure to eliminate unrestricted fund balance deficits create a higher probability of financial failure of APSSDs?

No, 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.

- O3. What are examples that would result in a nonprofit APSSD incurring a deficit unrestricted fund balance when considering *N.J.A.C. 6A:23A-18.5(h)*?

Deficits typically arise from excess expenditures over 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 non-allowable 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, rather than carrying a deficit for an unlimited period of time. Once non-allowable costs are identified and supported with corrective recommendations by the independent auditor, the school's management is responsible for submitting a corrective action plan, accepting the recommendation, and outlining corrective measures.

P. Sick Benefit Payout Limitations - *N.J.A.C. 6A:23A-18.5(i)* and *N.J.A.C. 6A:23A-18.6(a)66*

- P1. Will the new regulations at *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 unintentionally cause employees to adopt a "use or lose" mentality, which will increase staff absenteeism and cause a staffing disruption?

No, the new regulation *N.J.A.C. 6A:23A-18.5(i)* merely updates 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). 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 *N.J.A.C. 6A:23A-18.6(a)66* will prohibit accumulation of sick pay during a term of employment. The 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.

- P2. The Non-Allowable Costs provision of *N.J.A.C. 6A:23A-18.6(a)66* indicates that any payment for earned unused sick time over 1 percent of the employee's contracted salary, in the year for which the payment is being made, will be non-allowable. Some APSSDs currently have a cap on the number of days that can be accumulated, but not a 1 percent cap. Will that new regulation apply to staff that are hired after July 1, 2017? Or will

staff who were hired prior to this new code be grandfathered in so that they will be eligible to receive the benefit as we currently have it stated in our employee manual even though this benefit will be out to them after the new regulation goes into effect?

N.J.A.C. 6A:23A-18.6(a)66 applies to all staff beginning with the 2017-18 school year.

However, accrued sick leave earned and credited to the benefit of an individual employee prior to July 1, 2017 and remaining earned and credited to the benefit of an individual employee upon that employee's effective date of retirement from the APSSD is not limited by the sick pay regulations at *N.J.A.C. 6A:23A-18.6(a) 66* the maximum salary regulations at *N.J.A.C. 6A:23A-18.3 (o), (p), or (q); N.J.A.C. 6A:23A-18.5 (o);* nor *N.J.A.C 6A:23A-18.6 (a) 8., 9., and 10.* Sick leave earned and credited to the benefit of an individual employee after June 30, 2017 and paid to an employee on or after the effective date of retirement is subject to the limitations of the sick pay regulations at *N.J.A.C. 6A:23A-18.6(a) 66.* To illustrate:

For payments of accrued sick time made pursuant to an APSSD employee's retirement on or after July 1, 2017, a one-time payment of earned and unused sick leave benefit upon that employee's separation from service due to a retirement from the APSSD may be an allowable cost and is calculated using two measures:

1. **Time accrued prior to July 1, 2017** is calculated in accordance with individual annual employment contracts and APSSD board policy in effect for that fiscal year. Payment to an individual employee of time earned and unused (accrued) prior to July 1, 2017, and remaining to the credit of the employee upon retirement, is not subject to the 1 percent limitation at *N.J.A.C. 6A:23A-18.6(a)66.*
2. **Time accrued on or after July 1, 2017** is calculated in accordance with individual annual employment contracts and APSSD board policy in effect for that fiscal year, and remaining to the credit of the individual employee upon retirement, is subject to the 1 percent limitation at *N.J.A.C. 6A:23A-18.6(a)66* in the year of payment.
3. Accrued sick leave paid upon retirement, calculated pursuant to 1. and 2. above, is not subject to the maximum salary regulations at *N.J.A.C. 6A:23A-18.3 (o), (p), or (q); N.J.A.C. 6A:23A-18.5 (o);* or *N.J.A.C 6A:23A-18.6 (a) 8., 9., and 10.*

To ensure that payments of accrued sick leave were not made in violation of *N.J.A.C. 6A:23A-18.6(a)66* and to facilitate the prompt completion of desk reviews, the following is required:

- Allowable expense incurred for sick time payments made pursuant to a bona-fide retirement must be remitted within 30 days of the employee's separation from service. Although not an allowable expense until and unless paid, the APSSD must disclose the total year-end earned but unpaid sick leave liability in the footnotes to the annual financial statements; and
- The APSSD must be prepared to provide complete documentation in support of the calculation, including, but not limited to, the APSSD sick leave policy(s) in effect throughout the term of the retired employee's employment; annual time award and leave records of the retired employee; and all annual sick pay buy-back payments made to the retired employee.

Annual sick leave buy-back programs are intended to encourage employees to come to work during the current fiscal year. Accordingly, payments made pursuant to a sick leave buy-back must be for sick time earned and returned to the ASPPD within a single fiscal

year. Such annual payments, beginning with the 2017-18 fiscal year, are subject to the limitations imposed by the sick pay regulations at *N.J.A.C. 6A:23A-18.6(a)66*, but will not be limited by the maximum salary regulations at *N.J.A.C. 6A:23A-18.3(o), (p), or (q)*; *N.J.A.C. 6A:23A-18.5(o)*; and *N.J.A.C. 6A:23A-18.6(a)8, 9, and 10*. To illustrate:

For under annual sick leave buy-back agreements, beginning with the 2017-18 fiscal year, the annual payment of sick leave made pursuant to APSSD policy and the terms of an individual employment contract is subject to the 1 percent limitation in *N.J.A.C. 6A:23A-18.6(a)66*. Such payments are not subject to the maximum salary regulations at *N.J.A.C. 6A:23A-18.3(o), (p), or (q)*; *N.J.A.C. 6A:23A-18.5(o)*; and *N.J.A.C. 6A:23A-18.6(a)8, 9, and 10*. To be considered as an allowable cost, beginning with the 2017-18 fiscal year, the annual payment of earned but unused sick leave must be made pursuant to the terms and conditions of an annual leave incentive program that includes only sick leave earned and unused in a single fiscal year. Accordingly, such payments may not include payment for time earned any time prior to July 1, 2017. Because the determination of eligibility and the election to exercise the buy-back provision may occur subsequent to year-end, allowable payments may be accrued in the financial statements of the APSSD and must be remitted within 30 days of year-end to be considered an allowable cost. The APSSD must be prepared to provide complete documentation of the calculation and provide documentation in support of the calculation, including, but not limited to, APSSD sick leave policies in effect for the fiscal year, and annual time award and leave records of the retired employee.

- P3. Are the FASB references outdated and inconsistent within Department-permitted accounting?

No, the FASB references in the new 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*.

- P4. Since FASB 43 was replaced by ASC 710, does the new rule 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; whereas the Administrative Code does not allow for these types of accrual?

No, the new regulation at *N.J.A.C. 6A:23A-18.5(i)* merely updates the existing provisions for clarification and refers to the most recent standard of practice as set forth by a statement of the FASB. The new regulation also indicates 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.

Q. Automobile Costs – N.J.A.C. 6A:23A-18.6(a)15

- Q1. What administrative expenses for automobiles are permitted by APSSD administrators pursuant to *N.J.A.C. 6A:23A-18.6(a)15*?

N.J.A.C. 6A:23A-18.6(a)15 sets absolute limits on the allowable costs for automobiles used by APSSD staff.

Q2. Does *N.J.A.C. 6A:23A-18.6(a)15i* limit the allowable cost of automobiles used for transporting students?

No, *N.J.A.C. 6A:23A-18.6(a)15* does not apply to vehicles used for transporting students or supplies.

R. Fiscal and Budget Information

R1. When will the new APSSD budget reporting software be available?

For information on the new APSSD reporting software, please refer to the Department's [Initial Transition Guidance](#).

R2. Can the Department clarify the revenues, appropriations, and supporting documents that must be included as part of the fiscal and program information that must be submitted pursuant to *N.J.A.C. 6A:23A-18.16(a)1v*?

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*.

S. Food/Beverage Costs for Staff - *N.J.A.C. 6A:23A-18.6(a)18*

S1. What is the change to the limit on the costs of food/beverages for activities such as staff meetings, parent teacher meetings, workshops and professional development seminars?

N.J.A.C. 6A:23A-18.6(a)18 reduces the amount of costs of food/beverages that may be included in the certified actual cost per student for activities such as staff meetings, parent teacher meetings, workshops and professional development seminars from \$3,000 to the reasonable amount of \$1,500. APSSDs may provide such food or beverages at their own discretion but may not include them in the tuition charged to sending school districts.

T. Non-Allowable Interest Costs - *N.J.A.C. 6A:23A-18.6(a)27*

T1. Please explain the amendments to *N.J.A.C. 6A:23A-18.6(a)27*.

The new regulation *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.

These three circumstances are as follows:

- 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 new rule will have no effect on the interest costs that may be included in allowable costs.

- T2. Must APSSDs who have signed agreements and made arrangements based on current Administrative Code, including those APSSDs leasing from school districts that cannot own the improvements and, therefore, cannot collateralize the fixed assets in the loan, be able to have allowable interest costs on leasehold improvements?

The amendment to *N.J.A.C. 6A:23A-18.6(a)27ii* is not a change to the substantive interpretation of the regulations, it is a clarification of the Department's existing interpretation. APSSDs will be held to this consistent interpretation of the regulations. For more information, see response to question number T1.

- T3. If an APSSD enters 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, will the APSSD be allowed to include the interest in tuition?

No, the amendment to *N.J.A.C. 6A:23A-18.6(a)27ii* does not change the substantive interpretation of the regulations, it is a clarification of the Department's existing interpretation. APSSDs will be held to this consistent interpretation of the regulations.

U. Bad Debts - *N.J.A.C. 6A:23A-18.6(a)29*

- U1. Does the new regulation *N.J.A.C. 6A:23A-18.6(a)29* include a mechanism to write off bad debts related to extraordinary services and include them as an allowable expense?

N.J.A.C. 6A:23A-18.6(a)29 does not prohibit an APSSD from writing off uncollected amounts for their own financial purposes pursuant to laws prescribed by the IRC. The new regulation merely sets reasonable limits on the "bad debts" that may be included in the tuition charged to sending school districts.

APSSDs are prohibited 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 *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.

- U2. Will *N.J.A.C. 6A:23A-18.6(a)29* prohibit the write-off of bad debt that arises from a state agency, sending school district, charter school, or renaissance school, and create a higher probability of financial failure of APSSDs?

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. However, APSSDs should follow the balance of the regulation at *N.J.A.C. 6A:23A-18.6(a)29*.

V. Limit on Administrative Positions - *N.J.A.C. 6A:23A-18.6(a)67*

- V1. Is the limit of three full-time equivalents in *N.J.A.C. 6A:23A-18.6(a)67* per entity or per location/campus?

The limit on the number of full-time equivalent administrative positions in *N.J.A.C.*

6A:23A-18.6(a)67 will be applied per APSSD.

W.Compensation after Retirement - N.J.A.C. 6A:23A-18.6(a)71

- W1. Does *N.J.A.C. 6A:23A-18.6(a)71* limit retired employees from also receiving salary to a two-year maximum?

Yes, *N.J.A.C. 6A:23A-18.6(a)71* makes non-allowable the “cost 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.”

- W2. Does *N.J.A.C. 6A:23A-18.6(a)71* prohibit the payment of retirement benefits to employees who have not retired that are otherwise lawful under the Internal Revenue Code (IRC) or other laws?

No, since *N.J.A.C. 6A:23A-18.6(a)71* only restricts the simultaneous payment of salary, benefits or other compensation and retirement benefits as a result of retirement, and first applies “after two calendar years has expired since the individual began retirement,” this provision does not apply to employees who have not yet retired.

- W3. Does this rule apply to consultation services by personnel who retired from an APSSD a non-allowable cost for two years after the date of retirement?

Yes, this rule applies to consultation services by retired persons at APSSDs more than two years after the date of retirement. The rule expressly refers to both “an APSSD employee” and a “contractor/consultant” who is receiving retirement benefits as a result of his or her retirement from the APSSD.

- W4. Can payments of benefits under existing tax-qualified retirement plans be grandfathered since they are allowed under current rules?

No, beginning with the effective date of the amendments to the regulations, APSSDs must comply with *N.J.A.C. 6A:23A-18.6(a)71*. For more information regarding what payments may be made, please refer to the balance of the responses in this section.

- W5. Does new *N.J.A.C. 6A:23A-18.6(a)71* require APSSDs to stop paying salary and other compensation to all employees who receive benefits under the APSSDs’ tax-qualified retirement plans prior to retirement, even though many of the employees are permitted by the terms of their plans and the IRC to receive the benefits or are required to do so?

No, 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. The rule also does not apply until “two calendar years has expired since the individual began retirement.” As a result, the new rule will not have an effect on any employee, including older employees, who has not retired.

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.

- W6. Will *N.J.A.C. 6A:23A-18.6(a)*⁷¹ require APSSDs to terminate their employees receiving retirement benefits or require those employees to quit?

No, the new regulation only applies to retired employees. For more information, please see the balance of the responses to questions regarding this section.

X. Sale or Disposition of Assets of an APSSD - *N.J.A.C. 6A:23A-18.18*

For information regarding *N.J.A.C. 6A:23A-18.18*, please see the Department's forthcoming guidance on the Sale or Disposition of Assets of an APSSD.

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

- Y1. Please clarify the provisions of *N.J.A.C. 6A:23A-18.19*.

N.J.A.C. 6A:23A-18.19 requires every APSSD to file a management disclosure of information statement with the Department providing information on salaries, pension, and other information. While the regulations do not generally prohibit related party transactions, the disclosure statement provides transparency to hold APSSDs accountable to other stakeholders, including, but not limited to, the Department and sending school districts paying tuition.

- Y2. Does *N.J.A.C. 6A:23A-18.19* prohibit the ownership and operation of family businesses that operate as APSSDs or does it only require disclosure for transparency?

No, *N.J.A.C. 6A:23A-18.19* does not prohibit APSSDs from family ownership and operation of an APSSD; the regulation requires APSSDs to submit an annual disclosure statement, including, but not limited to, the salary, pension and other information regarding staff members, related staff, related parties, vendors, and business interests.

- Y3. Why are APSSDs required to file salary and benefit disclosure statements when APSSDs already supply the information to the Department?

The requirement for APSSDs 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.

When it becomes available, the APSSD budget and audit software will be designed to reduce duplicated efforts.

- Y4. Why are the annual disclosure statements publicly available?

The annual disclosure statement encourages transparency so APSSDs can be held accountable to other stakeholders, including the Department and sending school districts

paying tuition. It facilitates compliance determinations on Administrative Code provisions that specifically prohibit certain types of nepotism and/or related party transactions. Additionally, the disclosure statements bring APSSDs into closer alignment with the disclosure requirements for public school officials.

The information in the annual disclosure statements is not confidential as APSSDs 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)*.

Y5. Will there be more guidance on the annual disclosure statements?

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.

Y6. Are all annual disclosure statements on file with the Department considered public records subject to *OPRA*?

Yes, 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*.

Y7. Has the annual disclosure statement been released?

The annual disclosure statement has not yet been released.

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

Z1. Does the "nepotism" section prohibit the employment of family members at APSSDs?

No, the Department is aware that many APSSDs are small, family-owned establishments that may employ multiple family members. For this reason, the regulation is solely concerned with nepotism, that is, as set forth in *N.J.A.C. 6A:23A-18.20*, 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.

Z2. Does *N.J.A.C. 6A:23A-18.20* make the employment of family members at APSSDs non-allowable?

No, see the response to question number Z1. 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 will be considered non-allowable costs.

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

- AA1. Does the limit on travel costs *N.J.A.C. 6A:23A-18.6(a)68* include conference and registration fees?

Yes, the limit on travel costs set forth in *N.J.A.C. 6A:23A-18.6(a)68* and *N.J.A.C. 6A:23A-18.21* includes conference and registration fees. Rather than requiring APSSDs to implement the rigorous travel policies that apply to public school districts and disfavor certain types of travel expenditures, the regulations allow 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, *N.J.A.C. 6A:23A-18.21(e)* allows APSSDs to apply for a waiver as set forth in the response to question number AA2.

- AA2. Is there an exception to the travel expenditures limitation at *N.J.A.C. 6A:23A-18.21(d)* for staff members' professional development costs?

N.J.A.C. 6A:23A-18.21 allows 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. Please note that the regulations governing APSSDs adopted in July 2017 provide increased flexibility to APSSDs' management of travel and training expenditures. Prior regulations imposed limitations on first-class air travel, hotel accommodations, and meals that were often perceived to be overly restrictive by APSSDs. Those restrictions have been removed from the current regulations to provide additional flexibility. Further, the new regulations make clear that APSSDs are not subject to the restrictions imposed upon public schools through the provisions of the New Jersey Office of Management and Budget (OMB) Circular Letter 08-19 which includes a State-wide prohibition on the payment or reimbursement of in-State overnight travel costs. The regulations at *N.J.A.C. 6A:23A-18.21* replace those specific restrictions with a maximum allowable cost that provides APSSDs' management with the discretion to decide how to most economically allocate allowable travel expenditures. Along with this increased flexibility, the Department expects that, as with all costs, APSSDs will thoughtfully plan and prudently budget for travel and training throughout the year to ensure those reasonable, ordinary and necessary costs remain below the regulatory maximum allowable costs. Management's decisions regarding travel costs should be conducted to ensure the educational needs of all students as set forth in their individualized education programs are being met. No waiver is required when the APSSD's annual travel expenditures fall within the regulatory limits. However, if a waiver is requested because particular travel expenditures will cause the APSSD to exceed the annual regulatory maximum, the Department will closely scrutinize all of the APSSD's travel expenditures for the year to ensure that the APSSD's expenditures meet the standards set forth set forth at *N.J.A.C. 6A:23A-18.21(e)-(g)*. Any expenses that do not meet those standards may result in non-allowable costs.

- AA3. Does the limitation on travel expenditures include regular business travel?

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 is not included in the definition of "travel expenditures," and is not included in the limitation set forth in *N.J.A.C. 6A:23A-18.21(d)*. Please refer to the [Chart of Accounts](#) for further information on the accounting for all types of travel costs.

AA4. How do the travel restrictions impact APSSD staff's specialized training?

The travel regulations 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 actual allowable costs or \$20,000. The Department allows 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 would result in non-allowable costs.

AA5. How does the travel limitation affect APSSD staff who need to travel to carry out their jobs and fulfill student IEPs, including travel between school locations, for field trips, to worksites, related to student curriculum, home-based instruction or community-based instruction?

Expenses for mileage or tolls for travel carried out in the performance of regularly assigned job functions, such as travel between commonly owned APSSDs, are excluded from the definition of travel expenditures and therefore do not count toward the total limit. For more information on the accounting of each of these individual travel costs, please refer to the [Chart of Accounts](#).

AA6. Do restrictions on travel preclude management and staff members from performing their job functions, such as a director traveling between campuses, a job coach traveling to a work site, or a teacher traveling to an inclusion program?

No, please see the responses to question numbers AA3 and AA5.

AA7. Since maintaining a certification that is not required as a condition of employment is disallowed, how do paraprofessional aides, who represent the majority of APSSD staff, receive training they can benefit from such as restraints training, CPR, and other forms of life-saving and injury-prevention certification?

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.

AA8. Are the travel and advertising costs for extraordinary services held to the limitations in *N.J.A.C. 6A:23A-18.21(d)* and *N.J.A.C. 6A:23A-18.6(a)3*? Should such costs be included in the calculation of the certified actual cost per student?

Extraordinary costs are isolated in function code #217, and are billed separately per agreement with the sending school district. Accordingly, all extraordinary services costs are not included in the certified actual cost per student. Since extraordinary costs are not included in the certified actual cost per student, APSSDs will not be held to the limitations upon travel or advertising set forth in *N.J.A.C. 6A:23A-18.21(d)* and *N.J.A.C. 6A:23A-18.6(a)3*. APSSDs must be prepared to document the nature, extent, and cost of the travel and/or advertising costs charged to extraordinary services relate only to the provision of those extraordinary services. Accordingly, please note travel and/or advertising costs may be subject to allocation in accordance with the nature or timing of the item(s) or events. To illustrate, the limitations apply to the item(s) or

event(s) to the extent an employee holding dual position titles includes extraordinary services (1 to 1 Aide). The travel/training associated with the position title that is not 1 to 1 Aide is not charged to function code #217 and is included in the calculation subject to the limitation.

AA9. When must a waiver request pursuant to N.J.A.C. 6A:23A-18.21(e) be submitted?

An APSSD seeking a waiver from the travel limitation must do so in advance of the travel pursuant to N.J.A.C. 6A:23A-18.21(e).

AA10. Is overnight travel allowable?

The restriction on the overnight stays that was in the prior regulation for non-allowable costs, N.J.A.C. 6A:23A-18.5(a)35, has been removed, so overnight stays are allowed so long as they are within the restrictions in current N.J.A.C. 6A:23A-18.21.

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

BB1. Does *N.J.A.C. 6A:23A-18.22* 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 programs?

Yes, all APSSDs that record expenditures for behavior modification must comply with *N.J.A.C. 6A:23A-18.22* to include such costs in the certified actual cost per student.

BB2. Since behavior modification prohibits the provision of cash or checks to students, what can be used to reward students?

Other than those prohibited items set forth in the regulation, the determination of the services and supports provided to students should be determined by the student's IEP team based on a student's needs.

BB3. May APSSDs adopt behavior modification programs providing gift cards to students?

Yes; however, APSSDs utilizing gift cards as part of a behavior modification program must adopt a policy regarding that program that meets the requirements of *N.J.A.C. 6A:23A-18.22*, and affirm in their Statement of Assurance that they have done so. The policy need not be pre-approved, but it will be subject to monitoring by the Department.

BB4. What is meant by "regular basis" in *N.J.A.C. 6A:23A-18.22(b)2*?

Students at APSSDs need to receive a nutritious meal. Whether replacement of meals or components of meals is on a regular basis depends on the facts and circumstances of the individual case. The replacement of meals or components of meals is not to be on a regular basis outside of special achievements outlined in the policy required by *N.J.A.C. 6A:23A-18.22(a)*.

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

CC1. How do the limitations on food service reimbursement take into account that many APSSD students receive instruction that utilize food, such as behavioral reinforcers,

feeding studies, or to help students tolerate new tastes and textures?

The limitations on food costs apply to meals, defined as “the provision of breakfast and/or lunch to students.” 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 are required to adopt a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD’s behavior modification program and comply with all of the provisions set forth in *N.J.A.C. 6A:23A-18.22*.

For more information on the accounting of food costs for instruction and behavior modification, please see the [Chart of Accounts](#).

- CC2. Is the use of food, as part of a schoolwide or individual positive behavior supports program, such as specialty food for instruction to teach students with swallowing and oral motor problems, or to teach students with autism and other sensory difficulties to accept new flavors and textures an allowable costs?

The use of food for behavior modification as outlined in a school’s policy is not prohibited. However, as set forth in *N.J.A.C. 6A:23A-18.22*, behavior modification cannot include the replacement of meals or components of meals on a regular basis outside of special achievements outlined in a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD’s behavior modification program.

For more information on the accounting of food costs for instruction and behavior modification, please see the [Chart of Accounts](#).

- CC3. Is the reimbursement for school breakfast/lunch programs sufficient for APSSDs that provide specialized food and feeding to medically fragile students?

Expenditures 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 are not considered non-allowable costs. Please see the Department’s [Child Nutrition FAQs](#) for more information.

- CC4. Why does the Department regulate meals at APSSDs?

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 regulations define meals as the provision of breakfast and/or lunch to students; the proposed section does not address the use of food outside of meals that are required to provide related services to students. The regulations ensures that students receive nutritious meals while more closely aligning the meal costs included in tuition charged to sending school districts with public school levels. The regulations offer significant flexibility for APSSDs to offer meal programs to their students. However, as these programs are funded through public school funds, it is appropriate that the meals are aligned the nutritional guidelines followed by all public schools in the state.

CC5. Are food services removed from an APSSD's tuition?

Food services are not removed from an APSSD's tuition. For more information on the costs that may be included, please see the [Child Nutrition FAQs](#).

CC6. How are meals for students in for-profit APSSDs affected, since only nonprofit APSSDs can be reimbursed through the Child Nutrition Program (CNP) and for-profit APSSDs have some of the most economically disadvantaged students in the state?

Only nonprofit APSSDs may participate in the CNP; however, for-profit APSSDs are not required to participate in CNP. APSSDs are allowed to include the cost for school lunches in the cost of tuition within the reasonable limitations set forth in *N.J.A.C. 6A:23A-18.23*. For more information on the costs that may be included, please see the [Child Nutrition FAQs](#).

CC7. Where can APSSDs get information on the methodology used to calculate the allowable costs and on maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture if they are unclear?

APSSDs should refer to the Department's [Child Nutrition FAQs](#) and [website](#) on the Child Nutrition Program at APSSDs.

CC8. If an APSSD is approved for the Community Eligibility Provision (CEP) option, is it exempt from the CNP?

Only a nonprofit APSSD may participate in the Child Nutrition Program (CNP). Accordingly, only a nonprofit APSSD may become a CEP school. The CEP is a part of the CNP and does not exempt schools from the program's requirements. CEP schools may not charge any student, whether low income or not, for a school provided meal. However, APSSDs that qualify for CEP, under the current federal Department of Agriculture rules, should receive funding at the "free" rate from the CNP for all student meals served. APSSDs with questions on CEP eligibility should contact the Department or NJDOA with questions.

CC9. How will *N.J.A.C. 6A:23A-18.23* affect students?

N.J.A.C. 6A:23A-18.23 requires that students are served meals that align with appropriate dietary guidelines.

CC10. How do the limitations on food costs affect meals served to students that are from low-income/urban areas?

N.J.A.C. 6A:23A-18.23 accounts for such students in several ways. First, it requires nonprofit APSSDs to participate in the Child Nutrition Program, including the Community Eligibility Provision. Second, both nonprofit and for-profit APSSDs should determine the income eligibility of students attending the school using Department-provided forms, and provide free meals or charge students in full or reduced price. Finally, the Department allows APSSDs to include a reasonable amount of food service costs, net of all reimbursement pursuant to NJDOA's Child Nutrition Program and other revenue, in the tuition charged to schools. For more information, please review the

Department's [Child Nutrition FAQs](#) and [website](#) on the Child Nutrition Program at APSSDs.

CC11. Does the maximum daily price schedule for a high school reflect the actual cost of providing meals for students?

The maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture (NJDOA), net of all food service costs revenue, is a reasonable limitation on total food service costs. For more information on the costs that may be included, please see the [Child Nutrition FAQs](#).

CC12. How do for-profit APSSDs ensure that students receive free or reduced-price meals pursuant to *N.J.A.C. 6A:23A-18.23*?

APSSDs should work with parents and sending school district staff to facilitate the process for qualifying for a free or reduced price meal. For more information on the forms to be used, please refer to the Department's [Child Nutrition FAQs](#) and the [Child Nutrition Program at APSSDs](#) website.

CC13. According to *N.J.A.C. 6A:23A-18.23*, Child Nutrition, the costs associated with providing meals may be included in the certified actual cost per student for a nonprofit APSSD if four requirements are met. One of the requirements mandates that students are charged for reduced and/or paid meals. As you are aware, nonprofit APSSDs that participate in the Child Nutrition Program (CNP) can elect to participate in the Community Eligibility Provision (CEP). CEP permits eligible schools to provide meal service to all students but are not permitted to charge the students for meals. Will an APSSD that participates in the CEP program be exempt from charging students for lunch?

APSSDs participating in the CEP need to follow all rules and guidelines provided by the New Jersey Department of Agriculture. There will be no penalty or non-allowable costs for CEP participating APSSDs that follow these rules and guidelines, even where they conflict with *N.J.A.C. 6A:23A-18.23*.

CC14. Does the new code mean that total food costs, except for costs needed to feed medically fragile students but including other salaries and benefits, cannot exceed \$7.00/per day (\$4.25 plus \$2.75)? In other words, a school that is in session for 210 days with a meal count of 50 students per day, cannot have allowable food costs, after reimbursement from the child nutrition program and the students, that exceed \$73,500 (50 students times 210 days times \$7.00 per day)

No. First, expenditures for substitutions to meals when the disability restricts the child's diet must be included in total food service costs. The goal is for APSSDs to provide for the needs of these students within the allowable total food service costs based on the maximum daily price schedule, net of all revenue. Excess expenditures will only be allowable when (1) total net food service costs, including the cost of substitutions to meals, and subtracting all revenue, exceeds allowable total food service costs; and (2) the excess expenditures that would otherwise be non-allowable costs are, as shown through sufficient documentation, solely attributable to substitutions to meals when the disability restricts the child's diet. Please also note that APSSDs must maintain proper documentation supporting substitutions to meals when the disability restricts the child's diet, including, but

not limited to: 1) medical documentation from the student's health provider supporting the meal substitution; and 2) invoices or other records detailing the expenditures related to each student's meal substitutions.

The allowable total food service costs is calculated based on the per diem price for lunch, plus the per diem price for breakfast for high school published annually by the New Jersey Department of Agriculture, multiplied by number of meals served, based on actual enrollment, by the APSSD for the fiscal year. Any expenditures, net of all revenue from charging students and the Child Nutrition Program ("CNP"), in excess of the allowable total food service costs, will be deemed non-allowable costs, except as set forth above with regard to substitutions to meals. The NJDOA's [Maximum Price Schedule](#) is posted on the Department's website.

For more information, please refer to the [Child Nutrition FAQs](#) and [Chart of Accounts](#).