

**Executive County Superintendent Review of Administrator Contracts  
Q&A**

**Updated 7/2011**

This Q&A is to be used for the Executive County Superintendent required review and approval of administrator contracts pursuant to N.J.S.A. 18A:7-8(j) and the standards promulgated by the Commissioner for this review pursuant to N.J.A.C. 6A:23A-3.1.

**Contract Submission, Review and Approval**

**Q1. Which contracts must the Executive County Superintendent review?**

**A1.** The Executive County Superintendent (ECS) must review and approve, prior to district board of education approval, employment contracts for the following positions: superintendent, deputy superintendent, assistant superintendent and business administrator. The ECS must also approve any interim, acting or shared contracts for these positions pursuant to N.J.S.A. 18A:7-8(j) and N.J.A.C. 6A:23A-3.1(a). This includes review and approval of the following:

1. all new employment contracts, including contracts that replace an expired contract for that employee (tenured and non-tenured);
2. all renegotiations, amendments and other alterations of terms of existing contracts that have been approved by the Executive County Superintendent; and
3. all contract extensions where such term was not included in the original employment contract or is different from the term contained in the original contract.

**Q2. Is the Executive County Superintendent required to review existing contracts, including *all* renegotiations, amendments and other alterations of terms?**

**A2.** The ECS must review all renegotiations, amendments and other alterations of terms of existing contracts that have been previously approved by the ECS, as stated in Q&A #1, item 2. The ECS does not have the authority to review renegotiations, amendments and other alterations of terms to existing contracts not previously required to be approved by the ECS. [N.J.A.C. 6A:23A-3.1(a)2 and 3]

Therefore, the ECS cannot request modifications to existing contracts if such contracts were entered into prior to the appointment of the ECS. The ECS can certainly analyze existing contracts or modifications to existing contracts (such as salary adjustments) as a courtesy if requested by a district, as well as request copies of existing contracts for analysis and/or other purposes.

- Q3. Is the ECS permitted to approve a new contract that replaces an expired contract which includes benefits that the regulations/standards no longer allow (e.g. supplemental life insurance, reimbursement for FICA or health co-pays) for non-tenured and tenured employees (deputy superintendent, assistant superintendent and school business administrator)?**
- A3.** No. The ECS cannot approve a contract that includes benefits that the regulations/standards no longer permit. The ECS must disapprove all new contracts, including new contracts that replace an expired contract for that employee, that do not meet the benefit limitations and other standards in the regulations. [N.J.A.C. 23A-3.1]
- Q4. Who approves contracts required to be reviewed in a county without an Executive County Superintendent?**
- A4.** An ECS from another county will be designated to review and approve contracts for districts in counties without an ECS or without an individual whom the Commissioner has designated to perform ECS duties. [N.J.A.C. 6A:23A-3.1(b)]
- Q5. When is a proposed contract submitted to the Executive County Superintendent for approval?**
- A5.** All contracts must be submitted to the Executive County Superintendent for review and approval **prior** to approval by the board of education. [N.J.A.C. 6A:23A-3.1(c)]
- Q6. What happens if the district board of education approved a new contract, including a contract that replaces an expired contract for a tenured and non-tenured employee, or renegotiated, amended, or altered terms of existing contracts that the ECS had previously approved without submitting that contract to the ECS for approval?**
- A6.** The contract is considered unenforceable until the board of education submits the contract for review and receives approval from the ECS. Any contract submitted must include a detailed statement that lists the total cost of the contract for each applicable year, including salary, longevity (if applicable), benefits and all other emoluments. [N.J.A.C. 6A:23A-3.1(d)] This information should be submitted in the form of a worksheet, which is provided by the county office. Worksheets are specific to the type of position: superintendent deputy or assistant superintendent and business administrator.
- Q7. Can contracts for superintendents, deputy superintendents, assistant superintendents and school business administrators be more than one year in length?**
- A7.** No. Only superintendent and shared business administrator contracts are permitted by statute to be for three to five years in length, with the other positions limited to one year contract terms. [N.J.A.C. 18A:17-15 and 17-24.3] Therefore, the Executive County Superintendent must review and approve deputy superintendent, assistant superintendent

and non-shared business administrator contracts (tenured and non-tenured) at least annually consistent with N.J.A.C. 6A:23A-3.1, and cannot approve such contracts for a term greater than one year.

**Q8. Can a contract automatically renew for the same term as the initial contract?**

**A8.** Yes. If the board of education fails to provide the required notification, then the contract automatically renews for the term or same number of years as the prior contract only. [N.J.S.A. 18A:17-20.1] For example, a three year contract would be extended for another three years. All other aspects of the contract, salary and emoluments must be negotiated and comply with the regulations pursuant to N.J.A.C. 6A:23A-3.1.

**Q9. Can a contract be renegotiated during the life of the contract?**

**A9.** Yes. Contracts for superintendent, deputy superintendent, assistant superintendent or business administrator may be renegotiated at any time but any renegotiation must comply with N.J.A.C. 6A:23A-3.1 and public notice provisions of N.J.S.A. 18A:11-11. The contract must be submitted, along with a detailed statement (worksheet), to the ECS for review and approval prior to board approval. The terms of the renegotiated contract cannot extend past the maximum allowable term.

**Q10. Is a worksheet required to be submitted with any proposed contract?**

**A10.** Yes. N.J.A.C. 6A:23A-3.1(d) requires the board of education to submit a detailed statement (worksheet) that sets forth the total cost of the contract. Contracts for superintendents must contain information for each year of the proposed contract. [N.J.A.C. 6A:23A-3.1(d)] In the case of a shared school business administrator with a term of three to five years, pursuant to N.J.S.A. 18A:17-24.3, the contract must contain information for each year of the contract. Contracts for deputy superintendents, assistant superintendents and non-shared school business administrators must supply information for the one year of the contract. [N.J.A.C. 6A:23A-3.1(d)]

**Q11. Do core hours of the administrator need to be included in a contract?**

**A11.** No, a contract does not need to include core hours. However, the district board of education must provide the schedule for summer, vacation and other applicable periods along with the submission of the contract, to enable the ECS to conduct a fair and appropriate comparability analysis.

**Q12. Does a contract need to include a total cost of the contract for each applicable year: salary, longevity (if applicable), benefits and all other emoluments?**

**A12.** No, the total cost does not need to be included in the contract itself. However, the district board of education must provide the ECS with a detailed statement (worksheet) setting forth the total cost of the contract for each applicable year, including salary, longevity (if applicable), benefits and all other emoluments.

**Q13. Which contracts must include the required provision pursuant to N.J.S.A. 18A:17-15.1 and N.J.A.C. 6A:23A-3.1(e)14 that, in the event the administrator’s certificate is revoked, the contract is null and void?**

**A13.** This provision is required for superintendent contracts only.

**Public Notice and Public Hearing Requirements**

**Q14. Is a board of education subject to the public notice and public hearing requirement pursuant to N.J.S.A. 18A:11-11 for new contracts, including contracts that replace expired contracts for tenured or non-tenured employees?**

**A14.** No. N.J.A.C. 6A:23A-3.1(c)1 requires a public notice and public hearing only for renegotiations, extensions, amendments, or other alternations *to the terms of existing contracts*. The public notice and hearing requirements do not apply to new contracts, including contracts that replace expired contracts for existing superintendents, deputy superintendents, assistant superintendents or school business administrators, whether tenured or not tenured. However, nothing precludes a board of education from holding public hearings on new contracts, including contracts that replace expired contracts. The Department encourages districts to do so in the spirit of disclosure and transparency.

**Maximum Salary Amounts**

**Q15. How are superintendent maximum salary amounts determined?**

**A15.** Superintendent maximum salary amounts are determined by the district’s student enrollment. [N.J.A.C. 6A:23A-1.1] The amounts are as follows:

<u>Student Enrollment</u>	<u>Maximum Salary</u>	<u>Additional Salary for a High School</u>
0-250	\$125,000	\$2,500
251-750	\$135,000	\$2,500
751-1,500	\$145,000	\$2,500
1,501-3,000	\$155,000	\$2,500
3,001-6,500	\$165,000	\$2,500
6,501-10,000*	\$175,000	\$2,500

\*Districts with enrollment over 10,000 students may request a commissioner waiver to exceed the \$175,000 maximum salary amount.

**Q16. Are any superintendent contracts exempt from the maximum salary amounts?**

**A16.** Yes. Superintendent contracts for, county special services school districts, county vocational school districts, educational services commissions and jointure commissions are exempt. [N.J.A.C. 6A:23A-3.1(e)2]

## Salary Schedules

**Q17. Can the Executive County Superintendent approve a multi-year salary guide in contracts for deputy superintendents, assistant superintendents and business administrators, since these individuals are only permitted to have one year contracts?**

**A17.** No, a multi-year salary guide cannot be approved as part of the contract for deputy superintendents, assistant superintendents or non-shared business administrators. These employees should submit the salary schedule with the contract as support for the one-year salary included. However, the contract must include the actual salary amount, not just a reference to a previously-adopted schedule. The one-year salary and all other benefits will be reviewed under the standards in the statute and regulations. Acceptable wording would include the following: “For the 2011-2012 fiscal year, XXXX shall be paid an annual salary of \$X, consistent with the salary schedule adopted by the Board on X (date).

## Provisions for Salary Increases and Benefits

**Q18. Can a contract include provisions for a minimum salary increase (e.g. 2%) with a provision that any increase above that is based on the achievement of goals to be annually set by the board (outside the contract)?**

**A18.** Yes, but any increase over the minimum salary increase in the contract would require ECS review as it would be an amendment to a contract that the ECS had reviewed/approved. The salary, including any increase, needs to be within the maximum salary amount. [N.J.A.C. 6A:23A-3.1(e) 2, 10 and 11]

**Q19. Can a contract include simple provisions that the salary increase for subsequent years would be based on some formula (e.g. fixed %)?**

**A19.** A contract can contain a fixed percentage increase or other reasonable formulaic increase. Each year of the contract must include the salary that will be paid for that year. Superintendent salaries must conform to the maximum salary amounts; no year’s salary can exceed the maximum.

**Q20. Can a contract include provisions that the administrator receive all benefits and emoluments provided to a specified bargaining unit?**

**A20.** No. Benefits must be specified and cannot be tied generally to a specified bargaining unit or set of employees, to the greatest extent possible, to enable disclosure, transparency, and ability for the ECS to conduct a fair comparability analysis. A provision for health benefits consistent with other employees in the district is acceptable. However, a provision that states that the employees will receive all benefits consistent with other administrators, for example, is not acceptable. [N.J.A.C. 6A:23A-3.1(e)4] Allowable benefits should be specific to enable disclosure and transparency.

## **Merit Goals**

### **Q21. Can a contract contain merit goals?**

**A21.** Yes. Merit goals must be stated as quantitative and qualitative goals and must comply with the requirements of N.J.A.C. 6A:23A-3.1(e)10, 11 and 12.

### **Q22. How many merit goals are permitted?**

**A22.** A contract may contain up to three quantitative and two qualitative merit goals for each year of the proposed contract. Each quantitative goal may provide a merit bonus of up to 3.3% of the annual salary. Each qualitative goal may provide a merit bonus of up to 2.5% of the annual salary. In total, a merit bonus cannot exceed 14.99% of the annual salary. [N.J.A.C. 6A:23A-3.1(e)10]

### **Q23. How are the merit goals included in a proposed contract?**

**A23.** Merit goals are created by the board of education in consultation with the employee. Pursuant to the requirements of N.J.A.C. 6A:23A-3.1(e)10 and 11, the goals are to be a specific part of the contract and submitted to the ECS for approval.

### **Q24. When can the merit goal bonuses be paid?**

**A24.** Merit bonuses can be paid only upon the board of education's certification to the ECS that the goals have been satisfied and ECS confirmation of that satisfaction. [N.J.A.C. 6A:23A-3.1(e)10iv]

### **Q25. Are merit bonuses pensionable?**

**A25.** No. Merit bonuses are not permitted to be part of the base salary for pension purposes. [N.J.A.C. 6A:17:3-4.1 and N.J.A.C. 6A:23A-3.1(e)10iii]

## **Shared Services**

### **Q26. Can a superintendent receive an additional salary amount for shared services with another district?**

**A26.** Yes. Superintendents are permitted to earn a district salary increment of \$10,000 for each additional district that they are appointed to share services. If the student enrollment of the additional district(s) increases the base salary into the next maximum salary amount level, the superintendent would be eligible to receive a salary based upon the maximum salary amount for the combined enrollment of students in the districts served, in addition to the \$10,000 for the shared services agreement. [N.J.A.C. 6A:23A-3.1(e)2]

**Q27. What happens to an existing contract if a superintendent wishes to have a shared services agreement with another district?**

**A27.** Any shared services agreement between districts requires a new superintendent contract, which must be submitted to the ECS for review and approval. That new contract must comply with all of the requirements of N.J.S.A. 18A:17-24.2 and N.J.A.C. 6A:23A-3.1, including the maximum salary amounts, and must meet the 30 and 10 day rule for public notice and hearing. [N.J.S.A. 18A:11-11]

### **Sick and Vacation**

**Q28. Are the P.L. 2007, chapter 92 (N.J.S.A. 43, Pensions and Retirement and Unemployment Compensation) caps on unused sick leave and vacation leave applicable to superintendents, deputy superintendents, assistant superintendents and business administrators?**

**A28.** Yes. The contractual provisions regarding accumulated unused sick and vacation leave and supplemental compensation for such leave must be consistent with N.J.S.A. 18A:30-3.5 and 18A:30-9. [N.J.A.C. 6A:23-3.1(e)7 and 8]

**Q29. Can a contract include payment of unused sick leave prior to retirement?**

**A29.** No. Pursuant to the law, contracts can only include supplemental compensation for accrued, unused sick leave payable upon retirement (not annually or as part of any separation clause, only upon retirement). The amount cannot exceed the higher of the individual's accrued sick leave as of June 8, 2007 (date of the law) or the sick leave accrued by the individual after June 8, 2007, capped at \$15,000. However, the following two exceptions exist. An employee is eligible, upon retirement, to receive for any unused leave not more than the accumulated amount or \$15,000, whichever is greater if that employee: on the effective date of P.L. 2007, c. 92 (c. 43:15c-1 et al), or upon expiration of a collective negotiations agreement or employment contract applicable to that employee in effect on that date, has accrued supplemental compensation based upon accumulated unused sick leave or if the employee becomes an officer or employee after the effective date of P.L. 2007, c.92 and has previously accrued supplemental compensation based upon accumulated unused sick leave. [N.J.S.A. 18A:30-3.5 and N.J.A.C. 6A:23A-3.1(e) 7 and 8]

**Q30. Can a contract include payment for unused vacation leave?**

**A30.** Yes, but only for vacation leave accrued prior to enactment of P.L. 2007, chapter 92. An employee may accumulate vacation leave accrued as of the effective date of the law (June 8, 2007). Vacation leave accrued after June 8, 2007 can be carried over for up to one year, where required by business demands. Contracts must provide that annual payments of accrued vacation can occur only for leave accrued prior to the effective date of the act; annual payout of vacation leave accrued after the effective date of the act is not permitted. Payment of vacation leave accrued subsequent to the passage of P.L. 2007, c.

92 may only occur upon separation or retirement. [N.J.S.A. 18A:30-9 and N.J.A.C. 6A:23A-3.1(e)8]

**Q31. What happens to unused sick leave upon employee separation from a district before the employee retires?**

**A31.** It is not the previous district's responsibility to make payment upon retirement of any accrued sick time after the affected employee has separated from that district prior to retirement. Pursuant to N.J.S.A. 18A:30-3.2, the employee's current district *may* credit the employee for unused sick time based on that board's policy on sick leave credit for all employees. The district board of education must submit a copy of the board policy and certificate of accrued leave if such provision is included in the new contract.

**Q32. Can payment of unused sick or vacation be based on a number of days other than 260 if a different denominator was applicable when the unused sick or vacation was accrued?**

**A32.** The applicable denominator for new contracts and payment of sick and vacation under new contracts is 260. The calculation of an employee's sick leave benefit as of June 8, 2007 should be calculated using the methodology under the existing contract unless the contract does not include a per diem amount or method of calculation. If no method was included, the calculation cannot exceed the salary as of June 8, 2007 using a denominator of 260 days. [N.J.A.C. 6A:23A-3.1(e)9]

Note: The applicable salary to use in any payout is negotiable. Payout of grandfathered leave at different amounts is encouraged as long as the salary used does not exceed the current salary of the employee at the time of the payout.

**Q33. What beneficiary provisions can be included for unused sick or vacation leave?**

**A33.** A contract may name a beneficiary for accumulated unused vacation leave (consistent with the caps under P.L. 2007, c. 92) but may not include a beneficiary of unused sick leave, which is only payable to the employee upon retirement.

### **Personal Days**

**Q34. Can a contract include conversion of unused personal days to sick days?**

**A34.** Yes, as long as there is consistency with the statute regarding allowable accumulation, use and carryover of sick leave. [N.J.A.C. 18A:30-1 et seq.]

**Q35. Can a contract include payment for unused personal days?**

**A35.** No a contract cannot include payment for unused personal days.

## Annuities

### **Q36. Can a contract contain annuities?**

**A36.** Yes. Annuities are allowable, except for those that would supplement or duplicate a benefit already made available by operation of law or that is otherwise available to the employee. However, if such a supplemental or duplicative annuity had been included in an existing contract, then a subsequent contract could also include such an annuity. In any event, any annuity must be included in the total salary amount subject to the maximum salary amount. [N.J.A.C. 6A:23A-3.1(e)6]

## Disability Insurance

### **Q37. Can a contract include provisions that pay for disability insurance if the district offers it to all employees at the employees' expense?**

**A37.** No. The regulations at N.J.A.C. 6A:23A-3.1(e)4 specifically state that contracts cannot include payment for employee contributions that are either required by law (e.g. FICA) or by a contract in effect in the district with other employees. If a disability offering is not required, employee contributions and optional disability reimbursement can be included in a contract, provided they are reasonable and that the contract as a whole is comparable to other contracts, as determined by the ECS through a comparability review.

### **Q38. Can a contract include provisions for payment of disability insurance if the district only offers it to specific employees (at the district's expense)?**

**A38.** Yes. The regulations allow for benefits to be included that do not supplement or duplicate other benefits that are otherwise available to the employee by operation of law or existing group plan [N.J.A.C. 6A:23A-3.1(e)6] or do not reimburse or pay for employee contributions that are either required by law or by a contract in effect in the district with other employees. [N.J.A.C. 6A:23A-3.1(e)4]

## Life Insurance and TPAF/FICA

### **Q39. Can a contract include payment for the additional TPAF optional life insurance coverage of up to 3 ½ times salary?**

**A39.** No. The regulations specifically state that a contract cannot include reimbursement or payment of employee contributions that are either required by law or by a contract in effect in the district with other employees such as State or Federal taxes or contributions to FICA, Medicare, State pensions and annuities (TPAF), life insurance, disability insurance (if offered) and health benefits. [N.J.A.C. 6A:23A-3.1(e)4]

**Q40. Can a contract include a supplemental life insurance payment (supplemental to the TPAF provision)?**

**A40.** No. The regulations specifically state that a contract cannot include payment for benefits that supplement or duplicate existing benefits that are otherwise available to the employee by operation of law or existing group plan (e.g. life insurance). [N.J.A.C. 6A:23A-3.1(e)5]

**Q41. Can a contract include payment for the employee share of FICA or pensions requirement?**

**A41.** No. The regulations specifically state that a contract cannot include reimbursement or payment of employee contributions that are either required by law or by a contract in effect in the district with other employees. [N.J.A.C. 6A:23A-3.1(e)4]

**Q42. Can a contract include a separate payment or salary increase to replace the lost payment for optional life insurance, FICA or TPAF?**

**A42.** No. A contract should not include a corresponding salary increase to replace such lost benefit payment. The salary, benefits and other emoluments contained within the contract need to be comparable with those of similarly credentialed and experienced administrators in other school districts in the region and with similar enrollment, academic achievement levels and challenges, and grade spans. [N.J.A.C. 6A:23A-3.1(e)1]

### **Longevity Payments**

**Q43. Can a contract include a longevity payment?**

**A43.** Yes, a longevity payment can be included in a contract. Longevity is part of the base salary for maximum salary amount calculations only. [N.J.A.C. 6A:23A-2.1 and 3.1(d) and (e)1]

### **Travel Requirements**

**Q44. Should a contract include a provision that requires travel consistent with the OMB (Office of Management and Budget) circular and regulations?**

**A44.** Yes, a contract should include such a provision. Note that any contractual provision that is inconsistent with law is superseded by the law. Therefore, new contracts cannot include provisions inconsistent with the requirements of N.J.S.A. 18A:11-12, N.J.A.C. 6A:23A-7 and the OMB circular. This includes mileage reimbursement at a higher rate than the state rate or reimbursement for overnight travel in NJ (unless it is for a conference that has received a waiver) or reimbursement for meals. [N.J.A.C. 6A:23A-3.1(e)3]

**Q45. Can a new contract allow for mileage reimbursement at the federal rate or some other rate higher than the state mileage rate?**

**A45.** No. The OMB circular specifically states that the state mileage rate applies to all employees and board of education members in the district. The state rate is set annually in the appropriations act. It is currently 31 cents per mile. (Note: Existing negotiated agreements, which have not expired, that include a mileage reimbursement at a different rate may be honored pursuant to section I.B.6 of the OMB travel circular. [N.J.A.C. 6A:23A-3.1(e)3]

**Q46. Can a contract include a monthly travel allowance?**

**A46.** No. The only allowable monthly allowance is a reasonable car allowance that replaces the provision of a car. A reasonable car allowance cannot exceed the monthly cost of the average monthly miles traveled for business purposes for that employee multiplied by the allowable mileage reimbursement pursuant to applicable law and regulation and OMB circular (currently 31 cents per mile). If such allowance is included, the employee cannot be reimbursed for business travel mileage nor permanently assigned a car for official district business. [N.J.S.A. 18A:11-12c(3), N.J.A.C. 6A:23A-3.1(e)13 and 6A:23A-6.12]

**Q47. Can a contract provide an employee a car for business travel? What about personal travel? Can the contract include a dedicated driver or chauffeur?**

**A47.** A contract can include a provision for a car consistent with the requirements of N.J.A.C. 6A:23A-6.12. The cost of a car cannot exceed \$30,000 and only incidental personal travel is allowed. The contract cannot include a provision for a dedicated driver or chauffeur. IRS rules state the value of the vehicle is the actual cost of the car, not the value of the lease. The district board of education must submit detailed justification for any dedicated car provision to the ECS for review. [N.J.S.A. 18A:11-12c(3), N.J.A.C. 6A:23A-3.1(e)13 and 6A:23A-6.12]

### **Reimbursement for Annual Physical**

**Q48. Can a contract include reimbursement for an annual physical?**

**A48.** No. The contract cannot include reimbursement for an annual physical, whether the physical is required or not. In accordance with N.J.A.C. 18A:16-2 and N.J.A.C. 6A:32-6.1, a board of education may require employees to have an annual physical and shall require a candidate for employment who has a received a conditional offer of employment to undergo a physical examination. However, requiring an annual post-employment physical is a violation of the Americans with Disabilities Act. [42 U.S.C. §§ 12101-12213 (2000)] Reimbursement for an annual physical cannot be included in the contract (similar to co-pays and general medical expenses) as the regulations do not allow for benefits to be included if they supplement or duplicate other benefits that are otherwise available. [N.J.A.C. 6A:23A-3.1(e)6]

### **Tuition Assistance**

**Q49. Can a contract include tuition assistance or payment for attaining a degree?**

**A49.** Yes, but such a provision must be in accordance with the requirements of N.J.A.C. 6A:23A-3.1(e)15. Specifically, a graduate degree must be conferred by a duly accredited institution of higher education as defined in N.J.A.C. 6A:9-2.1. Tuition assistance or reimbursement or additional compensation for graduate school coursework must culminate in a graduate degree conferred by a duly accredited institution of higher education.

### **Employment After Retirement**

**Q50. Are there restrictions for employment after retirement?**

**A50.** Yes. Individuals who are covered under TPAF employment should become familiar with New Jersey Division of Pension and Benefits Fact Sheet #28, "Employment After Retirement" and with N.J.S.A. 18A:66-53.2(c).

### **Buyout Provisions**

**Q51. Can a contract include a provision for payment as a condition of separation from service?**

**A51.** Yes, a contract can include a provision for a determination that it is neither prohibitive nor excessive in nature and that does not exceed the lesser of the calculation of three months pay for every year remaining on the contract with proration for partial years, not to exceed 12 months, or the remaining salary amount due under the contract. [N.J.A.C. 6A:23A-3.1(e)5]

**Q52. Can a contract include a separate provision to buy out the superintendent if a shared service or a consolidation of the district occurs?**

**A52.** No. However, a contract can include a general provision for payment as a condition of separation from service if it is not deemed by the Executive County Superintendent to be prohibitive or excessive in nature. [N.J.A.C. 6A:23A-3.1(e)5]