

# **N.J.A.C. 6A:26, Educational Facilities**

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## **Chapter 26. Educational Facilities**

### **Subchapter 1. General Provisions**

#### **6A:26-1.1 Purpose and applicability of rules**

The rules are adopted by the New Jersey State Board of Education to implement the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c.72, as amended and as defined in N.J.S.A. 18A:7G-1, as well as to consolidate, conform, and update other rules relating to educational facilities in this State. The rules are adopted to ensure that the educational facilities in the State are safe, healthy, and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled, as defined by the New Jersey Student Learning Standards. The rules apply to all district boards of education in the State. To the extent these rules are inconsistent with other rules in Titles 6 and 6A of the New Jersey Administrative Code, the rules in this chapter shall take precedence.

#### **6A:26-1.2 Definitions**

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

“24-hour school facilities” mean facilities that host residents on-site year round, require the availability of water at all hours, employ staff on site 24 hours a day, and/or are care facilities, such as hospitals with educational programs provided at the facilities.

“Additional costs” means the additional construction costs beyond the area cost allowance for construction or the costs beyond reasonable estimated actual costs for rehabilitation if such costs are the result of factors outside the control of the school district, provided that either type of costs results from design factors that are required to meet the facilities efficiency standards and are approved or authorized pursuant to N.J.S.A. 18A:7G-5(g).

"Additional space" means space in excess of facilities efficiency standards.

"Adjusted gross square footage" means the gross square footage of a facility less excluded spaces.

"Annual maintenance budget amount" means the amount required to be included in the school district's annual budget certified for taxes as a deposit into the maintenance reserve account or in the required maintenance line-item accounts.

"Application for State School Aid" or "ASSA" means the application filed pursuant to N.J.S.A. 18A:7F-33, on a form issued by the Commissioner, in which a school district sets forth student enrollment by category and other pertinent information.

"Approved area for unhoused students" means the product of the area allowance per FTE student times the number of unhoused students.

"Approved LRFP" or "approved plan" means an LRFP that conforms to the requirements of N.J.A.C. 6A:26-2 and that has been determined by a Commissioner's final determination to ensure the school facilities are educationally adequate to support over the next five years the achievement of the New Jersey Student Learning Standards.

"Area allowance per FTE student" means 125 square feet for preschool through grade five, 134 square feet for grades six through eight, and 151 square feet for grades nine through 12.

"Area cost allowance" means as set forth in N.J.S.A. 18A:7G-3.

"Building system" means a set of related or similar building components that work together to perform a major function in a building or facility.

"Capital maintenance" means maintenance intended to extend the useful life of a school facility, including upgrades and replacements of building systems, such as structure, enclosure,

mechanical, plumbing and electrical systems, and can be considered to constitute or be part of a school facilities project.

"Capital project" means a school facilities project, other capital project or land acquisition project.

"Capital reserve account" means as defined in N.J.A.C. 6A:23A-1.2.

"Certified laboratory" means a laboratory certified pursuant to the provisions of N.J.A.C. 7:18.

"Comprehensive Annual Financial Report" or "CAFR" means the official annual report of a governmental unit that includes all funds and account groups, as defined in N.J.A.C. 6A:23A-1.2.

"Comprehensive maintenance plan" means a school district's multi-year maintenance plan covering required maintenance activities for each school facility in the school district adopted pursuant to this chapter.

"Cost index" means the average annual increase, expressed as a decimal, in actual construction cost factors for the New York City and Philadelphia areas during the second fiscal year preceding the budget year as determined pursuant to rules promulgated by the Development Authority.

"County vocational school district" means a county vocational school district established pursuant to N.J.S.A. 18A:54-1 et seq.

"Debt service" means as set forth in N.J.S.A. 18A:7G-3.

"Development Authority" means the New Jersey Schools Development Authority established pursuant to N.J.S.A. 52:18A-237.

"District aid percentage" means the number, expressed as a percentage derived from dividing the school district's equalization aid calculated pursuant to N.J.S.A. 18A:7F-53 as of the date of the Commissioner's determination of preliminary eligible costs by the school district's adequacy budget calculated pursuant to N.J.S.A. 18A:7F-51 as of the date of the Commissioner's determination of preliminary eligible costs.

"District board of education" means the local board of education or State district superintendent in the case of a State-operated district.

"District factor group" means an index of socioeconomic status established by the Department of Education based upon indicators available in the decennial census. School districts are arranged in 10 groups, DFG A through DFG J, A being the group with the lowest socioeconomic status, J the highest.

"Division" means the Department's Division of Administration and Finance.

"Drinking water outlet" means any location at a school facility, other facility, or temporary facility, as those terms are defined in this section, where water is expected to be used for consumption or food preparation.

"Educational adequacy" means, for purposes of a school facilities project, the suitability of a facility to provide instruction that will enable students to achieve the New Jersey Student Learning Standards and will encompass the facilities efficiency standards combined with the requirements of N.J.A.C. 6A:26-5.

"Educational space" means any space in a school facility for general instruction, specialized instruction, administration or student services and support.



"Emergency stabilization" means actions taken by a school district to correct and eliminate an actual or imminent peril to the health and safety of students or staff designed to render a school facility fit for occupancy by students or staff.

"Emergent condition" means a condition is so injurious or hazardous that it causes an imminent peril to the health and safety of students and staff.

"Emergent project" means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff.

"Estimated actual costs" means costs as determined pursuant to N.J.A.C. 6A:26-2.3 or 3.4.

"Excess costs" means as set forth in N.J.S.A. 18A:7G-3.

"Excluded space" is an existing space that is not contained in the facilities efficiency standards but may be included in a school district's approved room inventory that would be structurally or fiscally impractical to convert to other uses in the facilities efficiency standards as demonstrated by the school district and that:

1. Delivers programs and services aligned to the New Jersey Student Learning Standards; or
2. Provides support services directly to students.

"Facility" means a structure or building as further defined in this section by the terms school facility, temporary facility or other facilities.

"Facilities efficiency standards" means the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4.

“Feasibility study” means a study undertaken to determine whether a school facilities project is achievable in view of possible identified factors that may influence the project’s design or construction, including, but not limited to, applicable Federal, State and local laws; physical site conditions; market conditions; and costs and benefits. For example, such a study may be a pre-construction evaluation undertaken by a school district to determine whether it would be more feasible to replace rather than renovate a school facility because of health and safety or efficiency. It may also consist of a pre-land acquisition evaluation to determine whether it would be more feasible to acquire land for a school facilities project because of health and safety, efficiency, environmental factors, physical site conditions, or cost.

"Filing year" means the year in which the comprehensive maintenance plan is filed with the executive county superintendent.

"Final eligible costs" means as set forth in N.J.S.A. 18A:7G-3.

"Final plans and specifications" means the plans and specifications utilized to bid a capital project and to undertake and complete its construction.

"FTE" means as set forth in N.J.S.A. 18A:7G-3.

"Functional capacity" means the number of students that can be housed in a building to provide sufficient space for the building to be educationally adequate for the delivery of programs and services necessary for student achievement of the New Jersey Student Learning Standards. Functional capacity is determined by dividing the adjusted gross square footage of a school facility by the minimum area allowance per FTE student for the grade level students contained therein.

“Grant cycle” means the amount of annual funding available, as determined by the Commissioner, for section 15 grants for school facilities projects in RODs, other than county

vocational school districts.

"Gross square footage" means the total square footage of a school facility.

"Inconsistent space" means spaces that differ from the facilities efficiency standards in number, configuration, size, location, or use.

"Land acquisition" means an acquisition of land, whether by purchase, condemnation, or by gift or grant, to be used as a school site. Land acquisition is either an eligible cost of a school facilities project or an other capital project not eligible for funding pursuant to EFCFA.

"Lead action level" means the lead action level established by the United States Environmental Protection Agency at 40 CFR 141.80 for lead in drinking water.

"Lease-purchase agreement" means any agreement under which the school district leases equipment or school facilities as the lessee, and gives the school district the option of purchasing the leased property during or upon termination of the lease with credit toward the purchase price for all or part of rental payments that have been made by the school district in accordance with the lease-purchase agreement.

"Lease-purchase payment" means as set forth in N.J.S.A. 18A:7G-3.

"Local funding" means the funds supplied by a school district to finance the total costs of an other capital project.

"Local portion" means the amount of school bonds issued for a school facilities project funded under N.J.S.A. 18A:7G-9 or 10.

"Local share" means as set forth in N.J.S.A. 18A:7G-3.

"Local support" means the local share or the local portion.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a school district pursuant to N.J.S.A. 18A:7G-4.

"Maintenance reserve fund" means the account established by a school district pursuant to N.J.S.A. 18A:7G-13 into which it deposits monies to be used exclusively for required maintenance of school facilities.

"New construction" means a school facilities project that consists of either:

1. New school facilities; and/or
2. Additions to school facilities characterized by an increase in the gross square footage of the school facility and that is necessary due to unhoused students.

"New Jersey Student Learning Standards" means the standards established pursuant to N.J.S.A. 18A:7F-4.a.

"Other allowable costs" means the cost of temporary facilities; site remediation; site development; acquisition of land/or other real property interest necessary to effectuate the school facilities project; fees for the services of design professionals, including architects, engineers, construction managers, and other design professionals; legal fees; permitting and plan review fees; financing costs; and the administrative costs of the Development Authority or the school district incurred in connection with the school facilities project.

"Other capital projects" means all projects, or portions thereof, that are 100 percent locally funded, including:

1. Capital projects for the construction or rehabilitation of other facilities;
2. Leased school facilities, other facilities or temporary school facilities, unless used as temporary space for a school facilities project in accordance with N.J.A.C. 6A:26-3.14, subject to Department review of the terms and conditions of the

lease, in the case of school districts for which the State share of eligible costs for school facilities projects is 100 percent;

3. Eligible capital projects for which a school district is not seeking State support;  
and
4. Projects for which there are no costs eligible for State support.

“Other facilities” means athletic stadiums; swimming pools; any associated structures; or related equipment tied to such facilities, including, but not limited to, grandstands and night field lights, greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building, or facility used solely for school administration.

“Preconstruction activities” means the activities that must be undertaken prior to completion and submission to the Department of a school facilities project application for approval and calculation of preliminary eligible costs. Such activities can include site analysis, acquisition of land, remediation, site development, feasibility studies, design work, and acquisition of and design work for temporary facilities.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project, which shall be deemed to include the costs of construction and other allowable costs, as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7 after the completion of preconstruction activities.

“Priority project categories” means the categories specified in N.J.A.C. 6A:26-3.9(a) and 18.1.

"Project documents" means educational specifications, schematic plans, detailed plans and specifications, final plans and specifications, and other documents required for capital project review and approval by the Division.

“Quality Single Accountability Continuum” or “QSAC” means the monitoring and evaluation process of school districts pursuant to N.J.S.A. 18A:7A-10 et seq.

“Redevelopment entity” means an entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

“Regular operating school district” or “ROD” means a school district other than an SDA district.

"Rehabilitation" means a school facilities project consisting of the reconstruction, remodeling, alteration, modernization, or repair of a school facility to keep the school facility functional for its original purpose or for new purposes and that does not increase the gross square footage of the school facility.

"Replacement cost" means the area cost allowance multiplied by the gross square footage of the building for the year specified in this chapter.

"Required maintenance" means, for purposes of determining "M" in the formula in N.J.A.C. 6A:26-3.8, specific maintenance activities required for system warranty purposes that are approved for repairs and replacements to keep a school facility open and safe for use or in its original condition - including repairs and replacements to a school facility's heating, lighting, ventilation, security and other fixtures to keep the facility or fixtures in effective working condition - and that does not consist of routine or capital maintenance. Required maintenance is not an eligible cost of a school facilities project.

“Room inventory” means a list of each general instructional, specialized instructional, administrative, and support space, and the sizes and numbers that would constitute a school facility adequate to support the achievement of the New Jersey Student Learning Standards by the projected student enrollment.

"Routine maintenance" means contracted custodial or janitorial services; expenditures for the cleaning of a school facility or its fixtures; the care and upkeep of grounds or parking lots; the cleaning of, or repairs and replacements to, movable furnishings or equipment; or other expenditures that are not required to maintain the original condition over the school facility's useful life. Routine maintenance is not an eligible cost of a school facilities project.

"School bonds" means as set forth in N.J.S.A. 18A:7G-3.

"School district" means a district board of education, including a local or regional school district established pursuant to N.J.S.A. 18A:8-1 et seq. or 18A:13-1 et seq.; a county special services school district established pursuant to article 8 of N.J.S.A. 18A:46-1 et seq.; a county vocational school district established pursuant to article 3 of N.J.S.A. 18A:54-1 et seq.; and a school district under full State intervention pursuant to N.J.S.A. 18A:7A-34 et seq.

"School enrollment" means the number of FTE students who are recorded in the school registers on the last school day prior to October 16 of the current school year, except that it shall not include FTE students in evening programs, post-graduate students, and post-secondary vocational students.

"School facility" means and includes any structure, building, or facility used wholly or in part for educational purposes by a school district and facilities that physically support the structures, buildings, and facilities, such as school district wastewater treatment, power generating and steam generating, but excludes other facilities as defined in this section.

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or any other personal property necessary for, or ancillary to, any school facility. School facilities project includes, but is not limited to, fixtures; furnishings and equipment; site acquisition; site development; services of design professionals such as engineers and architects;

construction management; legal services; financing costs; and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project must be new construction to meet the housing needs of unhoused students, or rehabilitation to keep a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

“SDA district” means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year.

“Section 15 grant” means a grant of funds to be made pursuant to N.J.S.A. 18A:7G-15.

"Short-term notes" means temporary notes or loan bonds as described in N.J.S.A. 18A:24-3.

"Special education student" means a student receiving specific services pursuant to N.J.S.A. 18A:46-1 et seq. and N.J.A.C. 6A:14, Special Education.

"State debt service aid" means the amount of State aid determined pursuant to N.J.S.A. 18A:7G-9 for school bonds issued for school facilities projects approved by the Commissioner on or after July 18, 2000, in school districts that elect not to have the Development Authority or a redevelopment entity construct the project or that elect not to finance the project under N.J.S.A. 18A:7G-15; and the amount of State aid determined pursuant to N.J.S.A. 18A:7G-10 for school bonds or certificates of participation issued for school facilities projects approved by the Commissioner prior to July 18, 2000.

"State debt service aid percentage" means the district aid percentage or 40 percent, whichever is greater.

"State share" means as set forth in N.J.S.A. 18A:7G-3.



"State support" means the State share or State debt service aid.

"Temporary facility" means a facility used for educating students on a temporary basis while awaiting completion of a school facilities project that will permanently house students. It also means:

1. A facility reviewed and approved by the executive county superintendent and/or the Division as substandard prior to June 7, 2004, and a facility approved by the Division, as a temporary facility under the rules in effect on or after that date;
2. A facility not planned or constructed as a permanent school facility that is rented, leased, or otherwise acquired by a school district or a private school for the disabled for use by public school students; and
3. A temporary classroom unit, self-propelled van or other mobile unit, whether or not installed on a school district-owned school site.

"Total costs" means the final eligible costs plus excess costs, if any, for a school facilities project to be constructed by the Development Authority or a redevelopment entity or financed pursuant to N.J.S.A. 18A:7G-15; the total cost of the project as determined by the school district for a school facilities project not to be constructed by the Development Authority or a redevelopment entity or financed pursuant to N.J.S.A. 18A:7G-15, and the total costs of an other capital project as determined by the school district.

"Type I school district" means a school district established in a city, pursuant to N.J.S.A. 18A:9-2, where board members are appointed by the municipality, and where the governing body of the municipality issues school bonds for school district capital projects, pursuant to N.J.S.A. 18A:22-20 and 18A:24-11.

"Type II school district" means a school district established in a municipality other than a city, every consolidated school district, and every regional school district, pursuant to N.J.S.A. 18A:9-3,

where board members are elected or appointed by the municipality, as applicable, and where the district board of education issues school bonds for school district capital projects in a school district without a board of school estimate, pursuant to N.J.S.A. 18A:24-12.

"Uniform Construction Code" or "UCC" means N.J.A.C. 5:23.

“Unhoused students” means the number of students in excess of the functional capacity of a school facility calculated pursuant to N.J.A.C. 6A:26-2.2(c).

"Useful life" means the applicable recovery period for depreciation purposes determined under Section 168 of the Internal Revenue Code of 1986, 26 U.S.C. § 168 as amended and supplemented, and the applicable regulations.

## **Subchapter 2. Long-Range Facilities Plans**

### **6A:26-2.1 Responsibilities of school district**

- (a) Following the approval of the 2005 LRFP, each school district shall amend its LRFP at least once every five years on software made available by the Department, and in accordance with the instructions for completing the software. For newly established school districts, the LRFP shall be submitted no later than one year following its formation or earlier if the school district seeks approval for a school facilities project. The LRFP shall detail the school district's school facilities, other facilities and temporary facilities and the school district's plan for meeting school facilities needs during the ensuing five years.
- (b) Except as provided in N.J.A.C. 6A:26-3.14, no school facilities project shall be considered or approved unless the school district's LRFP has been submitted to the Department and approved by the Commissioner.

- (c) Each school district shall submit its LRFP to the planning board(s) of the municipality(ies) in which the school district is situated, no later than the date the school district submits the LRFP to the Commissioner, to afford the planning board(s) the opportunity to prepare and submit findings to the school district. In the case of a regional school district, all municipalities comprising the regional school district shall be considered school districts in which the regional school district is situated for purposes of this subsection. A school district shall provide to the Division proof of the date the school district submits the LRFP to the Commissioner and to the planning board(s). The planning board(s) shall submit its findings, if any, to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500, within 45 days of its receipt of the LRFP. No LRFP shall be considered complete until comments have been received from the planning board(s) or until 45 days have passed from the planning boards' receipt of the LRFP. If the school district or its architect receives the planning board findings, the findings shall be forwarded promptly to the Division at the above address.
- (d) All school districts sending students to another school district to be educated pursuant to N.J.S.A. 18A:38-8 et seq. shall expeditiously provide all information necessary for the receiving school district to complete its LRFP, including, but not limited to, demographic information necessary to prepare enrollment projections. Both sending and receiving school districts must submit a LRFP. If a send-receive relationship is terminated pursuant to N.J.S.A. 18A:38-21, both the sending and receiving school district shall promptly submit an amended LRFP.
- (e) If one or more member school districts withdraw from a regional school district operating pursuant to N.J.S.A. 18A:13-1 et seq., or the regional school district dissolves pursuant to N.J.S.A. 18A:13-51 et seq., all such withdrawing school districts and the regional school district, if applicable, shall submit an amended LRFP.

- (f) At any time, a school district may submit an amendment to an approved LRFP for review and approval by the Commissioner.
- (g) A school district's approved LRFP shall remain in effect until an amended LRFP is approved.

**6A:26-2.2 Completion of long-range facilities plans**

- (a) Each LRFP shall include:
  - 1. Enrollment projections for the school district for the five years covered by the plan, by grade level, as set forth in the Fall Survey Report for grades K through 12 and the ASSA for preschool programs, and utilizing enrollment figures as of October 15 of the previous year as the base enrollment figures. Students enrolled in the school district who are attending charter schools, students attending the schools of the school district pursuant to the school choice program, and students enrolled in the school district but attending private schools for the disabled shall be separately identified in enrollment projections, and shall be excluded from the calculation of the number of unhoused students pursuant to (b) below.
    - i. The enrollment figures shall be certified by a qualified demographer;
    - ii. The resume and any other professional credentials relied upon by the school district to demonstrate that the person who prepared the enrollment projection possesses adequate experience to be considered a qualified demographer shall be submitted as part of the school district's LRFP. Adequate experience shall include preparation of enrollment reports and projections on behalf of school districts, both in fulfillment of statutory or regulatory obligations and for other purposes. School district employees, such as the chief administrator and school business administrator, as well

- as persons hired by a school district may, if they possess the requisite experience, serve as a qualified demographer;
- iii. Projections shall be for the five ensuing years utilizing a cohort survival method, shall utilize pertinent live births of residents of the community provided by the New Jersey Department of Health and Senior Services and shall include enrollment trends for the previous five years as set forth in the previous six Fall Survey Reports or ASSA, as appropriate;
  - iv. Where a school district does not believe a five-year projection utilizing a cohort survival method will accurately predict future enrollment, the school district shall submit additional data and justification for consideration by the Commissioner;
  - v. A school district shall adjust enrollment projections to account for significant numbers of students who are attending charter schools; and
  - vi. ECPA school districts shall make appropriate adjustments to enrollment projections for preschool children based on the history of the actual enrollments in those programs and consistent with the school district's approved ECPA plan;
2. The functional capacity of every school facility in the school district, listed separately by facility and grade level, including an inventory of all spaces in each facility;
  3. An inventory of every school facility, other facility and temporary facility in the school district.
    - i. If a school district shares or leases facilities or any portion thereof, either as a lessor or lessee, all such spaces shall be included in its LRFP.
    - ii. All facilities, or portions thereof, owned by a school district that are leased or otherwise conveyed to another entity shall be included if the facility, or

portion thereof, will become available for use by the school district in the ensuing five years. Only the terms of leases currently in effect shall be considered when determining whether a space will be available to the school district in the ensuing five years.

- iii. All facilities, or portions thereof, acquired by the school district through a leasehold agreement, or to which the school district is otherwise entitled to possession by any legal arrangement, shall be included for the period covered by the plan during which the school district is entitled to use of the facility;
4. An inventory of all school district-owned land, indicating whether used currently, previously, or never, as a school site, with a map of the school district indicating the location of all school district-owned land and the location of existing schools in the school district;
5. A listing of the approximate size and nature of any new sites that may be needed for school facilities projects set forth in the LRFP, listing the specific project(s) to be constructed on each site;
6. An inventory of all building systems within each facility, including structure, enclosure, mechanical, plumbing, interior walls and finishes and electrical systems;
7. A determination of the life expectancy of all building systems;
8. A determination of any building system deficiencies in each school facility and the required remediation;
9. The school district's proposed school facilities projects and other capital projects and preliminary scopes of work in the five years ensuing, setting forth each proposed new school facility, addition and renovation, including each separate space to be constructed or renovated (for example, classrooms, art and music

- rooms, cafeterias, gymnasiums), the functional capacity of each proposed school facility and the priority tier pursuant to N.J.S.A. 18A:7G-5(m), and all school facilities to be sold, converted to other non-school facility uses or razed;
10. The school district's proposed programmatic models for school facility types and capacities the school district intends to operate in the five years ensuing;
  11. A comparison of the school district's proposed programmatic models with the facilities efficiency standards and identification of all types of spaces, sizes of spaces and number of spaces inconsistent with those standards. The school district shall note for all spaces that are inconsistent with the facilities efficiency standards whether it intends to seek a waiver of a facilities efficiency standard, locally fund the space, or seek approval for funding of additional space;
  12. A comparison of the school district's programmatic models with the existing inventory and how the school district proposes to convert the existing inventory to the programmatic models;
  13. The school district's proposed plans for new construction and renovation of other facilities in the five years ensuing, setting forth each proposed new other facility, addition and renovation, including each separate space to be constructed or renovated and all other facilities to be sold, converted to other non-school facility uses or razed;
  14. For each school facility set forth in the LRFP for which the school district is seeking approval of additional space or waiver of a facility efficiency standard to be approved as part of the LRFP, the school district shall submit documentation supporting the request in accordance with N.J.A.C. 6A:26-2.3(c);
  15. For each school facility to be replaced, a preliminary comparison of the cost of replacement of the school facility verses the cost to rehabilitate the school facility;

16. Preliminary data to support each proposed new school facility or addition, renovation to an existing school facility and the removal from the school district's inventory of school facilities each school facility to be sold, converted to non-school facility use or razed;
  17. A preliminary estimate of the cost of every school facilities project set forth in the LRFP; and
  18. A district board of education resolution approving submission of the LRFP.
- (b) Each LRFP shall include a determination by the school district of the number of unhoused students for the ensuing five-year period calculated as follows:
1. The number of unhoused students shall be the number of FTE students projected to be enrolled in preschool disabled, preschool, kindergarten, grades one through 12 and special education student programs to be provided in the school district in the ensuing five years that exceed the functional capacity of the school district's current school facilities or school facilities that will be available within five years, including community provider facilities housing preschool students, excluding projects which have been approved pursuant to N.J.A.C. 6A:26-3. Projected enrollments and functional capacity shall be separately determined for early childhood and elementary students (preschool through grade five), middle school students (grades six through eight) and high school students (grades nine through 12). For the purpose of calculating the school district's unhoused students, special education students shall be considered part of the grade level to which the students' chronological age corresponds. In the event approval is granted for a school facilities project which involves the construction of a new school facility to replace an existing school facility, the calculation of the number of unhoused students shall exclude the functional capacity of the facility to be replaced.



- (c) Approved area for unhoused students (AU) shall be determined according to the following formula:
- $AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$  where UEC, UE, UM, UH are the numbers of unhoused students in the early childhood, elementary, middle, and high school enrollment categories, respectively; and SEC, SE, SM, SH are the area allowances per FTE student in preschool and kindergarten, grades one through five, grades six through eight, and grades nine through 12, respectively. Area allowances shall be determined based on the grade level of a student regardless of the grade configurations of the school buildings of the school district. Gross square footage is to be used for these determinations.
- (d) An ECPA school district is encouraged to include one or more community provider early childhood education facilities projects, including projects of Head Start providers that qualify as community providers, as part of its LRFP. Superintendents are strongly encouraged to meet and collaborate with community early childhood education providers to meet the needs of unhoused students in the LRFP.
- (e) The school district shall incorporate the facilities efficiency standards in the LRFP.
1. If the LRFP includes a proposal for new construction or rehabilitation of a school facility that does not meet the facilities efficiency standards, the school district shall seek, as part of the LRFP approval, a waiver for those components that are not consistent with the standards.
  2. If the LRFP includes a proposal for new construction pursuant to N.J.S.A. 18A:7G-7(a), or rehabilitation pursuant to N.J.S.A. 18A:7G- 7(b), of a school facility that exceeds the facilities efficiency standards, the school district may seek Commissioner approval of that additional space and, if approved, such space will be deemed eligible for State funding. If the school district does not seek Commissioner approval for the additional space, the school district shall state that

fact in its submission and that space will be deemed ineligible for State support at the time of approval of the LRFP.

**6A:26-2.3 Review and approval of long-range facilities plans**

- (a) Within 90 days of receipt of a LRFP from a school district that has not previously submitted a LRFP, the Division shall determine whether the plan is fully and accurately completed and whether all information necessary to review the plan has been filed by the school district.
  - 1. When a LRFP is determined to be complete, the Division shall notify in writing the school district that the plan is deemed complete.
  - 2. When a LRFP is determined to be incomplete, the Division shall notify in writing the school district and require the submission of additional information as detailed in the notification. A school district shall submit the requested information. Only after the Division determines all requested information has been submitted and the information is accurate shall it determine a plan to be complete.
  
- (b) Within 60 days of the date of the notification that a plan is complete, the Commissioner shall notify the school district of the final determination of the LRFP. A final determination shall set forth:
  - 1. Reasonable five-year enrollment projections;
  - 2. A complete facility inventory;
  - 3. A complete inventory of physical conditions/deficiencies of every facility;
  - 4. A listing of all school-district-owned land, and a listing of any new school sites needed for school facilities projects if identified by the school district;
  - 5. Spaces for which a waiver is approved pursuant to (e) below;
  - 6. Identification of school facilities for which new construction was proposed in lieu of rehabilitation and for which it appears from the information presented that new

construction is justified but, for school facilities so identified, a feasibility study shall be submitted as part of the application for the school facilities project;

7. A listing of all proposed new construction projects for unhoused students; and
8. A listing of all proposed capital projects included in the LRFP.

(c) A school district shall amend its approved LRFP whenever it seeks to undertake a capital project that is inconsistent with the approved LRFP in effect. The amendment request shall be accompanied by a district board of education resolution approving the submission of the LRFP amendment.

1. In the case of an emergent project, the LRFP may be amended as provided in N.J.A.C. 6A:26-3.14(e).
2. In the case of a school facilities project requiring amendment to the school district's applicable approved room inventory in the approved LRFP, approval of the school facilities project shall require the prior approval of an amended room inventory. If amending the room inventory would affect the capacity of one or more of the school district's school facilities, the school district shall fully document the impact of amending the room inventory on each school facility in the school district, and Division review and approval of the LRFP amendment shall be required prior to Division approval of the school facilities project.
3. In the case of a school district seeking to amend its LRFP involving capital maintenance, the school district shall amend its LRFP by submitting an amendment request and updating the Department's software to:
  - i. Identify the building system or systems affected by the project;
  - ii. Revise building system conditions to reflect deficiencies;
  - iii. Indicate the deficient quantity and unit costs for the deficient system; and
  - iv. Commit the deficiency to a proposed project.

4. Prior to approval of a project that is inconsistent with a school district's approved LRFP and that affects the capacity of one or more of its school facilities, or the total number or grade alignment of school facilities in the school district, a school district shall amend its LRFP to fully document the project's impact on each facility. The Division shall review and approve the LRFP amendment according to this section prior to the Division's approval of the project.
- (d) Notwithstanding any provision of this chapter to the contrary, if at any time the number of LRFPs pending before the Commissioner for review exceeds 20 percent of the total number of operating school districts in the State, the Commissioner may extend by 60 days the deadline for reviewing each plan then before him or her. The Commissioner shall notify in writing each affected school district of the extension. No LRFP shall be considered to be pending before the Commissioner for review until a school district is notified by the Commissioner that the plan is complete.
- (e) Any school district that has an approved LRFP may begin undertaking feasibility studies for new construction identified pursuant to (b)6 above, site acquisition, development, remediation and design work, and acquire temporary facilities, provided that such activities are consistent with its approved LRFP and this chapter. For school districts required to use the Development Authority, the activities also shall be undertaken under the auspices of the Development Authority and in accordance with N.J.S.A. 18A:7G-5 and this chapter.

**6A:26-2.4 (Reserved)**

**Subchapter 3. Capital Project Review**

**6A:26-3.1 Initiation of a capital project**

- (a) All capital projects shall be undertaken in accordance with this subchapter.

- (b) School facilities projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.2 and 3.3; land acquisition projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.9 or 3.13 and 6A:26-7, as applicable; and other capital projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.12.
- (c) Project documents for school facilities projects and other capital projects shall be reviewed by the Division and approved for compliance with the requirements of N.J.A.C. 6A:26-5 as applicable.
- (d) Project documents for school facilities projects and other capital projects that involve the acquisition of land shall be reviewed for compliance with the requirements of N.J.A.C. 6A:26-7.
- (e) The Division shall review each capital project to determine whether the project is consistent with the school district's approved LRFP and whether it complies with the applicable room inventory in the approved LRFP, if any.

**6A:26-3.2 School facilities projects**

- (a) Any school district seeking to initiate a school facilities project shall apply to the Division on a Commissioner-provided form for approval of the school facilities project.  
School facilities projects include:
  - 1. New construction;
  - 2. Rehabilitation, provided that the rehabilitation or capital maintenance consists of the entire building system in the same school facility building section, as building section is defined in the approved LRFP, unless one or more of the components of a mechanical, electrical, or plumbing building system is required for the continued operation of such system;
  - 3. Acquisition of existing buildings to accommodate unhoused students;

4. Furnishings, fixtures, and equipment, but they shall be eligible for State support only as follows:
  - i. Furnishings with a useful life of 10 years or greater when part of a school facilities project is either new construction or rehabilitation and also qualified as reconstruction. The cost of furnishings shall not exceed the cost of the item if purchased through a State contract, if applicable. For purposes of this subsection, reconstruction is to be defined in accordance with the UCC, N.J.A.C. 5:23-6.3;
  - ii. Fixtures when part of a school facilities project;
  - iii. Equipment with a useful life of 10 years or greater either consisting of a school facilities project when it is an integral and substantial part of a building system in a school facility or when part of a school facilities project. The cost of equipment shall not exceed the cost of the item if purchased through a State contract, if applicable. Operating equipment such as vacuums, snowblowers, and floor polishers, along with repairs to such items shall be ineligible for State support;
  - iv. Air conditioning equipment with a useful life of 10 years or greater either consisting of a school facilities project when it is an integral and substantial part of a building system or when part of a school facilities project. If the school facilities project consists of new construction, the air conditioning system shall be eligible for State support to the extent that it is included in the area cost allowance. If the school facilities project consists of rehabilitation that includes the replacement of an existing air conditioning system, the replacement shall be eligible for State support provided that it is for the entire building air conditioning system in the same school facility building section, as building section is defined in the approved LRFP, unless

one or more of the components of that building system are required for the continued operation of such system. If the school facilities project consists of rehabilitation that includes the installation of a new air conditioning system, the new system shall be eligible for State support if it is for the entire building air conditioning system in the same school facility building section and for instructional spaces (excluding industrial shops) and/or for occupied non-instructional spaces (excluding kitchens and locker rooms). To the extent that a new air conditioning system is for unoccupied non-instructional spaces, such as utility rooms and storage rooms, except for spaces that accommodate heat- and humidity-sensitive equipment, it will not be eligible for State support; and

- v. Technology electronic systems recommended by the “Facilities Standards for Technology in New Jersey Schools” and the “Working Toward the Future With Our Children” educational technology plan for New Jersey, or subsequent State educational technology standards for New Jersey schools, when part of a school facilities project which is either new construction or rehabilitation that also qualifies as reconstruction as defined in the UCC, N.J.A.C. 5:23-6.3; and

- 5. The rehabilitation of a multi-purpose physical education field(s) and, for pre-school-through-grade-five school facilities, a playground with playground equipment when required to support the New Jersey Student Learning Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model. A new multi-purpose physical education field or playground, including playground equipment is eligible for State support, within

the area cost allowance only when part of a school facilities project consisting of new construction for unhoused students.

- (b) An application for a school facilities project shall contain the following information:
1. All information set forth in N.J.A.C. 6A:26-5.2 and 5.3 if the project is subject to educational adequacy review and, if not, any drawings or narrative relating to the project from a New Jersey licensed architect or professional engineer, if applicable, and, if the school facilities project includes the acquisition of land, N.J.A.C. 6A:26-7.1;
  2. Necessary updates to the enrollment projections in the school district's approved LRFP to support the project;
  3. A delineation and description of each of the functional components of the school facilities project;
  4. The number of unhoused students to be housed in the school facilities project;
  5. The minimum area allowances per FTE student as calculated pursuant to this chapter;
  6. A narrative description of the school facilities project on a form prescribed by the Commissioner, including an itemized breakdown of estimated actual costs and quantities by area for new construction, rehabilitation and acquisition of existing buildings;
  7. Identification of the site for new construction, if any;
  8. Identification and description of any spaces that exceed the facilities efficiency standards for which the school district received approval pursuant to the approved LRFP or is seeking approval as additional space pursuant to N.J.A.C. 6A:26-3.3;
  9. A complete room inventory of the spaces contained in the building;
  10. A feasibility study for all new construction in lieu of rehabilitation;



11. Identification of the programmatic model from the school district's approved LRFP and supporting documentation to confirm that the school facilities project conforms to the programmatic model;
  12. The tier the school district proposes for each school facilities project in accordance with N.J.S.A. 18A:7G-5(m);
  13. A resolution of the district board of education authorizing the submission of the application to the Division;
  14. A certification from the chief school administrator and the school business administrator that the school district has not advertised or awarded a construction or purchase contract for the school facilities project and that the school facilities project has not been completed; and
  15. Any additional information that a school district deems relevant for the Commissioner's review of the school facilities project.
- (c) Where required by N.J.S.A. 40:55D-31 and 18A:18A-16, each school district shall submit applications for school facilities projects to the planning board(s) of the municipality(ies) in which the school district is situated, no later than the date the school district submits to the Division each application to afford the planning board(s) the opportunity to prepare and submit findings to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500. A school district shall provide to the Division proof of the date that it submits each school facilities project application to the planning board(s). The planning board(s) shall submit to the Division findings, if any, within 45 days of its receipt of each project application from a school district required to use the Development Authority, and has an additional 10 days to file with the Division notice of recommendations against approval of the project. No school facilities project application shall be considered complete until comments have been received from the planning board(s) or until either 45 days or 55

days, as applicable, have passed from the planning board's receipt of each school facilities project application, whichever is earlier. If the school district or its architect receives the planning board findings, it shall be forwarded promptly to the Division at the above address.

- (d) A school district shall not initiate a school facilities project without an approved LRFP.

### **6A:26-3.3 Review and approval of school facilities projects**

- (a) After receipt of a school facilities project application, the Division shall assess the application and determine whether it is fully and accurately completed and all necessary information has been filed by the school district or the Development Authority on behalf of the school district. All information in N.J.A.C. 6A:26-3.2(b) must be provided to the Division before a school facilities project application shall be considered fully and accurately completed and the application shall be reviewed to determine whether it conforms to the school district's approved LRFP and whether it complies with the applicable programmatic model in the approved LRFP, if any, or the facilities efficiency standards. If a school facilities project application is determined to be incomplete, the Division shall inform the school district by listing in writing all deficiencies in the application and missing required information. After all required information is received and a school facilities project application is determined complete, the Division shall notify in writing the school district that the school facilities project application is deemed complete. In the case of a Development authority schools facility project, preconstruction activities shall be conducted prior to the application being deemed complete.
- (b) After approval of the LRFP, within 90 days of receipt of a complete school facilities project application, or from the date of the school district's last revision to the project application, whichever is later, the Division shall review each application to determine

whether the school facilities project is consistent with the school district's approved LRFP and whether it complies with the applicable room inventory in the approved LRFP, if any, or the facilities efficiency standards. If unable to make a decision within the 90 days, the Division shall notify the school district, explaining in writing the reason for the delay and indicating the date by which a decision shall be made. The decision date shall be no later than 60 days from the expiration of the original 90 days. If a decision is not made by the subsequent date established, the school facilities project shall be deemed approved.

- (c) When the Division determines that a school facilities project complies with the requirements of N.J.A.C. 6A:26-5.1 through 5.3, and is consistent with the facilities efficiency standards or the applicable room inventory in the school district's approved LRFP, if any, and does not exceed the standards or the applicable room inventory approved in the LRFP, except for spaces for which the school district is not seeking State support, the Division shall approve the school facilities project, provide a final determination of the preliminary eligible costs pursuant to the formulas set forth in N.J.S.A. 18A:7G-1 et seq. and N.J.A.C. 6A:26-3.4, and shall notify in writing the school district of the approval and preliminary eligible costs.
- (d) The Division shall notify the school district if it determines that a school facilities project is inconsistent with the facilities efficiency standards or the applicable room inventory in the approved LRFP. Within 30 days of the notification, the school district shall advise the Division of its determination to do one of the following:
1. Revise its school facilities project and re-submit it for review by the Division;
  2. Make a request for additional space eligible for State support;
  3. Locally fund any excess costs; or
  4. Seek a waiver as set forth in (i) below.

- (e) The Division shall approve requests for additional or inconsistent space eligible for State support if the school district demonstrates that:
1. School facility needs related to programs required pursuant to State or Federal law or regulation cannot be addressed within the facilities efficiency standards and that all other spaces are consistent with the standards;
  2. Such spaces are necessary to comply with Federal or State laws concerning educating students with disabilities to the greatest extent possible in the same building or classes with their non-disabled peers and the additional or inconsistent spaces will:
    - i. Allow for the return of students with disabilities from out-of-school-district facilities;
    - ii. Permit the retention of students with disabilities who would otherwise be placed in out of school district facilities;
    - iii. Provide space for regional programs in a host school building that houses both disabled and non-disabled students; or
    - iv. Provide space for the coordination of regional programs by a county special services school district, educational services commission, jointure commission or other agency authorized by law to provide regional special education services, in a school facility that houses both disabled and non-disabled students;
  3. Such spaces are necessary to house the school district's central administration and:
    - i. The proposed administrative offices will be housed in a school facility;
    - ii. The existing central administrative offices are obsolete or it is more practical to convert those offices to instructional space; and

- iii. The space sought does not exceed an increase of the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total school district school enrollment.
- (f) Spaces approved pursuant to (e) above shall be aided pursuant to N.J.S.A. 18A:7G-5.g(4).
- (g) When reviewing requests by SDA districts for additional space, the Commissioner shall, in accordance with *Abbott v. Burke*, 153 N.J. 480 (1998) (*Abbott V*), afford deference to a school district's determination that specialized instructional rooms are necessary based on the school district's particular needs.
- (h) If a request for additional space is determined to be eligible for State support, the applicable room inventory in the school district's approved LRFP shall be deemed amended. If the Division does not approve a request for additional space, it shall be deemed ineligible for State support unless and until the Division's decision is reversed on appeal.
- (i) The Division shall not approve any school facilities project for new construction or rehabilitation that is not consistent with the facilities efficiency standards or the applicable room inventory in the approved LRFP unless the school district demonstrates that waiver of the standard(s) will not adversely affect the facility's educational adequacy, including the ability to deliver the programs and services necessary to enable all students to achieve the New Jersey Student Learning Standards. If the Division approves a waiver, the applicable room inventory in the school district's approved LRFP shall be deemed amended. If the Division does not approve a waiver request, the school district shall conform the school facilities project to the facilities efficiency standards and resubmit the project.
- (j) School facilities projects that comprise new construction shall receive approval for State support only if necessary for reasons of unhoused students.

(k) A school facilities project that consists of rehabilitation shall be approved only if it will keep the school facility functional for its original purpose or for a new purpose and if it can be accomplished without increasing the gross square footage of the original facility but shall not include any routine maintenance or required maintenance. The Division may approve rehabilitation projects that include elevators, egress, and other modifications to school facilities to render them compliant with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq., the UCC, N.J.S.A. 52:27D-119 et seq. or other State and Federal requirements, even if the gross square footage of the building is thereby increased to complete the school facilities project.

(l) All school facilities shall be deemed suitable for rehabilitation unless a feasibility study undertaken by the school district demonstrates to the Division's satisfaction that the structure might pose a risk to the safety of the occupants even after rehabilitation, or that rehabilitation is not cost-effective. Whenever a school district initiates a school facilities project for new construction in lieu of rehabilitation, the school district shall submit a feasibility study as part of the school facilities project application supporting its determination that it would be more feasible to replace rather than rehabilitate the school facility because of health and safety or efficiency. The feasibility study shall consist of:

1. Estimated costs of repairing the existing school facility and providing upgrades and additions required to make the school facility educationally adequate. The estimated costs of a rehabilitation project shall contain only the costs necessary for compliance with the UCC, health and safety, and educational adequacy as determined pursuant to N.J.A.C. 6A:26-5 and N.J.S.A. 18A:7G- 5.g(1);
2. Estimated costs of replacing the existing school facility, including site acquisition, if required, and disposal of the existing site and school facility; and

3. Estimated costs of all extraordinary factors, including off-site improvements, environmental remediation and temporary facilities.
- (m) When a school district demonstrates to the Division's satisfaction that replacement is more feasible than rehabilitation and the proposed school facilities project is otherwise approvable, the Division shall approve the school facility project for new construction in lieu of rehabilitation, and the preliminary eligible costs shall be determined pursuant to N.J.A.C. 6A:26-3.4(a).
- (n) When a school district does not demonstrate to the Division's satisfaction that replacement is more feasible than rehabilitation, the Division may approve the school facilities project if all other requirements are met, but the preliminary eligible costs shall be determined in accordance with N.J.A.C. 6A:26-3.4(b).
- (o) If the Division determines that the preliminary eligible costs of a rehabilitation project, as determined pursuant to N.J.A.C. 6A:26-3.4(b), appear so excessive as to make rehabilitation an unreasonable option, it may direct the school district to conduct a study comparing cost and other factors associated with the rehabilitation versus new construction. If the Division determines that rehabilitation is an unreasonable option based on the comparison, the school district shall either re-submit the project as new construction or preliminary and final eligible costs shall be determined pursuant to N.J.A.C. 6A:26-3.4(a) if the school district determines to continue with the rehabilitation project.
- (p) Upon approval of a school facilities project and determination of the preliminary eligible costs pursuant to N.J.A.C. 6A:26-3.4, the Division shall notify the school district that the school facilities project has been approved and of the preliminary eligible costs, excess costs, and additional costs, if any.

#### **6A:26-3.4 Calculation of preliminary eligible costs for school facilities projects**

- (a) Upon approval of a completed school facilities project application, preliminary eligible costs for new construction, new construction in lieu of rehabilitation approved pursuant to N.J.A.C. 6A:26-3.3, and purchase of an existing facility to be utilized as a school facility shall be calculated as follows:

$$\text{Preliminary eligible costs} = \text{AU} \times \text{C}$$

Where

AU is the approved area for unhoused students; and

C is the area cost allowance.

- (b) Preliminary eligible costs for rehabilitation or new construction in lieu of rehabilitation that is not approved pursuant to N.J.A.C. 6A:26-3.3 shall equal reasonable estimated actual costs as calculated on a form prescribed by the Commissioner, which shall include, but not be limited to:

1. Specific unit costs and quantities;
2. Other allowable costs;
3. The costs to render a school facility energy efficient;
4. The costs to render a school facility compliant with the UCC;
5. The costs to ensure that a school facility meets health and safety standards; and
6. The costs to ensure that the school facility meets educational adequacy as determined pursuant to the facilities efficiency standards and N.J.A.C. 6A:26-5.

- (c) The reasonableness of estimated actual costs under (b) above shall be determined in accordance with industry standards.

- (d) Notwithstanding (a) and (b) above, preliminary eligible costs for new construction and rehabilitation of a purchased facility within five years of purchase shall be determined as follows:

$$\text{Preliminary eligible costs} = (\text{ACP-PC}) \times (\text{C/CP})$$

where



ACP is the preliminary eligible costs for the facilities purchased

pursuant to (a) above;

PC is the purchase cost for the facility;

C is the area cost allowance at the time of application for the school facilities project; and

CP is the area cost allowance at the time of purchase of the facility.

Preliminary eligible costs so calculated shall not be less than zero.

- (e) For school facilities projects deemed approved pursuant to N.J.A.C. 6A:26-3.3(b), preliminary eligible costs for new construction shall be calculated by using the proposed square footage of the school facility as the approved area for unhoused students, and for rehabilitation shall be the reasonable estimated costs of the rehabilitation.
- (f) Notwithstanding anything to the contrary, preliminary eligible costs for school facilities projects of county vocational school districts and of special services school districts shall equal the amount determined by the board of school estimate and approved by the board of chosen freeholders pursuant to N.J.S.A. 18A:46-42 or 18A:54-31, as appropriate.
- (g) Notwithstanding anything to the contrary, preliminary eligible costs for Development Authority school facilities projects shall equal the amount determined by the Development Authority pursuant to N.J.S.A. 18A:7G-5.

### **6A:26-3.5 Determination of final eligible costs for Authority school facilities projects**

- (a) School facilities projects of SDA districts shall be constructed by the Development Authority.
- (b) After approving a project that shall be constructed by the Development Authority and calculating the preliminary eligible costs, the Division shall promptly prepare and submit to the Development Authority a preliminary project report that shall consist, in addition to any other information deemed relevant by the Commissioner, of the following information:

1. A complete description of the school facilities project;
  2. The actual location of the school facilities project;
  3. The total square footage of the school facilities project together with a breakdown of total square footage by functional component;
  4. The preliminary eligible costs of the school facilities project;
  5. The project's priority ranking determined pursuant to N.J.S.A. 18A:7G-5(m);
  6. Any other factors to be considered by the Development Authority in undertaking the school facilities project; and
  7. The name, address, and phone number of the person from the school district to contact concerning the school facilities project.
- (c) If the Development Authority determines that a school facilities project can be completed within the preliminary eligible costs based on detailed plans and specifications, the final eligible costs shall be deemed to equal the preliminary eligible costs pursuant to EFCFA and the preliminary project report shall be deemed to be the final project report delivered to the Development Authority pursuant to N.J.S.A. 18A:7G-5(j).
- (d) In the event that the Development Authority determines that a school facilities project cannot be completed within the preliminary eligible costs, prior to the submission of its recommendations to the Commissioner, the Development Authority shall consult with the school district and the Commissioner and determine whether changes can be made to the school facilities project that will result in a reduction in costs while meeting the requirements of educational adequacy.
1. When the Commissioner is notified by the Development Authority that the Development Authority has determined that changes in the school facilities project are possible so the project can be accomplished within the scope of the preliminary eligible costs while still conforming to the facilities efficiency standards, the Division shall:

- i. Calculate the final eligible costs to equal the preliminary eligible costs; and
  - ii. Issue a final project report to the Development Authority in accordance with (h) below.
2. When the Development Authority has determined it is not possible to make changes in a school facilities project so it can be completed within the preliminary eligible costs either because the additional costs are the result of factors outside the control of the school district or because the additional costs are required to meet educational-adequacy requirements, the Development Authority will recommend to the Commissioner that the preliminary eligible costs be increased accordingly, whereupon the Division shall:
  - i. Calculate the final eligible costs to equal the sum of the preliminary eligible costs plus the increase recommended by the Development Authority; and
  - ii. Issue a final project report in accordance with (h) below.
3. When the Development Authority has determined the additional costs are the result of factors within the school district's control or of design factors that are not required to meet the facilities efficiency standards, the Development Authority shall recommend to the Commissioner that the preliminary eligible costs be accepted, whereupon the Division shall:
  - i. Calculate the final eligible costs to equal the preliminary eligible costs unless the preliminary eligible costs are determined to be insufficient to meet the educational needs of the school district, in which case preliminary eligible costs shall be adjusted upward as appropriate, and specify the excess costs that shall be borne by the school district; and
  - ii. Issue a final project report to the Development Authority in accordance with (h) below.

- (e) For any school facility project to be constructed by the Development Authority in which the State share of final eligible costs is 100 percent, the Development Authority may delay the request for a determination of final eligible costs until receipt of the construction bids by the Development Authority.
- (f) After receipt by the Development Authority of a final project report, the school district shall be responsible only for the local share identified in the report, cost overruns relating to excess costs, if any, and the costs associated with changes, if any, made at the request of the school district to the scope of the school facilities project. If a school district fails to obtain approval of the local share within one year of the determination of the final eligible costs, the Development Authority may redetermine final eligible costs and forward them to the Commissioner for approval. If the Development Authority elects to re-determine final eligible costs, the school district shall not seek or obtain approval of the local share until the final eligible costs are re-determined.
- (g) The Development Authority shall not commence the acquisition or construction of a school facilities project until the Division transmits to the Development Authority a final project report except as provided in N.J.A.C. 6A:26-3.9.
- (h) The final project report shall contain all of the information contained in the preliminary project report and also shall contain:
  - 1. The final eligible costs;
  - 2. The excess costs, if any;
  - 3. The total costs, which equal the final eligible costs plus excess costs, if any;
  - 4. The State share of the final eligible costs; and
  - 5. The local share of the total costs.

**6A:26-3.6 Determination of final eligible costs for ROD school facilities projects**

- (a) Prior to a determination of final eligible costs, a school district that is not using the Development Authority for construction of a school facilities project may appeal to the Commissioner for an increase in the preliminary eligible costs that were approved pursuant to N.J.A.C. 6A:26-3.3 if the detailed plans and specifications prepared in accordance with N.J.A.C. 6A:26-5.4 by a licensed architect or engineer for the school facilities project indicate that the cost of constructing the portion of the school facilities project approved for State support exceeds by 10 percent or more the preliminary eligible costs for the project as determined by the Commissioner. The school district shall file its appeal within 30 days of the preparation of the detailed plans and specifications.
- (b) The appeal shall outline the reasons why the preliminary eligible costs calculated for the school facilities project are inadequate, provide documentation to support such reasons, and estimate the amount of the adjustment that needs to be made to the preliminary eligible costs. Upon a determination that the appeal information is complete, the Commissioner shall forward the appeal information to the Development Authority for its review and recommendation.
- (c) The Commissioner shall make a determination on the appeal within 30 days after receipt of the Development Authority's recommendation. If the Commissioner does not approve the adjustment to the preliminary eligible costs sought by the school district, the Commissioner shall issue in writing his or her findings setting forth the reasons for the denial and why the preliminary eligible costs as originally calculated, or an adjustment to the preliminary eligible costs that is smaller than sought by the school district, is sufficient.
- (d) A school district that decides not to appeal the determination of preliminary eligible costs may request, at any time after approval of the school facilities project and determination of preliminary eligible costs, that the Commissioner determine final eligible costs for the project.

- (e) Final eligible costs for the school facilities project shall be determined as follows:
1. The preliminary eligible costs shall become the final eligible costs if a school district does not appeal or unsuccessfully appeals the determination of preliminary eligible costs.
  2. The final eligible costs shall be the preliminary eligible costs as adjusted by the Commissioner if a school district successfully appeals the determination of preliminary eligible costs pursuant to (b) above. In no case shall the adjustment to preliminary eligible costs be more than 10 percent.
- (f) Following the determination of final eligible costs, the Division shall notify in writing the school district of the following:
1. The final eligible costs;
  2. The total costs;
  3. The State share or State debt service aid percentage;
  4. The local share, if applicable;
  5. Excess costs, if any; and
  6. Additional costs, if any.
- (g) A school district shall not seek approval of the local share or the total costs of a school facilities project receiving State debt service aid through a bond referendum for the school facilities project until the Division has notified the school district of the final eligible costs for the project. A school district may seek approval of the estimated local share in its annual budget prior to a determination of final eligible costs. If the local share estimate in the annual budget is less than the actual local share, the school district shall proceed in accordance with N.J.A.C. 6A:26-4. A school district may seek approval of local share utilizing capital reserve pursuant to N.J.A.C. 6A:23A-14.

### **6A:26-3.7 Local support of school facilities projects**

- (a) No school facilities project shall be constructed unless local support, if any, plus other local revenue sources utilized to fund the total costs of a school facilities project receiving State debt service aid has received approval as set forth in this section. School districts shall notify the Commissioner and executive county superintendent when approval is obtained, and, if applicable, provide each the schedule for issuance of school bonds. School districts shall also notify the executive county superintendent of the issuance of school bonds within 30 days of their issuance.
- (b) If the Development Authority is constructing the school facilities project, the school district shall provide to the Development Authority funds for 100 percent of the ineligible costs of the project in accordance with the rules of the Development Authority.
- (c) If the school district determines to issue school bonds to fund all or any part of the local support, the school district shall proceed in accordance with (e), (f), or (g) below, as applicable. If the school district determines to fund the entire local support through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate voter or board-of-school-estimate approval of the expenditure of local support, make withdrawals from capital reserve in accordance with N.J.A.C. 6A:23A-14. A school district may fund the local support for additions or improvements to an existing school facility or equipment through a lease-purchase agreement not in excess of five years' duration if the school district obtains approval of the lease-purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.
- (d) If a school district submits to voters a separate proposal for local funding for a non-referendum capital project pursuant to N.J.S.A. 18A:7F-5 and N.J.A.C. 6A:23A-8.4, such amounts shall not be utilized as the local share or to reduce the total costs of a school facilities project receiving State debt service aid of a school facilities project.
- (e) Whenever the district board of education in a Type I or Type II school district having a board of school estimate determines it is necessary to sell school bonds to raise money

for the local support for any school facilities project approved pursuant to EFCFA and these regulations, it shall estimate by resolution the amount necessary to be raised for school facilities project(s) and itemizing the estimate to make it readily understandable. The secretary of the district board of education shall certify to each member of the school district's board of school estimate a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds; the final eligible costs of the school facilities project as approved by the Commissioner; the total costs; the State share or State debt-service-aid percentage; the local share, if applicable; and the excess costs, if applicable. If the district board of education determines to use a combination of school bonds and other revenue sources, the resolution shall also include the portion of the local share or total costs of a school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from it. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.

- (f) Whenever a school facilities project(s) to be paid for from school bond proceeds is submitted to the voters of a Type II school district an annual or special school election for their approval or disapproval, the district board of education shall frame and adopt the question(s) to be submitted so each school facilities project is submitted as a separate question, or so all or any number of them are submitted in one question, which shall state the school facilities project(s) submitted and the amounts to be raised for each of the school facilities projects separately submitted or for each or all of the school facilities projects jointly submitted, as the case may be, but any proposal for land purchase shall be sufficient to authorize the taking and condemning of the land. If the district board of education determines to use a combination of school bonds and other revenue sources, the question shall also include the portion of the local share or total costs of a school



facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from it. Gifts, grants, private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.

1. If the school facilities project is to be constructed by the Development Authority or a redevelopment entity, or by the school district with a grant pursuant to N.J.S.A. 18A:7G-15, the single-question referendum shall request approval for the local share and shall disclose the amount needed to be raised by school bonds, the final eligible costs of the school facilities project as approved by the Commissioner, the State share, the total costs, and the excess costs, if any.
2. If the school facilities project is not to be constructed by the Development Authority or a redevelopment entity or by the school district with a grant pursuant to N.J.S.A. 18A:7G-15, the single-question referendum shall request approval for the total costs of the school facilities project, disclose the amount needed to be raised by school bonds, the State debt-service-aid percentage, the final eligible costs, and the excess costs, if any.
  - i. The State debt-service-aid percentage shall be stated as a percentage of the annual debt service of the final eligible costs.
3. When a school facilities project is framed in more than one question, the explanatory statement accompanying the questions shall include a summary that lists the total costs of the project; the State share or the State debt-service-aid percentage; the final eligible costs of the project; the local share, if applicable; excess costs; and the revenue source for the local share or total costs of a school facilities project receiving State debt service aid.
4. The statement of excess costs in any ballot question and in any explanatory statement that accompanies a ballot question shall describe the excess costs as

follows: "This school facilities project includes (insert amount) for school facility construction elements in addition to the facilities efficiency standards developed by the Commissioner of Education, or that are not otherwise eligible for State support pursuant to N.J.S.A. 18A:7G-5(g)".

- (g) Whenever a State-operated school district determines it is necessary to sell school bonds to raise money for any school facilities project approved pursuant to EFCFA and this subchapter, it shall estimate the amount necessary to be raised for the school facilities project(s), itemizing such estimate to make it readily understandable. The State school district superintendent shall certify to each member of the school district's capital project review board a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds; the final eligible costs of the school facilities project as approved by the Commissioner; the total costs; the State share or the State debt-service-aid percentage; the local share, if applicable; and the excess costs, if any. The capital project review board shall review the project in accordance with N.J.S.A. 18A:7A-46.2. If the school district determines to use a combination of school bonds and other revenue sources, the question shall also include the portion of the local share or total costs of the school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.
- (h) A school district, other than a State-operated school district, that sought and failed to receive approval pursuant to N.J.S.A. 18A:7G-11 of a school facilities project that did not have excess costs, and sought and failed within the three years prior but after July 18, 2000, to receive approval of the same school facilities project, with or without excess costs, may file a petition with the Office of Controversies and Disputes, in conformance

with N.J.A.C. 6A:3-1.4 and the procedures in this subsection, to request that the Commissioner approve the school facilities project and authorize the issuance of school bonds for the local share of the school facilities project. Pursuant to N.J.S.A. 18A:7G-12, a State-operated school district may not use the process set forth in this paragraph but shall instead use the process established by N.J.S.A. 18A:7A-46.2 to undertake a school facilities project.

1. A petition filed pursuant to this subsection shall be captioned In the Matter of the Application of the Board of Education of the (Township, Borough, etc.) of (School district), (Name) County, for an Order Directing Issuance of Bonds Pursuant to N.J.S.A. 18A:7G-12 and shall:
  - i. Briefly set forth the basis for the school district’s appeal, including: an explanation of how each school facilities project proposed in the petition meets the statutory requirements that the school district has failed to obtain approval of the local share of the school facilities project(s) within the three years prior to the latter of such failures; the latter failure was for a school facilities project(s) without excess costs as defined in N.J.A.C. 6A:26-1.2; and why the requested school facilities project(s) is necessary for the provision of a thorough and efficient system of education in the school district;
  - ii. Be accompanied by a district board of education resolution approving the school district’s appeal, documentation of the failed referenda underlying the appeal and a verification as set forth in N.J.A.C. 6A:3-1.4; and
  - iii. Be filed in triplicate (original and two copies).
2. The review, public comment, and hearing process regarding the petition shall be as follows:

- i. A conforming petition and supporting materials filed pursuant to (h)1 above shall be forwarded to the Division, which shall review the record for completeness and solicit such documentation from the school district as may be necessary to ensure the petition's consistency with the threshold statutory criteria as set forth in (h)1 above. Once the record is determined to be complete, the Division shall return to the Office of Controversies and Disputes the record with a written report of its review. The Division also shall provide to the school district a copy of its written report;
- ii. Upon receipt of a completed record from the Division, the Office of Controversies and Disputes shall notify the district board of education that it has met the prerequisites for seeking an order of the Commissioner directing issuance of school bonds for the local share of the school facilities project(s) and shall direct the school district to:
  - (1) Announce at a district board of education meeting to occur by a specified date that interested persons may submit written comments to the Commissioner through the Office of Controversies and Disputes, in duplicate and no more than 10 pages in length, and a copy to the district board of education;
  - (2) Publish by the date specified and in a minimum of two newspapers, one local and one Statewide, notice of the opportunity for the public to file such comments. Both the announcement and published notice shall identify clearly the school facilities projects; the amount of school bonds the school district seeks to issue; the fact that the voters previously rejected referenda seeking the issuance and the number of such rejections; and the purpose of the school district's appeal to the Commissioner; and

- (3) File with the Office of Controversies and Disputes a sworn certification that the required announcement was made and the required notice was published.
- iii. Upon receipt of the required certification from the school district and expiration of the public comment period pursuant to (h)2ii above, the Commissioner shall arrange for an evidentiary hearing in accordance with the following procedures:
- (1) The Commissioner may either request that the Director of the Office of Administrative Law assign an administrative law judge to conduct the matter as an uncontested case pursuant to N.J.S.A. 52:14F-5(o) or arrange for assignment of a hearing officer to conduct the matter on behalf of the Department;
  - (2) Written notice of the hearing date(s) shall be sent to the district board of education and its legal representative;
  - (3) The district board of education shall effectuate notice to interested persons by announcing the hearing date at a district board of education meeting prior to the hearing date, and shall publish same in a minimum of two newspapers, one Statewide and one local, with a minimum of 20 days' notice provided through both means, and with proof of both the announcement and the publication to be submitted to the assigned judge or hearing officer;
  - (4) The hearing shall be conducted on an expedited basis and, to the extent possible, at a location close to the school district;
  - (5) Interested persons shall be provided with a reasonable amount of time, as determined by the assigned judge or hearing officer, to present comments without unduly prolonging proceedings; and

- (6) The district board of education shall present, in a manner to be determined by the assigned judge or hearing officer, proofs as to why the school facilities project(s) for which it seeks to issue school bonds are necessary for provision of a thorough and efficient system of education in the school district.
3. Following review of the report and recommendation issued by the Office of Administrative Law pursuant to N.J.A.C. 1:1-21.5 or prepared by the assigned hearing officer in a manner consistent with N.J.A.C. 1:1-21.5, the Commissioner shall make in a written decision a final determination taking into consideration the report's recommended findings of fact and conclusions of law.
  - i. Within 13 days of the date the report was mailed to the district board of education, or such longer period as may be requested by the school district and granted by the Commissioner, the school district may file with the Office of Administrative Law comments on the report and recommendation.
4. If the Commissioner finds that the school facilities project(s) is necessary for the provision of a thorough and efficient system of education in the school district, the written ordering decision shall authorize the district board of education to prepare to issue school bonds once the Division has approved the final eligible costs of the school facilities project(s) pursuant to N.J.A.C. 6A:26-3.5 and to submit to the Division detailed plans and specifications, or if unavailable, the most complete documentation on the project.
  - i. The Division shall then issue a preliminary project report and transmit the documentation to the Development Authority for purposes of a Development Authority recommendation of the final eligible costs of the school facilities project(s), pursuant to N.J.A.C. 6A:26-3.5.

- ii. If the Development Authority has the detailed plans and specifications and/or documentation sufficient to make a recommendation of the final eligible costs of the project(s), the recommendation shall be forwarded to the Division. If the plans for the school facilities project(s) do not meet the criteria for detailed plans and specifications, the additional design work shall be funded so a final-eligible-cost recommendation can be made to the Division. The local share shall be adjusted to reflect the Development Authority's funding of the additional design work.
  - iii. Once the Commissioner approves the final eligible costs of the school facilities project(s) and issues to the Development Authority a final project report, the Commissioner shall approve the school facilities project(s) without excess costs and authorize the issuance of school bonds to fund the local share.
5. In addition to the amount of taxes determined by the legal voters of the school district at the annual school election, the district board of education secretary shall certify the amount required for the repayment of the interest and principal of the school bonds required to fund the local share approved by the Division in the same manner required for interest and debt-redemption charges pursuant to N.J.S.A. 18A:22-33. The amount certified shall be included in the taxes assessed, levied, and collected in the municipality(ies) comprising the school district.
6. Any school facilities project authorized pursuant to this subsection shall be constructed by the Development Authority pursuant to N.J.A.C. 6A:26-3.9.
- (i) Any ROD included in district factor group A or B as of July 18, 2000 may apply to the Commissioner for 100 percent State share of final eligible costs of a school facilities project in the event the school district is having difficulty financing the local share or the total costs of a school facilities project receiving State debt service aid. To receive from

the Commissioner a recommendation for 100 percent State share of final eligible costs, a school district shall submit documentation demonstrating that:

1. It sought approval of a school facilities project that did not have excess costs, and failed to receive such approval, and previously sought and failed to receive approval of the same school facilities project, with or without excess costs and:
    - i. The budget equalized tax rate of the school district is at least 130 percent of the State average; or
    - ii. The equalized municipal tax rate is above the State average; and
  2. The school facilities project is necessary for the provision of a thorough and efficient system of education in the school district.
- (j) Upon review of the application, the Commissioner shall determine whether to recommend to the Legislature that the school district receive 100 percent State share of the final eligible costs of the project. A school district will receive 100 percent State share only if the Legislature so determines upon receipt of the Commissioner's recommendation.
- (k) All school facilities projects approved pursuant to (i) and (j) above shall be constructed by the Development Authority pursuant to N.J.A.C. 6A:26-3.9. Final eligible costs of the project shall be determined in accordance with N.J.A.C. 6A:26-3.5 prior to the Development Authority undertaking construction of the school facilities project.

#### **6A:26-3.8 Determination of State support for school facilities projects**

- (a) State support for school facilities projects shall be determined as follows:
1. State debt service aid for projects approved on or after July 18, 2000, shall be calculated as follows:  
  
Aid is the sum of A for each issuance of school bonds issued for a school facilities project approved by the Commissioner on or after July 18, 2000, where:



$A = B \times AC/P \times DAP \times M$ , with  $AC/P = 1$

whenever  $AC/P$  would otherwise yield a number greater than one, and where:

$B$  is the school district's debt service for the individual issuance for the State fiscal year;

$AC$  is the preliminary eligible costs determined pursuant to section 7 of EFCFA;

$P$  is the principal of the individual issuance plus any other funding sources approved for the school facilities project;

$DAP$  is the district aid percentage as defined pursuant to N.J.S.A. 18A:7G-3, except that  $DAP$  shall not be less than 40 percent and, for county special services school districts,  $DAP$  is that of the county vocational school district in the same county; and

$M$  is a factor representing the degree to which a school district has fulfilled maintenance requirements for a school facilities project, and shall be 1.0 except when a different maintenance factor is required by N.J.S.A. 18A:7G- 9.

2. State debt service aid for school facilities projects approved prior to July 18, 2000, shall be calculated as follows:

Aid is the sum of  $A$  where

$A = B \times CCSAID/TEBUD$  and where

$B$  is the school district's total debt service or lease purchase payment for the individual issuance for the State fiscal year;

$CCSAID$  is the school district's core curriculum standards aid amount determined pursuant to N.J.S.A. 18A:7F-15; and

$TEBUD$  is the school district's T & E budget determined pursuant to N.J.S.A. 18A:7F-13.

For county special services school districts,  $CCSAID/TEBUD$  shall be that of the county vocational school district in the same county.

3. The amount of a grant shall be determined as follows:
  - i. The State share payable to the school district shall equal the product of the school facilities project's final eligible costs and the district aid percentage or 40 percent, whichever is greater. The Development Authority shall provide grant funding for the State share pursuant to an agreement between the school district and the Development Authority, which shall set forth the terms of disbursement of the State share in addition to other terms and conditions.
    - (1) All grants and the corresponding local share shall be accounted for separately by project in the capital projects fund in accordance with N.J.A.C. 6A:26-4;
    - (2) Local share budgeted in capital outlay shall be transferred to the capital projects fund upon execution of the grant agreement with the Development Authority. Any unexpended transferred capital outlay funds remaining after completion of the school facilities project shall be transferred to the general fund in the current year or reserved and designated in the subsequent year's general fund budget.

**6A:26-3.9 Design and construction of Development Authority school facilities projects**

- (a) The Development Authority shall design and construct school facilities projects in accordance with EFCFA and the Development Authority's rules.
  1. The Commissioner shall develop an educational facilities needs assessment for each SDA district. The assessment shall be updated periodically by the Commissioner in accordance with the schedule the Commissioner deems appropriate for the school district; except that each assessment shall be updated at

a minimum within five years of the development of the school district's most recent prior educational facilities needs assessment.

2. The assessment shall be transmitted to the Development Authority to be used to initiate the planning activities required prior to the establishment of the educational priority ranking of school facilities projects pursuant to this subsection.
  3. Following the approval of an SDA district's LRFP or of an amendment to the plan, but prior to authorization of preconstruction activities for a school facilities project included in the plan or amendment, the Commissioner shall establish in consultation with the SDA district an educational priority ranking of all school facilities projects in the SDA district based upon the Commissioner's determination of critical need in accordance with priority project categories developed by the Commissioner. The priority project categories shall include, but not be limited to, health and safety; overcrowding in the early childhood, elementary, middle, and high school grade levels; spaces necessary to provide in-district programs and services for current disabled students who are being served in out-of-district placements or in-district programs; and services for the projected disabled student population, rehabilitation and educational adequacy.
  4. In consultation with the Commissioner, SDA districts, and the governing bodies of the municipalities in which the SDA districts are situated, the Development Authority shall establish a Statewide strategic plan pursuant to N.J.S.A. 18A:7G-5.m to be used in the sequencing of SDA district school facilities projects based upon the projects' educational priority rankings and issues that impact the Development Authority's ability to complete the projects.
- (b) To advance a school facilities project, a school district that is required to use the Development Authority and has an approved LRFP may request the initiation of

preconstruction activities in connection with a school facilities project identified as a priority project in the Statewide strategic plan, provided that such activities are consistent with its approved LRFP and are undertaken under the auspices of the Development Authority.

1. School districts shall submit to the Division a preconstruction application setting forth all preconstruction activities - including feasibility studies, remediation, site development, demolition, design work, acquisition of and design work for temporary facilities, and acquisition of land - that need to be undertaken prior to submission of a school facilities project application. The Division shall review each application for consistency with the educational priority ranking, the Statewide strategic plan, and the approved LRFP. If the Division authorizes the Development Authority to undertake preconstruction activities, it shall forward the application to the Development Authority, which shall undertake such activities pursuant to procedures developed by the Development Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for a State share.
  2. For school districts in which the State share of final eligible costs of a school facilities project is 100 percent, the Development Authority shall provide the funding for these preconstruction costs.
- (c) A school district that is required to use the Development Authority shall seek approval from the Commissioner to acquire land pursuant to N.J.A.C. 6A:26-7. The Commissioner may approve the land purchase if the site is capable of supporting the applicable school facility in the approved LRFP. If the Commissioner approves the request, he or she shall notify the school district and the Development Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for a State share. For school districts in

which the State share of eligible costs for the school facilities projects is 100 percent, the Development Authority shall provide the funding for the cost of the land if approved by the Commissioner and the Development Authority.

- (d) The Development Authority shall submit detailed plans and specifications to the Department for review and approval pursuant to N.J.A.C. 6A:26-5.4. If the final plans and specifications prepared by the Development Authority change the number, size, location, configuration or use of educational spaces as set forth in the detailed plans and specifications required by N.J.A.C. 6A:26-5 submitted to the Department when a school facilities project was approved, the Development Authority shall submit the final plans and specifications to the Department for review and approval pursuant to N.J.A.C. 6A:26-5. For purposes of N.J.A.C. 6A:26-5.5, the detailed plans and specifications submitted by the Development Authority shall constitute final plans and specifications.
- (e) For all school facilities projects constructed by the Development Authority, or which the school district is constructing under delegation of the Development Authority pursuant to N.J.S.A. 18A:7G-13(a), the Development Authority shall notify the Department of any change order affecting the number, size, location, configuration or use of educational spaces and submit the change order to the Department for review and approval.
- (f) The Development Authority shall provide to the Division a copy of the final plans and specifications utilized when soliciting bids for a school facilities project and certify that no changes affecting educational adequacy were made between the detailed plans and specifications, and the final plans and specifications.
- (g) Upon completion of a school facilities project by the Development Authority, the school district shall submit to the Commissioner and the Development Authority a plan for school facility maintenance in accordance with N.J.A.C. 6A:26-20.

**6A:26-3.10 Design and construction of ROD school facilities projects**

- (a) The provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and implementing rules are applicable to any school facilities project constructed by a school district.
- (b) Prior to UCC approval for construction of a school facilities project, a school district shall submit to the Division the final plans and specifications for final approval pursuant to N.J.A.C. 6A:26-5.4.
- (c) Upon completion of a school facilities project by a school district, the school district shall submit to the Commissioner a plan for school facility maintenance in accordance with N.J.A.C. 6A:26-20. All plans shall include a provision for a maintenance reserve fund. All maintenance reserve funds created in accordance with N.J.A.C. 6A:26-20 shall be funded annually with two-tenths of one- percent of the net replacement cost of the school facility, which shall be included in the annual budget of the school district. The monies in the maintenance reserve fund may be withdrawn at any time during the year to fund the maintenance mandated by N.J.A.C. 6A:26-20. The net replacement cost of the school facility shall equal the area cost allowance multiplied by the gross square footage of the building.

**6A:26-3.11 Initiation of other capital projects**

- (a) Other capital projects shall be reviewed by the Division based on the following criteria:
  - 1. Whether they are consistent with the school district's approved LRFP;
  - 2. The total amount of funds the school district intends to expend to complete the other capital project;
  - 3. The type of facility to be constructed; and
  - 4. Whether the facility, if it is to house students, conforms to educational adequacy requirements at N.J.A.C. 6A:26-5.2.

- (b) Other capital projects that require educational adequacy reviews are subject to the provisions of N.J.A.C. 6A:26-5. Land acquisition projects shall be reviewed pursuant to N.J.A.C. 6A:26-7. Other capital projects shall conform to all other applicable statutes and regulations, including N.J.S.A. 18A:18A-1.1 et seq.
- (c) A school district may annually transfer by district board of education resolution an unbudgeted fund balance up to one percent of the school district's annual budget certified for taxes or \$50,000, whichever is higher, to capital outlay to fund other capital projects, except land acquisition projects, that received approval in accordance with (a) and (b) above. Once it exceeds the annual maximum-transfer amount, the school district shall receive approval for local funding for other capital projects as set forth below.
1. If the school district determines to issue school bonds to fund all or any part of the local funding, the school district shall proceed in accordance with (c)2 or 3 below, as applicable, and (c) 4 below. If the school district determines to fund the entire local funding through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate approval of the expenditure of local funds, and make withdrawals from capital reserve in accordance with N.J.A.C. 6A:23A-4.1. A school district also may fund the local funding for additions or improvements to an existing facility or equipment through a lease-purchase agreement not in excess of five years' duration if the school district obtains voter or board of school estimate approval of the lease-purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.
  2. Whenever the district board of education in a Type I or Type II school district having a board of school estimate shall determine it is necessary to sell school bonds to raise money for the local funding for an other capital project, it shall estimate by district board of education resolution the amount necessary to be raised for such other capital project(s), itemizing the estimate to make it readily

understandable. The district board of education secretary shall certify to each member of the school district's board of school estimate a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds. If the board determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of the local funding to be raised through other funding sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.

3. Whenever the undertaking of an other capital project(s) to be funded by the proceeds of a school bonds issue is to be submitted to voters of a Type II school district at an annual or special school election for their approval, the district board of education shall frame and adopt the question(s) to be submitted so each other capital project is submitted as a separate question, or all or any of them are submitted as one question. The question shall state the other capital project(s) submitted, and the amounts to be raised for each other capital projects separately submitted or for each or all other capital projects jointly submitted, as the case may be. Any proposal for the purpose of land shall be sufficient to authorize its taking and condemning. If the district board of education determines to use a combination of school bonds and other funding sources, the question shall also include the portion of the local funding to be raised through other funding sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.



4. Whenever a State-operated school district shall determine it is necessary to sell school bonds to raise local funding for an other capital project, the school district shall estimate the amount necessary to be raised for the other capital project(s), itemizing the estimate to make it readily understandable. The State school district superintendent shall certify to each member of the school district's capital project review board a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds. The Capital Project Review Board shall review the project in accordance with the procedures in N.J.S.A. 18A:7A-46.2. If the school district determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of local funding to be raised through other funding sources, listing separately each source and amount from that source. Gifts, grants, and other private taxpayer sources, along with municipal surplus, shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.
5. If the school district issues school bonds for an other capital project under (c)2, 3, or 4 above, the resolution or question to the voters shall specifically state that the other capital project is not eligible for State support. In the case of a school facilities project for which a school district determines not to seek State support, the resolution or question shall state as follows: "The other capital project to be funded herein was potentially eligible for State support, in whole or in part, at a minimum amount of 40 percent for eligible components of the project. However, (add name of school district) determined not to seek State support for this other capital project." If a school district has not received approval of its LRFP, the school district shall submit a request to amend its LRFP to include the other capital project. Approval of the amendment shall be required prior to the review of the other capital project.

### **6A:26-3.12 Acquisition of land by school districts**

- (a) Every acquisition of land, whether by purchase, condemnation, or by gift or grant, to be used as a school site shall comply with N.J.A.C. 6A:26-7 and receive approval thereunder.
- (b) School districts may seek to acquire land as part of a school facilities project or prior to approval of a school facilities project. If approval for land acquisition is sought prior to approval of a school facilities project and the school facilities project is subsequently approved, such school facilities project shall be deemed to have included the land acquisition.
- (c) Every land acquisition shall be approved by voters or the board of school estimate, unless otherwise provided in (c)1 through 3 below:
  - 1. If a school district intends to utilize school bonds to acquire the land prior to the approval of a school facilities project, the request for local-debt authorization shall state that the school bonds proceeds will be utilized to acquire land to be used for a school facilities project identified in the approved LRFP, and that the availability of State support for such a school facilities project will not be determined unless and until the school facilities project is submitted and approved as eligible for State support pursuant to EFCFA and this subchapter. School districts may also seek to acquire land as part of an other capital project or prior to its review and approval, if any.
  - 2. If a school district intends to utilize funds in its capital reserve account to fund an acquisition of land for a school facilities project in its approved LRFP, voter approval of the withdrawal from capital reserve is not required if the appropriation to the capital reserve account for the acquisition of land receives voter approval pursuant to N.J.A.C. 6A:23A-14.1.
  - 3. If a school district utilizes funds other than school bonds or funds from the capital reserve account to acquire the land, except for gifts, grants, other private sources,

and municipal surplus, the school district shall include as a line item in its annual school budget submitted to the voters the appropriation of funds for the land acquisition.

- i. An approved line-item appropriation for the acquisition of land in the annual budget certified for taxes shall not become part of the pre-budget-year net budget for purposes of calculating the spending-growth limitation of the subsequent year pursuant to N.J.S.A.18A:7F-1 et seq. Unused spending authority calculated pursuant to N.J.A.C. 6A:23A-10.3 that is created by such appropriation shall not be considered unused spending authority available to a district board of education in the next two budget years.

#### **6A:26-3.13 Review, approval, and use of temporary facilities**

- (a) As part of a school facilities project, a school district may propose providing temporary facilities pending the construction of a school facilities project either by the Development Authority or the school district. A school district may also propose providing temporary facilities not as part of a school facilities project and, therefore, to be locally funded as an other capital project. An approved private school for the disabled may also propose to provide temporary facilities, which are not part of a school facilities project and shall be reviewed as an other capital project.
- (b) All temporary facilities shall be approved by the Division pursuant to this section and, if housing students, pursuant to the educational adequacy requirements at N.J.A.C. 6A:26-5.4(c) and the temporary facility standards at N.J.A.C. 6A:26-8.
  1. If an SDA district seeks approval of a temporary facility and it is part of a school facilities project, and if approval is sought prior to the school facility project's approval, it shall submit to the Division a preconstruction application referencing

the acquisition of a temporary facility (including related design work), pursuant to N.J.A.C. 6A:26-3.9.

- i. If the SDA district seeks approval of a temporary facility prior to approval of a school facilities project, the school district or the Development Authority on behalf of the school district, shall submit an application for approval of the temporary facility pursuant to this section. The Division shall then make a determination on the temporary facility, and notify both the school district and the Development Authority. When the SDA district later submits an application for the related school facilities project, the temporary facility submission shall be deemed to be included in the application. The preliminary eligible cost and final eligible cost determinations shall incorporate the eligible costs of the temporary facility.
- ii. If the SDA district seeks approval of a temporary facility at the time it seeks approval of a school facilities project, the school district, or the Development Authority on behalf of the school district, shall submit an application for approval of the temporary facilities pursuant to this section. The temporary facility cost estimate for the estimated actual costs of the temporary facility shall be included in the cost estimate for the school facilities project. The project and preliminary eligible cost, land, and educational adequacy determinations shall occur at the same time as its temporary facility determination pursuant to this section.
- iii. If the SDA district, or the Development Authority on behalf of the SDA district, seeks approval of a temporary facility after the time it seeks approval of a school facilities project, the cost estimate for estimated actual costs of the temporary facility shall be added to the cost estimate for

the school facilities project, and the temporary facility determination shall occur after the project and preliminary eligible cost determinations are made by the Division.

2. If a ROD seeks approval of a temporary facility that is part of a school facilities project, the ROD shall engage an architect to undertake the design work required for the temporary facility to be approved as part of a school facilities project.

i. If the school district seeks approval of a temporary facility prior to approval of a school facilities project or at the time it seeks approval of a school facilities project, the school district shall submit an application for temporary facility approval, including a cost estimate for the temporary facility based on its estimated actual costs. A temporary facility approved prior to the approval of a school facilities project shall be funded locally. Once the project has been approved, the school district shall receive credit toward the local share of its final eligible costs, pursuant to N.J.A.C.

6A:26-3.8.

(c) An application for a temporary facility, including in the case of an approved private school for the disabled, shall contain the following information:

1. If the temporary facility is to house students, all information set forth in N.J.A.C. 6A:26-5.4(c), relating to detailed plans and educational specifications, and all information demonstrating that the design of the facility complies with N.J.A.C. 6A:26-8, Temporary Facility Standards;
2. All information to the extent applicable to temporary facilities in N.J.A.C. 6A:26-7.1 if the temporary facility includes the acquisition of land;
3. If the temporary facility is part of a school facilities project and if intended to house students due to overcrowding, necessary updates to the enrollment

projections in the school district's approved LRFP to support the temporary facility;

4. The number of unhoused students, if any, to be housed in the temporary facility;
  5. A cost estimate for the temporary facility;
  6. A recommendation of the county superintendent of schools certifying the need for a temporary facility;
  7. A resolution of the district board of education or the board of trustees of the approved private school for the disabled approving the application; and
  8. Where required by N.J.S.A. 40:55D-31 and 18A:18A-16, either proof that 45 or 55 days have passed, whichever time period is applicable, pursuant to N.J.A.C. 6A:26-3.2, from the planning board's receipt of the temporary facility application or the receipt of comments from the local planning board(s) on the temporary facility application, whichever is earlier. Such comments are to be sent to the Division, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500.
- (d) After the Division receives a completed temporary facility application, it shall make a determination on the temporary facility based on the following criteria:
1. Whether the temporary facility is consistent with the school district's approved LRFP;
  2. If intending a temporary facility to be part of a school facilities project and intending the temporary facility to house students due to overcrowding, whether the school district evidences through updates to its enrollment projections that the related school facility has a functional capacity of less than 90 percent of the facilities efficiency standards when the capacity is most efficiently utilized through scheduling and other means;

3. If it is to house students, whether the facility conforms to educational-adequacy requirements at N.J.A.C. 6A:26-5.4(c);
  4. Whether the design of the facility demonstrates compliance with the temporary facility standards at N.J.A.C. 6A:26-8;
  5. If it includes land acquisition, whether the facility conforms to the applicable requirements at N.J.A.C. 6A:26-7.1;
  6. Whether the facility meets the facilities efficiency standards; and
  7. Whether the estimated actual cost of the temporary facility is reasonable.
- (e) If the temporary facility is intended to be funded as an other capital project, the school district shall conform to all other applicable statutes and regulations, including N.J.S.A. 18A:18A-1.1 et seq. and the local support provisions at N.J.A.C. 6A:26-3.11(c).
- (f) If a school district or an approved private school for the disabled houses public school students in a facility that was reviewed and approved as a substandard facility under the rules in effect prior to June 7, 2004, the facility shall not be required to be re-approved as a temporary facility under the rules in effect after June 7, 2004. Renewal of the facility's approval as a substandard facility shall be subject to standards for substandard facilities in effect prior to June 7, 2004.
- (g) A temporary facility may be approved by the Division for a term of two years, with three annual renewals if the school district, or the Development Authority on behalf of the school district, demonstrates satisfactory progress toward the provision of permanent facilities. No such approval shall remain in effect or be eligible for renewal unless the executive county superintendent determines in consultation with the Division and upon inspection of the temporary facility that:
1. The temporary facility meets the educational-adequacy and temporary-facility standards as specified in this chapter;

2. The school district or approved private school for the disabled demonstrates through the LRFP or other plan, in the case of the approved private school for the disabled, that students housed in the temporary facility will be housed in permanent school facilities; and
  3. The temporary facility meets N.J.A.C. 5:23 requirements for a certificate of occupancy for “E” (educational) group use.
- (h) When a school district receives State support pursuant to EFCFA for a school facilities project and temporary facilities are acquired by the school district to house students pending completion of the school facilities project, the temporary facilities shall not be encumbered, sold or otherwise disposed of until the Division approves the action.

**6A:26-3.14 Emergency stabilization**

- (a) Emergency stabilization must qualify as an emergency pursuant to N.J.S.A. 18A:18A-7 and the rule promulgated pursuant thereto at N.J.A.C. 5:34-6.1. Emergency stabilization is not eligible for State support, and therefore the costs incurred by the school district in undertaking the emergency stabilization will not be eligible for reimbursement by the State in the event that it is determined that an emergent condition exists after undertaking such stabilization.
- (b) When a school district determines that an emergency exists pursuant to N.J.S.A. 18A:18A-7, it shall undertake emergency stabilization as follows:
1. The school district shall, if possible, immediately undertake the actions necessary, including temporary repairs to alleviate the emergency;
  2. The school district shall conform to the Public Schools Contract Law and the applicable rule at N.J.A.C. 5:34-6.1 when undertaking such emergency stabilization; and



3. The school district shall proceed as set forth in (d) or (e) below if, after undertaking emergency stabilization, it is necessary to undertake an emergent project.
- (c) Emergent projects can be either school facilities projects eligible for State support or other capital projects. Emergent projects that are school facilities projects shall proceed in accordance with (d) and (e) below. Emergent projects that are other capital projects shall proceed in accordance with (f) below. If a school district determines that an emergent condition exists after undertaking an emergency stabilization, the school district in applying for review and approval, if applicable, of the project shall submit evidence acceptable to the Division of the emergency stabilization costs.
- (d) Prior to the approval of a school district's LRFP, a school district may, on a form provided by the Commissioner, apply directly to the Commissioner for approval of a school facilities project when an emergent condition exists.
1. The Commissioner shall approve a school facilities project for an emergent condition only if, after an on-site inspection, the county superintendent of schools, in consultation with the Division, certifies that an emergent condition exists.
  2. If a school facilities project for an emergent condition is approved by the Commissioner, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The scope of work contained in the application shall be limited to action required to rectify the emergent condition.
  3. Notwithstanding the approval of a school facilities project for an emergent condition prior to approval of a school district's LRFP, pursuant to this section, preliminary eligible costs and final eligible costs for the school facilities project shall be determined consistent with this chapter.

- (e) After approval of a school district's LRFP, a school district may, on a form provided by the Department, apply directly to the Division for approval of a school facilities project when an emergent condition exists.
1. The Division shall approve a school facilities project for an emergent condition only after an on-site inspection, the county superintendent of schools, in consultation with the Division, certifies that an emergent condition exists.
  2. If the existence of the emergent condition has been certified pursuant to (e)1 above, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The expedited basis shall include Division acceptance of school district submission of the school facilities project application or a predevelopment request in the case of Authority managed projects, within 45 days of the date of such submission. If the emergent condition was not included in the school district's approved LRFP, the school district shall request an amendment to its LRFP as part of the project application and amend its LRFP within 45 days of such submission. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the school district's approved LRFP.
  3. Preliminary eligible costs and final eligible costs for the school facilities project shall be determined consistent with this chapter.
- (f) If a school district determines that an emergent condition exists after undertaking an emergency stabilization, and the emergent project is an other capital project, the school district shall submit the information required by N.J.A.C. 6A:26-3.11, and the Division shall perform all required reviews on an expedited basis. The scope of work contained in the application shall be limited to those actions determined by the Division to be

reasonable considering the emergent condition and the capital projects in the school district's approved LRFP.

**6A:26-3.15 Insurance, damages awards, gifts, grants, other private sources of funds, and municipal surplus**

- (a) School districts shall insure all insurable property, real or personal, in accordance with N.J.S.A. 18A:20-25.
- (b) Insurance proceeds and damages awards received by a school district shall be applied as follows: if the school district applies for approval of a school facilities project involving a facility for which there are insurance proceeds or a damages award, the insurance proceeds and/or damages award shall be applied to reduce the amount of State support as follows:
  - 1. For locally constructed school facilities projects for which a school district elects to receive a State share pursuant to N.J.S.A. 18A:7G-15, the State share amount shall be reduced in the following manner:
    - i. Calculate the percentage of total project costs that would be funded by the State pursuant to N.J.A.C. 6A:26-3.8 if no insurance proceeds and/or damages award were received by the school district;
    - ii. Multiply the percentage by the amount of insurance proceeds and/or damages award to which the school district is entitled, minus any amount that would exceed the eligible costs of the project; and
    - iii. Reduce the State share by the amount determined in step ii.
  - 2. For Development Authority-constructed school facilities projects with a local share, the local share shall be adjusted in the following manner:

- i. Calculate the percentage of total costs that would be funded by local share if no insurance proceeds and/or damages award were received by the school district;
  - ii. Reduce the total costs by the amount of insurance proceeds and/or damages award to which the school district is entitled minus any amount that would exceed the eligible costs of the project;
  - iii. Multiply the local share percentage determined in (b)2i above by the amount determined in (b)2ii above; and
  - iv. Add the amount of insurance proceeds and/or damages award to the revised local share amount determined in (b)2iii above. The amount determined in this subparagraph shall be provided to the Development Authority before it undertakes a school facilities project.
3. For Development Authority-constructed school facilities projects without a local share, the State share shall be adjusted in the following manner:
  - i. Reduce the State share by the amount of insurance proceeds and/or damages award to which the school district is entitled; and
  - ii. The amount determined in (b)3i above shall be provided to the Development Authority before it undertakes a school facilities project.
4. For locally constructed school facilities projects for which a school district elects to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9, the school district shall issue bonds only for the amount of the total projects costs minus the insurance proceeds and/or damages award.
  - i. If the bonds have already been issued, the insurance proceeds and/or damages award should be used to reduce the outstanding principal amount at the earliest call date or to annually reduce the amount of debt service

payment. The calculation of State debt service aid shall be made from the reduced amount.

(c) Gifts, grants, other private sources, and/or municipal surplus received by a school district shall be applied as follows: if the school district applies for approval of a school facilities project that will also receive funding through any of the above sources, such source of revenue shall be applied to the local share of the project, and may be applied to reduce the State support only if a Development Authority-constructed school facilities project does not have a local share, or for school facilities projects with a local share, the source of revenue exceeds the local share and, by its terms, may only be used for the school facilities project, in which case State share shall be reduced by the amount of the excess over local share.

1. For locally constructed school facilities projects for which a school district elects to receive a State share pursuant to N.J.S.A. 18A:7G-15, and the revenue source exceeds the local share and, by its terms, may only be used for the school facilities project, such excess shall be applied to the State share of the project and reduce the amount of the grant before a disbursement is made.
2. For locally constructed school facilities projects for which a school district elects to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9, the school district shall issue bonds only for the amount of the total project costs, minus the revenue source.
3. For Development Authority-constructed school facilities projects with a local share, the revenue source shall be applied toward the local share, and that amount shall be provided to the Development Authority before it undertakes the school facilities project, along with any amount in excess of the local share that by the terms of the revenue source must be used for the school facilities project, which shall be applied to reduce the amount of State share.

4. For Development–Authority-constructed school facilities projects without a local share, the revenue source shall be applied to reduce the amount of State share only if the terms of the revenue source require that it be used for the school facilities project, in which case that amount shall be provided to the Development Authority before it undertakes the school facilities project.

#### **Subchapter 4. Management of Capital Projects**

##### **6A:26-4.1 Capital projects fund**

- (a) All revenues and appropriations related to school facilities projects receiving funding pursuant to EFCFA and this chapter, and to other capital projects that utilize revenue sources identified in (b) below, shall be accounted for in the capital-projects fund defined in N.J.A.C. 6A:23A-1.2.
- (b) The source of revenue in the capital-projects fund includes the:
  1. Sale of school bonds;
  2. Issuance of temporary notes or loan bonds pursuant to N.J.S.A. 18A:24-3;
  3. Issuance of certificates of participation for a lease-purchase agreement greater than five years approved prior to EFCFA;
  4. Grants received pursuant to N.J.S.A. 18A:7G-15; and
  5. All revenue sources identified in the referenda or resolution authorizing the issuance of school bonds pursuant to N.J.A.C. 6A:26-3.7 and 3.12.
- (c) The revenue source in the capital-projects fund also shall include capital-reserve withdrawals and other local revenues to fund the local share of a school facilities project not utilizing school bonds pursuant to N.J.A.C. 6A:26-3.7(c).
- (d) All revenue sources identified in the referenda or resolution pursuant to N.J.A.C. 6A:26-3.7 or 3.11 shall be transferred to the capital-projects fund upon voter, board of school estimate or capital project review board approval. The revenue sources shall be accounted

for separately with, and accorded the same accounting treatment as, the corresponding school bonds.

**6A:26-4.2 Use of capital-projects fund to account for a capital project funded in part or in whole by school bonds, short-term notes, or pre-EFCFA lease-purchase agreements of greater than five years' duration**

- (a) The cost of a capital project covered by bond proceeds shall include costs associated with architects, lawyers, and construction managers even if not specifically stated in the referendum question approved by voters or in the resolution approved by the board of school estimate or capital project review board. A district board of education that budgeted and charged such costs to the general fund prior to the referendum has the option to reimburse the costs from the capital-projects fund after approval of the referendum or resolution.
- (b) Use of the capital-projects fund to account for bond proceeds and short-term notes shall be limited to the following:
  - 1. Type I and Type II school districts with boards of school estimate shall be limited to the amount fixed by the board of school estimate pursuant to N.J.A.C. 6A:26-3.7(e) for each capital project, or projects when jointly submitted, under N.J.S.A. 18A:22-19 and 30, and 18A:24-55.
  - 2. Type II school districts without a board of school estimate shall be limited to the amount approved by voters for each capital project, or projects when jointly submitted, pursuant to N.J.S.A. 18A:22-39 and 18A:24-55.
  - 3. State-operated school districts shall be limited to the amount approved by the capital project review board.
  - 4. The local share of capital projects when jointly submitted in (b)1 or 2 above may be transferred among projects within an approved referendum as long as the

school district adequately discloses in the referendum question that such transfers can be made and the district board of education can attest that all projects can be completed as approved, and no excess costs beyond those approved by voters shall be eligible for transfers.

i. If the ability to transfer was not disclosed in the referendum question, the Commissioner may approve the transfer upon the school district's written request of need and the district board of education's certification of its ability to complete all projects as approved and that no excess costs beyond those approved by voters shall be eligible for transfer.

(c) Use by a district board of education of the capital projects fund to account for a lease-purchase agreement greater than five years is limited to the expenditures in the approved pre-EFCFA lease-purchase agreement greater than five years.

(d) A district board of education shall not transfer capital-project cost overruns to general-fund current expense or capital outlay and shall not fund capital-project cost overruns by general-fund appropriations or surplus pursuant to N.J.S.A. 18A:22-8.2, unless such transfer is approved by the Commissioner to supplement proceeds from a school bond authorization or pre-EFCFA LPA agreement pursuant to N.J.S.A. 18A:22-8.2(c). After consideration of alternative corrective actions, the Commissioner shall approve, according to N.J.A.C. 6A:26-4.4(a)5, the transfer only if it is in the best interests of both students and taxpayers.

(e) Interest earned on investments in the capital-projects fund shall not be used to supplement the school-bond authorization, unless expressly authorized in the referendum or resolution pursuant to N.J.A.C. 6A:26-3.7, or expressly authorized in the pre-EFCFA LPA.

1. All transfers of interest shall be:



- i. Made by resolution to either the debt-service fund or the general fund at the discretion of the district board of education; and
- ii. Completed annually and at the end of the project.

**6A:26-4.3 Use of capital projects fund to account for a school facilities project not funded in part or in whole by school bonds or short-term notes**

- (a) School districts shall use the capital-projects fund to account for an approved school facilities project where the school district elects to receive a grant pursuant to N.J.S.A. 18A:7G-15 and to fund the entire local share through a means other than school bonds or short-term notes.
- (b) Local share budgeted in capital outlay and/or withdrawn from capital reserve for a school facilities project not funded by school bonds or short-term notes shall be transferred to the capital-projects fund upon execution of the grant agreement with the Development Authority in accordance with N.J.A.C. 6A:26-3.8(a)3 and 9.1.
- (c) A district board of education may utilize by resolution general-fund surplus up to 20 percent above the awarded project cost in response to change orders allowed pursuant to N.J.A.C. 6A:26-4.9 and in accordance with N.J.A.C. 6A:26-4.4(b).

**6A:26-4.4 Options where there are insufficient funds to complete a capital project**

- (a) A district board of education shall have the following options for referendum-authorized projects upon opening initial bids for the project, or at any other time when it is determined that there are not sufficient funds to complete the referendum-authorized project(s). The district board of education shall:
  1. Reject all bids pursuant to N.J.S.A. 18A:18A-36 and re-advertise based on the same specifications, or on modified specifications that do not materially impact

the nature and scope of the project and that have been approved by the Division pursuant to N.J.A.C. 6A:26-5;

2. If contracts were previously awarded, seek approval pursuant to N.J.A.C. 6A:26-4.9 for a change order for modifications to effect economies they would not materially impact the nature or scope of the project as approved by the Division and board of school estimate or voters, as applicable;
3. Seek approval of the board of school estimate or voters, as applicable, for additional funds to complete the project.
  - i. The sale of additional bonds, transfer of general-fund surplus, additional tax levy, capital reserve, and/or unexpended bond proceeds of a capital project authorization may be utilized upon voter or board-of-school-estimate approval according to procedures in N.J.A.C. 6A:26-4.6(b);
  - ii. Approval for the sale of additional bonds shall be by resolution or referendum in accordance with N.J.S.A. 18A:24-1 et seq.;
  - iii. Approval for the transfer of general-fund surplus, additional tax levy, and/or capital reserve to supplement an approved referendum may be through special appropriation in a Type I school district, separate question at a special election in a Type II school district without a board of school estimate, or through the appropriate line-items and supporting documentation in the base budget at the annual election as follows:
    - (1) Requests at the annual election through the appropriate line-items and supporting documentation in the base budget shall have a statement of purpose, as prescribed by the Commissioner, to be included in the advertised budget. Requests shall also be specifically discussed at the public hearing as documented in the district board of education minutes.

- (2) Approved line-item appropriations in the annual budget certified for taxes for the requests in (a)3iii(1) above shall not become part of the pre-budget-year net budget for purposes of calculating the spending-growth limitation of the subsequent year pursuant to N.J.S.A. 18A:7F-1 et seq. Unused spending authority calculated pursuant to N.J.A.C. 6A:23A-10.3 that is created by such approvals shall not be considered unused spending authority available to a district board of education in the next two subsequent budget years;
4. Redefine/scale down the scope of the project and seek approval of the board of school estimate or voters, as applicable, to use the original proceeds for the redefined scope and/or new purpose. All such projects shall be resubmitted and the Division shall redetermine final eligible costs prior to seeking board-of-school-estimate or voter approval; or
5. Apply to the Commissioner for a transfer of general-fund surplus to the capital-projects fund to supplement the proceeds from a bond authorization or pre-EFCFA lease-purchase agreement greater than five years if determined and approved by the Commissioner that a transfer is in the best interests of both students and taxpayers of the school district after consideration of alternative corrective actions.
  - i. The school district application shall include a narrative on the need for the transfer and analysis of alternative corrective actions, including steps outlined in (a)1 through 4 above, a copy of the referendum question and detailed cost analysis of the capital project to support the need for the transfer request. The project cost analysis shall include, at a minimum, a comparison of the itemized budget as approved by the Division, including

the determination of final eligible costs for a school facilities project; the itemized budget as approved by the voters, including pre-referendum and post-referendum costs; the itemized budget for the project upon bid award; and any change orders approved pursuant to these regulations or change orders pending approval.

- ii. The Commissioner's approval shall be based upon:
  - (1) A recommendation from the executive county superintendent that no further alternative corrective actions can be made after his or her review of the school district's application in consultation with the Division;
  - (2) The Division's recommendation that the capital project is within the facilities efficiency standards and necessary for educational adequacy after the Division's review of the school district's application. If the Division determines the project scope is beyond the facilities efficiency standards and the excess costs are greater than the transfer request, the Division shall take into consideration in its recommendation whether the excess costs are outside the control of the school district;
  - (3) School district certification that the transfer request is not due to contractor malfeasance subject to legal recourse. If the transfer request is due to architect, engineer or contractor malfeasance, then the school district shall certify its intent to pursue all legal options. If the transfer request is approved by the Commissioner, any subsequent awards on the legal action shall be recorded as revenue in the general fund; and
  - (4) Other considerations as appropriate.

- iii. If the need for the transfer is due solely to inaccurate and/or insufficient project cost estimates, a district board of education may not request Commissioner approval for a transfer of general fund surplus without first seeking corrective action through board of school estimate or voter approval, as applicable, of additional funds and/or revised scope pursuant to (a)3 and/or 4 above.
- iv. The Commissioner shall not approve a transfer request if the district board of education did not include an adequate level of contingency at the time of contract award in accordance with N.J.A.C. 6A:26-4.8(c).
- v. If a capital project contains excess costs or is an other capital project, no transfer of general-fund surplus shall be approved by the Commissioner prior to a district board of education submission of the capital project for bids on at least two separate occasions.

(b) A district board of education shall have the following options for a school facilities project when the school district elects to receive a grant pursuant to N.J.S.A. 18A:76-15 and elects to fund the entire local share through a means other than school bonds if there are insufficient funds to complete the project upon opening initial project bids or any time thereafter. The district board of education shall:

- 1. Seek approval of the board of school estimate or voters, as applicable, for additional funds to complete the project. Sources that may be considered are:
  - i. The sale of bonds;
  - ii. The transfer of general-fund surplus;
  - iii. A tax levy;
  - iv. Capital reserve; and/or
  - v. The unexpended proceeds of a capital-project authorization according to N.J.A.C. 6A:26-4.6(b); or

2. Transfer by district board of education resolution general-fund surplus in an amount not to exceed 20 percent of the school facilities project award price in response to change orders allowed pursuant to N.J.A.C. 6A:26-4.9; or
3. Transfer from capital reserve pursuant to N.J.A.C. 6A:23A-14.1.

#### **6A:26-4.5 Over-expending a capital project**

- (a) Under the New Jersey Code of Criminal Justice, Title 2C of the New Jersey Statutes, it is a crime for a public official or employee to knowingly disburse, order, or vote for the disbursement of moneys or incur obligations in excess of appropriations or an amount limited by law. The Department shall notify the Office of Inspector General, and may notify the Director of the Division of Criminal Justice if an over-expenditure/deficit is detected in a capital project.
- (b) A district board of education over-expending the capital-projects fund also shall be subject to a reduction in its State aid and other actions pursuant to N.J.A.C. 6A:23A-16.10 and 6A:26-14.1, if applicable.

#### **6A:26-4.6 Unexpended bond proceeds**

- (a) A capital project shall be considered completed for the purposes of determining unexpended bond proceeds under this section when:
  1. The project has received its certificate of completion from the contractor;
  2. All retainage has been liquidated; and
  3. A permanent certificate of occupancy has been received, if applicable.
- (b) Any school bonds proceeds that remain unspent upon completion of the capital project shall be disposed of by the school district in accordance with N.J.S.A. 18A:24-47 et seq. if issued by the school district for a school facilities project prior to July 18, 2000, and

where the school district received no funding pursuant to EFCFA except for funding received pursuant to N.J.A.C. 6A:26-13.1(b), or issued for an other capital project.

1. Unexpended balances may remain in the capital projects fund for six years after the time of issuance or sale of bonds pursuant to N.J.S.A. 18A:24-48 and 51.
  2. Within six years of issuance or sale, if a new purpose(s) for the unexpended balances is determined, the board of school estimate, capital project review board, or voters may approve the change in purpose by resolution or ballot question pursuant to N.J.S.A. 18A:24-48 through 52.
    - i. The resolution or ballot question for the new purpose shall receive Commissioner approval pursuant to N.J.S.A. 18A:24-49 through 52 if the bonds mature beyond the period prescribed for the new purpose(s) by N.J.S.A. 18A:24-5.
  3. If no new purpose for the unexpended balances is determined within the six years from issuance or sale, the district board of education shall transfer by resolution the funds to either the general fund or debt-service fund.
    - i. To establish there is no new purpose, the school district's budgeted appropriations and actual expenditures for the transfer year may not reflect capital outlay spending.
  4. After six years from issuance or sale, unexpended balances shall be transferred by resolution to either the general fund or the debt-service fund.
- (c) Proceeds of school bonds issued by the school district or other revenue sources transferred to the capital-projects fund, pursuant to N.J.A.C. 6A:26-4.1, for the purpose of funding all or part of the costs of ROD school facilities projects that remain unspent upon completion of the school facilities projects and/or other capital projects whose funding was authorized by the bonds shall be used by the school district to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt

service principal payments. The provision shall apply if any school facilities project funded by the school bonds receives the State share of eligible costs.

1. If the unexpended proceeds are used annually to make debt-service-principal payments, the proceeds shall remain in the capital projects fund and be appropriated in each subsequent year's budget certified for taxes to reduce in full each year the debt-service-principal payment until the proceeds are exhausted.
2. Use of unexpended bond proceeds to make principal payments shall be used in the determination of State debt service aid pursuant to N.J.A.C. 6A:26-3.8, if applicable.

#### **6A:26-4.7 Oversight of ROD constructed school facilities projects**

- (a) Every district board of education shall be subject to the following for every approved school facilities project receiving State support under this chapter:
  1. To provide the Commissioner assurance that the contracting process for design and construction contracts for school facilities projects conforms to all requirements of Title 18A of the New Jersey Statutes and all other applicable laws and rules, the school district shall, in a separate certification for each contract awarded for a school facilities project pursuant to (a)3 below, certify that the school district has followed the provisions of law related to:
    - i. Authorization to prepare plans and specifications;
    - ii. Preparation and contents of bid specifications;
    - iii. Approval of plans and specifications;
    - iv. Advertising for bids;
    - v. Review and evaluation of proposals; and
    - vi. Award and execution of contracts.



2. The design and construction contracting process, contract administration and the payment of claims, and change orders for school facilities projects shall be subject to audit by the Commissioner.
3. Upon the award of each design or construction contract, the school district shall submit a Commissioner-provided form certifying that the procurement process conformed to all requirements of statute and rules, including, but not limited to, the matters covered in (a) above, and that all contracts procured for the school facilities project conformed to Title 18A of the New Jersey Statutes and all other applicable laws. The form shall be certified by the school business administrator and approved by resolution of the district board of education.
4. The school district shall maintain a project file that shall include, but not be limited to, the following:
  - i. All documents related to the project-approval process, including project siting; land acquisition; real estate (deeds, leases, title report including searches for easements, mortgages, judgments, liens, unpaid taxes, water and sewer, property description by metes and bounds); surveys; district board of education resolutions; referendum ballot questions or municipal debt ordinances; and all public notices pursuant to the Open Public Meetings Act;
  - ii. All documents related to the financing of the project including:
    - (1) Selection and payment of professionals, such as bond counsel and other attorneys; underwriters; financial and investment advisors; trustees; official printers; and bond insurers;
    - (2) Structuring of the financing, such as the method(s) of borrowing considered, complete financing estimates and cash flows, all number runs, including escrow sufficiency, if applicable, and yield

calculations; the rationale for the plan of financing (resulting in the issuance of obligations under terms most advantageous to the school district) long-range plans or models, computerized models, private uses, and costs of issuance; and

(3) Issues of debt, such as general, series, and supplemental bond resolutions; trust indentures; trust agreement; preliminary official statement; all disclosure materials; Official Notice of Sale or Purchase Contract; arbitrage certificate; tax regulatory agreement; IRS Form 8083, as appropriate; Disclosure Agreement; and TEFRA Notice, if applicable;

iii. All documents related to the bidding process, evaluation of bids, award and execution of contracts, the specifications, request for proposal or other invitations to bidders; advertisements or public notices of the bid opportunity; logs of the bids received and the bids opened; bid evaluation worksheets; notices of contract award; and the executed construction contract documents;

iv. All documents related to the construction of school facilities, including documents required by the construction contract documents to be kept; specifications; change orders; alternate submissions; approvals or rejections; unit prices; product data; time of performance schedules; construction photographs; quality control management reports; value engineering information; up-to-date project accounting system; intermediate and final audits; "as built" or other drawings documenting the actual facilities built and fixtures installed; close-out documentation on forms provided by the Department; related correspondence; vouchers; and certifications;

- v. All payroll certifications filed with the school district by all contractors and subcontractors; and
  - vi. All documents a school district is legally required to make, maintain, or keep on file as part of a construction project.
- (b) The documents in (a) above shall be maintained in a readily accessible place for review and inspection by the Department, the Development Authority, the Department of Community Affairs, and the Office of Government Integrity for the duration of the school facilities project and three years thereafter, or until completion of all litigation concerning any aspect of the school facilities project, if any. Destruction of the documents shall be consistent with the record retention schedule adopted pursuant to N.J.S.A. 47:3-15 et seq.
- 1. A standardized voucher form, where provided to school districts by the Department, shall be fully executed by contractors, delivered to the school district prior to a school district providing any payment to a contractor and maintained by the school district in the project file. Prior to the school district providing any payment, the voucher form shall be countersigned, where indicated, by the school district.
  - 2. School district shall include standardized contract provisions, where provided by the Department, in all contracts for the design and construction of a school facilities project.
  - 3. All contractors, and subcontractors in the four areas listed in N.J.S.A. 18A:18A-18, utilized by school districts to construct school facilities projects shall be pre-qualified pursuant to the Development Authority pre-qualification process.
  - 4. Upon completion of a school facilities project that received State share in the form of a grant pursuant to N.J.S.A. 18A:7G-15 or N.J.S.A. 18A:7G-13(a), the school district shall submit to the Division a copy of the documents required for the final completion disbursement: the certification by the school business

administrator and the design consultant certification upon final completion. Upon completion of a school facilities project for which State support is in the form of debt-service aid pursuant to N.J.S.A. 18A:7G-9 or 10, the school district shall submit, on a form to be provided by the Commissioner, a certification of the school business administrator, which shall be approved by resolution of the district board of education, certifying that the school facilities project was constructed consistent with the approved plans and specifications for the school facilities project and all approvals provided by the Commissioner pursuant to EFCFA.

- (c) School districts are encouraged to report to the Division of Wage and Hour Compliance, Department of Labor, on the failure to receive from contractors and subcontractors certified payroll records, required pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. School districts receiving certified payroll records with suspected inaccuracies or receiving other indications of noncompliance with the New Jersey Prevailing Wage Act are also encouraged to report to the Division of Wage and Hour Compliance, Department of Labor, and, as well, to take other steps such as verifying the accuracy of these certified payroll records by comparing them against other payroll-related records and gathering site inspection information from construction managers on a spot check basis.

#### **6A:26-4.8 Bidding and awarding of contracts for ROD capital projects**

- (a) Bids shall be advertised and received, and contracts awarded only after final approval of plans and specifications from the Department of Community Affairs, Division of Codes and Standards or the local enforcing agency if it performs the UCC review. Bids may be advertised but contracts shall not be awarded before the school facilities project or other capital project has received approval from the Division for final educational adequacy,

pursuant to N.J.A.C. 6A:26-5.4, if applicable. If the school facilities project is not subject to either final educational adequacy review or UCC review, bids shall be advertised and received, and contracts awarded only after final eligible costs have been determined pursuant to N.J.A.C. 6A:26-3.6.

- (b) In accordance with N.J.S.A. 18A:18A-36, school districts shall award contracts within 60 days of receipt of bids, and may apply to the municipal construction enforcing official for the required building permits.
- (c) At the time of contract award, school districts shall encumber a contingency in an amount equal to no less than five percent of the total costs of construction of a capital project, against which change orders may be approved in accordance with N.J.A.C. 6A:26-4.9. However, school districts shall not encumber an amount that would result in the total contract award plus any contingency totaling more than the approved referenda amount if the capital project is funded wholly or in part by bond proceeds.
- (d) School districts shall award one or more contracts for the entire approved scope of the capital project, unless there is prior Division approval in accordance with the following:
  - 1. The bid documents include one or more bid alternates that the school district may opt not to award, provided there is no impact on the educational adequacy or the total costs of a capital project; or
  - 2. The school district demonstrates to the Division that extraordinary circumstances require an award of the entire approved project scope in separate phases, and the school district has demonstrated that adequate funds are available to complete the entire approved project scope.

**6A:26-4.9 Submission of change orders for ROD projects**

- (a) Contract change orders for capital projects shall be governed by the following:

1. Change orders may be approved by district boards of education for no more than the approved referendum amount for a capital project funded in whole or in part by bond proceeds, when necessitated by one of the following:
  - i. Emergencies consistent with N.J.S.A. 18A:18A-7;
  - ii. Unforeseeable physical conditions; or
  - iii. Minor modifications to project scope that achieve cost savings, improve service or resolve construction conditions.
  
2. Upon its determination that an extraordinary circumstance exists, the Division shall approve all other change orders, including, but not limited to, the following:
  - i. Change orders that increase in the aggregate by more than 20 percent the original-award amount of each contract or of the entire project but for no more than the approved referendum, including changes funded by project contingency in N.J.A.C. 6A:26-4.8(c);
  - ii. Change orders that eliminate or affect the project scope that was the basis of the Division's determination of the final eligible costs of a school facilities project pursuant to N.J.A.C. 6A:26-3.6; or
  - iii. Change orders that affect the number, size, configuration, location or use of educational spaces.
  
3. Before the school district or Division may authorize a change order that increases the contract amount, the availability of funds shall be certified by the board secretary, on a form prescribed by the Commissioner that indicates:
  - i. The original contract amount and funds allocated to each contract in the overall project;
  - ii. All payments made to date;
  - iii. All change orders approved and pending to date;

- iv. The percentage of the project that is completed, and the percentage of the contract cost remaining; and
  - v. The funds available to complete the project, including all change orders that were executed or are pending.
4. For change orders that must be approved by the Division pursuant to (a)2 above, the school district shall file with the Division the following:
- i. Two copies of the change-order request indicating in detail the scope of the change order and the basis upon which the proposed change order may be approved pursuant to this subchapter;
  - ii. A certification of the availability of funds per (a)3 above; and
  - iii. A certification that no other solution is possible when a proposed change order affects the final eligible costs of a school facilities project, and that no excess scopes are proposed for inclusion in the project in lieu of the final eligible costs.
- (b) Upon receipt of all materials required in (a) above, the Division shall promptly undertake its review and determine whether a proposed change order is necessary. If approved, a copy of the change order request marked "Approved" by the Division shall be sent to the school district.
- (c) When the aggregate value of change orders undertaken pursuant to (a)1 above exceeds 20 percent of the total contract-award amount or the total project cost, necessitating Division approval pursuant to (a)2iii above, the school district shall submit on a form prescribed by the Commissioner and certified by the district board of education secretary a summary of each change order approved, the justification for each change order, and the change in the contract amount.

**6A:26-4.10 Change orders for Development Authority school facilities projects**

- (a) For projects constructed by the Development Authority, only change orders that affect the approved number, size, configuration, location, or use of educational space shall be submitted to the Division for review and approval.
- (b) The Development Authority shall submit to the Division periodic reports on each project being constructed under its auspices, indicating the contract-award amounts, the nature and scope of each approved change order, the revised project amounts, and the total costs of change orders approved to date.

### **Subchapter 5. Review of Capital Projects for Educational Adequacy**

#### **6A:26-5.1 General provisions**

- (a) All capital projects that affect any of the following criteria for educational adequacy shall be reviewed and approved by the Division according to this subchapter. The criteria are the number, configuration, size, location, or use of educational spaces within a school facility. The review for educational adequacy shall take into consideration the suitability of the number, configuration, size, location, and use of educational spaces; built-in furniture and equipment; and provisions for the disabled. Capital projects that involve the following types of building construction work shall be approved for educational adequacy:
  - 1. New school facilities including pre-fabricated facilities;
  - 2. Additions to existing school facilities;
  - 3. Alterations to the total number, dimension in volume and/or area, configuration or location of educational spaces or the number of any one kind of educational space; and
  - 4. Installation of temporary facilities.
- (b) Both Development Authority and ROD school facilities projects, along with other capital projects, shall be subject to educational adequacy reviews. The review process and types



of documents subject to review will differ somewhat depending on whether the project is a school facilities project or other capital project, and, if a school facilities project, on whether it is a Development Authority project or a ROD project.

1. For a Development Authority school facilities project, the Development Authority on behalf of the school district shall apply for the review and approval for educational adequacy in conjunction with the application for approval of a school facilities project pursuant to N.J.A.C. 6A:26-3. The application shall be made prior to the review and approval of capital projects for compliance with the UCC, N.J.A.C. 5:23, by the Division of Codes and Standards in the Department of Community Affairs, and prior to local share authorization. The educational-adequacy review shall cover the following types of project documents: educational specifications; schematic plans and related documents; detailed plans and specifications; and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the Development Authority on behalf of the school district at the time of project application. Detailed and final plans and specifications shall be forwarded to the Division by the Development Authority after project approval but prior to the Division determination of final eligible costs and Department of Community Affairs review for UCC compliance.
2. For a ROD school facilities project, school districts shall apply for the review and approval for education adequacy in conjunction with the application for approval of a school facilities project. The educational-adequacy review shall cover the following types of documents: educational specifications, schematic plans and related documents, and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the school district at the time of project application. Final plans and specifications

shall be submitted by the school district after project approval but prior to the UCC-compliance review.

3. For an other capital project, school districts shall apply for the review and approval for educational adequacy in conjunction with the application for the Division review for consistency with the school district's approved LRFP. The educational adequacy review shall cover educational specifications, schematic plans and related documents, and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the school district at the time the project is reviewed for consistency with the school district's approved LRFP. Final plans and specifications shall be submitted by the school district after the consistency review but prior to the UCC-compliance review.
- (c) The executive county superintendent shall approve any change of use of instructional space that is not a capital project.

#### **6A:26-5.2 Educational specifications**

- (a) Submissions of educational specifications for educational\_adequacy reviews shall include the following:
1. Details of the educational program activities and requirements for each space proposed in the capital project, and shall refer to the New Jersey Student Learning Standards wherever appropriate;
  2. An itemized list of furniture, equipment, and support spaces required to conduct the educational program specified for each space, together with their net areas in square feet, as well as the net of the total room area required for each space;
  3. Specific technical and environmental criteria, adjacencies, and other requirements for the educational program; and

4. A building-space program that indicates the number and net area in square feet of each instructional, specialized instructional, administrative, and support space in each existing or proposed building included in the capital project and/or the temporary facility.

### **6A:26-5.3 Schematic plans and other related project documents**

- (a) Submission of schematic plans for educational adequacy reviews shall include the following:
  1. Four sets of schematic plans showing the entire existing and proposed building drawn to a scale of not less than 1/16 inch per foot. The approved use of each space, the proposed number of occupants, and the net square feet area, shall be clearly labeled on all existing and proposed spaces;
  2. Layouts of the built-in and moveable furniture and equipment for examples of all occupied spaces drawn to a scale of not less than 1/8 inch per foot;
  3. Information required to demonstrate compliance with the Facility Planning Standards at N.J.A.C. 6A:26-6, including dimensions, clearances, ceiling heights, and required equipment;
  4. Paths of travel for disabled persons;
  5. A completed plot plan when site work is required, including the intended location of the school and a layout of the locations of all other structures, multi-purpose physical education fields, playgrounds, walkways, roadways, access roads, buffer and set back zones, parking areas, deed restrictions, easements, protective covenants, right of ways, and environmentally sensitive areas. If the land for the site is being acquired, an application also shall be submitted for approval under N.J.A.C. 6A:26-7.1; and

6. The signature and seal of a New Jersey licensed architect or professional engineer if there is an architect or engineer engaged for the project and signatures of the president of the district board of education and chief school administrator. In the case of Development Authority school facilities projects, schematic plans shall also be signed by the Development Authority, pursuant to N.J.S.A. 59:4-6.
- (b) Other project documents to be submitted with the schematic plans shall include:
1. A project cost estimate on a form provided by the Commissioner;
  2. A project schedule;
  3. A copy of the dated transmittal letter to the executive county superintendent indicating project document submission to the Division; and
  4. A copy of the transmittal letter indicating the date of plan submission to the local planning board, where required by N.J.S.A. 40:55D-31 and 18A:18A-16, including, but not limited to, whenever the project consists of a new building, the conversion of an existing building to school use, or the building footprint, volume, pedestrian or vehicular access are altered by the project.

**6A:26-5.4 Detailed plans and specifications and final plans and specifications**

- (a) In the case of a Development Authority school facilities project, the Development Authority on behalf of the school district shall apply upon completion of detailed plans and specifications for final approval of the project's educational adequacy. Detailed plans and specifications shall be considered adequate for calculations of final eligible costs if the plans and specifications are at least 60 percent complete. Final approval of the educational adequacy of the project shall occur prior to the calculation of the final eligible costs of the school facilities project, pursuant to N.J.A.C. 6A:26-3.5. The application for final approval shall include:

1. Four individually packaged sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey licensed architect or professional engineer and signed by the president of the district board of education, chief school administrator, and the Development Authority, and specifications to sufficiently demonstrate the school facilities project conforms to schematic plans approved by the Division. To demonstrate such conformance, the submission shall include architectural floor plans, an architectural site plan, as applicable, and architectural drawings that will allow verification of ceiling heights and other applicable standards in N.J.A.C. 6A:26-6.3. If the Division determines the documents are not sufficient to demonstrate conformity with the schematic plans, it may request additional drawings and/or technical specifications;
2. The fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5; and
3. In the event there is a change affecting the number, configuration, size, location, or use of educational spaces as set forth in the detailed plans and specifications submitted to the Department, the Development Authority shall submit to the Division the application with two sets of final plans and specifications, as set forth in (b)1 below. No additional fee shall be imposed.

(b) In the case of a ROD school facilities project or an other capital project, the school district shall apply upon the completion of final plans and specifications for final approval of the educational adequacy of the project. The application shall include:

1. Four individually packaged sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey licensed architect or professional engineer and signed by the president of the local district board of education and chief school administrator, and specifications to sufficiently

demonstrate the capital project conforms to schematic plans approved by the Division as described in (a)1 above;

2. A properly executed copy of a “Request for Local Release of School Construction Plans” for a school district that chooses to have a municipal code enforcing agency review its plans for UCC conformance. The review shall include the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for application for a construction permit or for plan review, as appropriate. The school district’s chief school administrator and municipal code enforcing agency chief shall sign the form, which may be obtained from the Division; and
3. A check payable to the “Treasurer, State of New Jersey” for the fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5.

(c) In the case of a temporary facility, the school district, or the Development Authority on behalf of the school district for Development Authority school facilities projects, shall apply upon the completion of detailed plans and educational specifications for approval of the temporary facility’s adequacy. Detailed plans and educational specifications shall be considered adequate for calculations of eligible costs if the plans and educational specifications are at least 60 percent complete unless otherwise provided in (c)9 below.

The application shall include:

1. Four sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the district board of education and chief school administrator, as well as the Development Authority in the case of a temporary facility that is part of an Development Authority school facilities project, and educational specifications to sufficiently demonstrate the educational adequacy of the temporary facility and compliance with the temporary-facility standards at N.J.A.C. 6A:26-8;

2. A completed plot plan whenever site work is required for the temporary facility. On it shall be shown the intended location of the temporary facility and a layout of all other structures, play and recreation areas, athletic fields, walkways, roadways, access roads, buffer and set-back zones, and parking areas. It also clearly shall indicate the impact that placement of the temporary facility will have on the site of the permanent school facility;
3. A copy of the dated transmittal letter to the executive county superintendent indicating plan submission to the Division;
4. A copy of the transmittal letter indicating the date of plan submission to the local planning board, whenever required by N.J.S.A. 40:55D-31 and 18A:18A-16;
5. A temporary-facility schedule addressing the relationship to the school facilities project schedule, in the event that the temporary facility is part of a school facilities project;
6. The fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5. If the temporary facility is not part of a Development Authority school facilities project, payment shall be in the form of a check, payable to the “Treasurer, State of New Jersey”;
  - i. If the fee for the temporary facility is submitted to the Division prior to the submission of the fee for the final educational-adequacy review for the school facilities project, the amount paid for the temporary facility will be credited toward the fee for the school facilities project;
7. If the temporary facility is not part of a Development Authority school facilities project, a properly executed copy of a Request for Local Release of School Construction Plans for a school district that chooses to have a municipal code enforcing agency review its plans for conformance with the UCC. Such review shall require the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the

requirements for application for a construction permit or for plan review, as appropriate. The school district's chief school administrator and municipal code enforcing agency chief shall sign the form, which may be obtained from the Division; and

8. If the temporary facility was previously used for school purposes and a certificate of occupancy for Group E is in effect and no change of use is required, a floor plan with proposed occupancy in lieu of signed and sealed plans shall be submitted to the Division to meet the requirements of this section.

**6A:26-5.5 Fee schedule**

(a) The Division shall collect fees for its reviews of detailed/final plans and specifications for educational adequacy in the case of Development Authority school facilities projects and for its reviews of final plans and specifications for educational adequacy in ROD school facilities projects and other capital projects according to the following schedule:

*Table 1 Educational Adequacy Project Review Fee Schedule*

Construction Cost Estimate (CCE)	Educational Adequacy Project Review Fee
Up to \$1,000,000	0.5 percent of the CCE
\$1,000,001 to 10,000,000	\$5,000 plus 0.25 percent of the amount over \$1,000,000
Over \$10,000,000	\$27,500 plus 0.1 percent of the amount over \$10,000,000

(b) For purposes of the table in (a) above, the construction cost estimate shall be as set forth in the final eligible cost of a school facilities project or in the cost estimate submitted for an other capital project.

(c) The Division shall calculate the final educational-adequacy review fee for a school facilities project when it reviews and approves the school facilities project application



pursuant to N.J.A.C. 6A:26-3.3 or reviews an other capital project application pursuant to N.J.A.C. 6A:26-3.12. If the Division approves an award of the project scope in separate phases, pursuant to N.J.A.C. 6A:26-4.8(d), the entire final educational\_adequacy review fee shall be remitted to the Division when it reviews the first phase of the school facilities project or other capital project requiring final approval of its educational adequacy, pursuant to N.J.A.C. 6A:26-5.4.

**6A:26-5.6 Capital projects not subject to educational-adequacy review**

- (a) For a Development Authority school facilities project not subject to educational-adequacy review, the Division shall issue a preliminary project report and shall forward to the Department of Community Affairs for review the report along with drawings or narrative sufficient to delineate the scope of work, so the Department of Community Affairs may review construction documents for UCC conformance. The review shall require the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for application for a construction permit or for plan review, as appropriate.
- (b) For a ROD school facilities project or other capital project not subject to educational-adequacy review, the Division shall make a determination of the project's final eligible costs and shall forward to the Department of Community Affairs for review the determination along with drawings or narrative sufficient to delineate the scope of work, so the Department of Community Affairs may review construction documents for UCC conformance. The review shall include the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for a construction-permit or plan-review application, as appropriate. If the school district has submitted to the Division a properly executed copy of a "Request for Local Release of School Construction Plans," pursuant to N.J.A.C. 6A:26-5.4(b)2, the Division shall forward the release form to the Department of Community Affairs for its action.

## **Subchapter 6. Planning and Construction Standards for School Facilities**

### **6A:26-6.1 Application of the Uniform Construction Code**

- (a) All school construction shall be done in accordance with the UCC, as administered and enforced by the Department of Community Affairs, and with this subchapter.
- (b) The UCC enhancements, enumerated at N.J.A.C. 5:23-3.11A(c), shall be required of all capital projects at public schools, and shall be administered and enforced by the Department of Community Affairs. Charter schools shall be required to comply with the UCC enhancements where the health and safety of the building occupants are affected.
- (c) The educational facility planning standards, at N.J.A.C. 6A:26-6.3 and 6.4, shall be administered by the Department and cooperatively enforced by the Department and by the Department of Community Affairs. Pursuant to N.J.S.A. 18A:36A-10, charter schools shall not be required to comply with the educational-facility planning standards except where the health and safety of the building occupants are affected.
- (d) Among the standards incorporated by reference into the educational facility planning standards, and administered and enforced according to (c) above, is the Barrier Free Subcode of the UCC, at N.J.A.C. 5:23-7.

### **6A:26-6.2 Exceptions**

- (a) No exceptions from the requirements of this subchapter shall be made, except upon the following findings:
  - 1. That strict compliance with any specific requirement would result in practical difficulty to the school district; and
  - 2. That the exception, if granted, will not jeopardize the health, safety and welfare of occupants or intended occupants and the public generally.

- (b) An application for an exception pursuant to this section shall be filed in writing with the Assistant Commissioner of the Division of Administration and Finance, and shall provide statements of the following:
1. The subchapter requirements from which an exception is sought;
  2. The manner by which strict compliance with said provisions would result in practical difficulties;
  3. The nature and extent of the practical difficulties; and
  4. Feasible alternatives to the subchapter's requirements that would adequately protect the health, safety, and welfare of the occupants, intended occupants and the general public.
- (c) The Division shall review the application, and shall deny or grant it within 90 days by written order stating the reasons therefor.

#### **6A:26-6.3 Educational facility planning standards**

- (a) The educational facility planning standards delineated in (b) through (h) below, in conjunction with the UCC, shall form the requirements for the design and construction of public schools. Specific standards for school facilities housing preschool students are set forth at N.J.A.C. 6A:26-6.4.
- (b) General design and construction requirements shall be as follows:
1. School facilities shall afford space for general instruction, specialized instruction, administration, and student services, the adequacy of which shall be pursuant to the requirements of this section. In addition, school facilities shall afford accommodations for approved vocational and special education programs;
  2. Instructional rooms with windows shall have no exterior obstructing wall within 20 feet of the major window wall;
  3. Inner courts shall have a minimum width of 20 feet;

4. Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;
5. Power tools and machines in shops that generate dust shall be provided with dust-collecting equipment. The equipment shall be either single- or multi-use vacuum packs or a central dust-collection system. Installed systems shall comply with National Fire Protection Association (NFPA) Standard 664 "Standards for the Prevention of Fire and Explosion in Wood Processing and Woodworking Facilities" (1998), incorporated herein by reference, as amended and supplemented, and N.J.A.C. 7:27-8. Copies of the NFPA Standard 664 may be obtained by contacting NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.
6. The ceiling height of an academic classroom or other instructional space containing more than 300 square feet in area shall average nine feet six inches, and no part of the ceiling or other obstruction shall be lower than eight feet. Instructional spaces of less than 300 square feet and areas of larger spaces devoted to clothing alcoves, storage or work space shall have a minimum ceiling height of eight feet;
7. Height of the ceiling or other obstruction in other areas shall provide a minimum clearance as listed below:

Gymnasium	22 feet
Auxiliary gymnasium	14 feet
Weight room	12 feet
Music room (vocal or instrumental)	12 feet

The minimum height from overall highest riser to ceiling shall be eight feet.

Cafetorium	18 feet
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Cafeteria	12 feet
Industrial arts and vocational shop	12 feet
Library/media center	9½ feet

8. Public school corridors and all other administrative spaces shall have a minimum ceiling height of eight feet;
9. A health unit shall be provided and shall include a nurse's area, a waiting area, an examination area, a rest area with privacy, drinking water, and toilet facilities sized and arranged so physically disabled persons requiring assistance will be able to receive aid;
10. Instructional greenhouses shall meet the following standards in addition to the requirements of the UCC and the Fire Prevention Code:
  - i. All doors shall be a minimum of three feet wide;
  - ii. Drinking fountains shall not be located inside greenhouses; and
  - iii. Greenhouses may be either attached to a school building or located at least 20 feet from the school building.
11. Wherever chemicals are stored or used, an eyewash fountain or similar device capable of providing a 15-minute continuous water flow shall be provided. Eyewash devices shall also be provided per N.J.A.C. 6A:26-12.5;
12. The minimum dimension of an instructional space or specialized instructional space shall be 10 feet; and
13. The designs of new schools shall incorporate the guidelines developed by the United States Green Building Council known as Leadership in Energy and Environmental Design (LEED), "LEED for Schools," which is incorporated by reference herein, to achieve maximum energy efficiency and environmental sustainability in the design of schools. A copy of the guidelines may be obtained from the Office of School Facilities, PO Box 500, Trenton, NJ 08625-0500.

- (c) Entrance and exit requirements shall be as follows:
1. Pick-up and drop-off areas shall be designed to provide safe entrances and egress for students and adults;
  2. There shall be clearly marked walkways from drop-off areas into school facilities, and entrances to the school facility shall be clearly marked;
  3. Minimum clear widths for egress corridors serving more than 100 students in pre-kindergarten and elementary schools (kindergarten through fifth grade) shall be:
    - i. Seven feet, wall to wall without lockers or wardrobes;
    - ii. Eight feet, wall to locker face with lockers or wardrobes on one side; and
    - iii. Nine feet six inches, locker face to locker face with lockers or wardrobes on both sides.
  4. Minimum clear widths at any point in middle and high schools, grades six through 12, shall be:
    - i. Seven feet six inches, wall to wall without lockers;
    - ii. Eight feet six inches, wall to locker face with lockers or wardrobes on one side; and
    - iii. Ten feet, locker face to locker face with lockers or wardrobes on both sides.
  5. Minimum clear widths for secondary egress corridors serving 100 or fewer occupants shall be five feet.
  6. Doors from all spaces used by students and school staff, excluding lavatories, storage rooms, janitors' closets, instructional spaces under 300 gross square feet, and locker rooms, shall swing into the corridor and shall have a safety vision panel of 1/4 inch glazing that is at least 100 square inches.
- (d) The environment requirements shall be as follows:

1. Windowless classrooms and other occupied instructional spaces that do not have operable windows equal to at least four percent of the floor space shall be air conditioned, excluding gymnasiums, industrial shops, kitchens, and locker rooms; and
  2. School facilities shall be designed, constructed, and renovated consistent with the standards of the UCC and other applicable State and Federal laws for radon, lead, asbestos, and other contaminants, and subject to the enforcement of such standards by the applicable State or Federal agency.
- (e) Safety requirements shall be as follows:
1. Glazing in fire-rated assemblies shall be in accordance with the UCC. All other interior glazing shall be safety glazing;
  2. A check valve shall be installed in the line supplying gas to each classroom, laboratory, shop or the other area where gas is used by students, except home economics rooms;
  3. Science rooms, laboratories, shops, and other instructional spaces in which an open flame and/or the use of hazardous chemicals occurs, with the exception of home-economic rooms, shall be equipped with an emergency safety cold-water shower and a floor drain or a self-contained water receptacle or catch basin;
  4. All construction or alteration of playgrounds, playground equipment, and surfacing, including materials provided at the base of playground equipment, shall comply with the playground-safety subcode of the UCC at N.J.A.C. 5:23-11, and with N.J.A.C. 5:23-7, the Barrier Free Subcode of the UCC;
  5. When provided, a ceiling paddle fan shall be located at least eight feet above the floor and be enclosed with a metal guard;
  6. Playground equipment shall not be constructed of chromated copper arsenate treated wood; and

7. The storage of pesticides shall be in a locked metal cabinet and vented to the exterior.
- (f) Electrical power and communications requirements shall be as follows:
1. Push-type emergency cut-out switches shall be provided at appropriate locations within shops to de-energize the electrical supply to non-portable machinery and shall have a clear unobstructed access of a minimum of 36 inches. The switches shall be provided on the basis of one for each 1,000 square feet or fraction thereof of floor area in the shop, but in no case less than two per shop. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized, thereby being inoperative;
  2. All non-portable motorized equipment and machinery shall be provided with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the above emergency cut-off;
  3. Instructional spaces shall be provided with sufficient electrical power, communication and data outlets to satisfy the school district's program and equipment needs as defined in the school district's approved technology plan or equivalent document and educational specifications for a school facilities project, with not less than two duplex outlets remotely located per space;
  4. Large group areas such as assembly rooms, auditoriums and other large group instructional spaces shall be provided with electrical power, data, and communications outlets at appropriate locations and at the location of portable projectors and built-in speaker cables at stage and platform areas; and



5. A communication system shall be installed in each classroom to allow for emergency communication to local authorities. The communication system may be in the form of a telephone system capable of placing 9-1-1 calls.

(g) Lighting requirements shall be as follows:

1. Installed artificial lighting intensity shall comply with the following minimum footcandles, which shall be maintained on the task at any time:

Installed Lighting Intensity	Minimum Acceptable
<u>Locations</u>	<u>Footcandles</u>
Classrooms and instructional areas - study halls, lecture rooms, art rooms, offices, libraries, conference rooms, work rooms, shops, laboratories, and secondary school cafeterias	50
Drafting, typing, and sewing rooms	70
Reception rooms, gymnasiums, auditoriums, primary school cafeterias, all-purpose rooms, and swimming pools	30
Locker rooms, washrooms, toilet rooms, corridors containing lockers, and stairways	10
Corridors without lockers and storerooms	5
Classrooms for the partially sighted	70

2. As an alternative to compliance with the above requirements, instructional spaces shall comply with the American National Standards Institute standard number ANSI/IES RP3-00, Guide for Educational Facilities Lighting, (2000) incorporated herein by reference, as amended and supplemented, which is available for review

at the Division. The document may be purchased from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.

(h) Plumbing requirements shall be as follows:

1. The number of plumbing fixtures and ventilation requirements shall conform with the provisions of this chapter and be calculated according to the UCC;
2. General student toilet rooms shall be designed and labeled for student use, contain at least two of each required fixture and be directly accessible from a corridor or an open plan instructional space. Students housed within an instructional space in excess of 300 square feet shall not be required to travel through any other space except a corridor to reach a general pupil toilet room;
3. There shall be at least one general toilet room for each sex on each floor occupied by students, or all instructional rooms shall have individual toilet rooms. Where classrooms, shops, or physical education rooms are provided with self-contained individual facilities (water closet, lavatory, and drinking fountains), the pupil capacity of the rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms;
4. Toilet facilities for preschool and kindergarten classrooms shall be provided as follows:
  - i. An individual toilet room shall be provided in each classroom and shall meet the following criteria:
    - (1) Be located and equipped in such a way as to ensure privacy for the students;
    - (2) Be accessible to physically disabled students and barrier free in design as per N.J.A.C. 5:23-7;

- (3) Be equipped with an open front seat with a flood rim height no greater than 14 inches from the floor, and a lavatory (sink) with a flood rim height no greater than 26 inches from the floor.
- ii. In lieu of providing an individual toilet room in each classroom as required in (h)4i above, toilet rooms may be provided adjacent to or outside the classroom if the following criteria are satisfactorily addressed:
  - (1) No child or group of children shall be left unsupervised at any time when traveling to or from the facilities. Provisions shall be made for adult supervision in a manner that will not infringe upon instructional time;
  - (2) Toilet facilities shall be readily accessible and the toilet room and signage shall be visible to a child from the classroom door;
  - (3) Toilet facilities shall be provided for both boys and girls and shall meet the requirements of (h)4i(4) above.
- iii. If a school district chooses to provide toilet rooms adjacent to or outside the classroom in conformance with (h)4ii above, the chief school administrator shall certify to the executive county superintendent on forms prescribed by the Commissioner how the alternate method of compliance shall be addressed. The completed form and a copy of a resolution by the district board of education approving the alternate method of compliance shall be submitted to the executive county superintendent for approval. Thereafter, the chief school administrator annually shall resubmit the form certifying how the alternate method of compliance will be addressed. Any changes to the approved alternate method of compliance shall be submitted to the executive county superintendent for approval;

5. Entrance to toilet rooms and locker rooms shall be designed to prevent visibility into the room;
6. Water closets shall be separated by individual stall partitions, including doors that are of a smooth impervious material to permit effective cleaning;
7. Floors of all toilet, shower, and drying rooms shall be water-tight and impervious to moisture. Floors shall be provided with an integral cove base at least four inches high;
8. Flooring materials of ceramic tile, quarry tile, sheet vinyl, and plastic coatings designed for this purpose shall be deemed to meet the requirements of this subchapter except for use in showers. Resilient tiles or exposed concrete shall not be acceptable in toilet rooms;
9. Where showers are provided, shower heads shall be at least 30 inches apart, one shower head for each 10 students, with a shower head height of six feet, and 12 square feet of floor area shall be provided per shower head;
10. Preschool and kindergarten classrooms shall be equipped with a bubbler or water fountain; and
11. Arts and crafts classrooms shall be equipped with a water source, sink and appropriate sink trap.

**6A:26-6.4 Educational facility planning standards for school facilities housing preschool students**

- (a) The educational facility planning standards delineated in this subchapter shall apply to the design and construction of school facilities housing preschool students. Any standards not addressed in this section are addressed in N.J.A.C. 6A:26-6.3, in conjunction with the UCC. For community providers, the requirements of this section shall supplement but not supplant the requirement manual mandated by the Office of

Licensing in the Department of Human Services, for community provider licensure. If this section's requirements exceed the requisites of the Department of Human Services' manual, the requirements of this section shall apply.

(b) General design and construction requirements shall be as follows:

1. School facilities for preschool students shall afford space for instruction, administration, and student services, as set forth in the facilities efficiency standards in (h) below;
2. Preschool classrooms shall be no higher than the second floor of a school facility;
3. Preschool classrooms shall have a minimum of the square footage of usable space per child as set forth in the facilities efficiency standards, and usable space per child shall exclude storage, equipment, or furnishings that are either built-in or not easily movable;
4. Each preschool classroom shall have an attached toilet room designed to accommodate the needs of physically handicapped students with features sized for the use of preschool students;
5. Preschool classrooms shall have a resilient floor covering;
6. Separate from the toilet room, each preschool classroom shall have access to an additional sink with a flood rim height no greater than 26 inches from the floor;
7. Preschool classrooms shall be equipped with a bubbler or water fountain; and
8. Preschool classrooms shall be designed to modulate interior noise and minimize exterior noise.

(c) Entrances, egress, and security requirements shall be as follows:

1. All preschool classrooms shall have operable windows with inside locks and shall be equal to at least four percent of the floor space.

(d) The outdoor play area requirement shall be sufficient to support the achievement of the New Jersey Preschool Teaching and Learning Standards of Quality as defined in N.J.A.C.

6A:13A and by the educational specifications under N.J.A.C. 6A:26-5, and evidenced by a sufficiency standard such as the following: 100 square feet of outdoor play space for each child using the space at one time.

- (e) The electrical power and communications requirement shall be as follows:
  - 1. Child-safety receptacles shall be used throughout preschool classrooms and bathrooms and elsewhere in the school facility where applicable.
- (f) Lighting requirements shall be as follows:
  - 1. Subject to the requirements of N.J.A.C. 6A:26-6.3(g), preschool classroom lighting shall be adjustable and varied across the space with a mixture of both natural and artificial light; and
  - 2. Preschool classrooms shall have child-safe windows to maximize natural light.
- (g) Plumbing requirements shall be consistent with N.J.A.C. 6A:26-6.3(h)4 except as follows:
  - 1. Preschool classrooms toilet facilities shall be open to view as a safety precaution;
  - 2. Toilet facilities for preschool students shall be designated for their exclusive use and shall be so identified; and
  - 3. Preschool facilities shall provide a diaper/clothes changing area in the classroom.
- (h) The facilities efficiency standards for early childhood schools are the following:

*Table 2 Early Childhood School Model for Three and Four Year Old Students*

Early Childhood School Model

For Three and Four Year Old Students

<u>Enrollment</u>	<u>294</u>	<u>FTE*</u>
Utilization Factor	100%	1

<u>Room Designations</u>	Net SF** per room	# of students	# of students per room	# of rooms	Net SF	Description
<u>Instructional Spaces</u>						
<u>Preschool Classroom</u>	950	270	15	18.00	17,100	See notes below
<u>Preschool Classroom</u>	950	24	12	2.00	1,900	
<u>Special Education</u>						
					19,000	Subtotal Net SF of Instructional Spaces
				1.00		Utilization Factor
					19,000	Subtotal Net SF for Instructional Spaces w/Utilization Factor
<u>Specialized Spaces</u>						
Kitchen	1,200			1.00	1,200	
Multi-Purpose room / Gross motor skills	3,400			1.00	3,400	
Small Group Instruction Room (SGI)	400			2.00	800	
					5,400	Subtotal Net SF for Specialized Spaces
<u>Administrative Spaces</u>						
Nurse	400			1.00	400	

Reception/Main Office	400	1.00	400	
Principal/Director Office	200	1.00	200	
Conference Room	125	2.00	250	
Teacher Work Room	300	1.00	300	
			1,850	Subtotal Net SF for Administrative Spaces
			26,250	Total Net SF
			89.29	Net SF per student
			1.4	Grossing Factor***
			125.00	Gross SF per student
			36,750	Total Gross SF for population of 294 FTE
			\$143.00	Area Cost Allowance per SF
			\$5,255,250	Cost of new Early Childhood School for population of 294 FTE

\*Full time equivalent

(FTE)

\*\*Square Feet (SF)

\*\*\*Grossing factor = 40% of Total net SF for circulation, toilet rooms, storage, mechanical, receiving, communications, electrical, Adult handicapped accessible bathroom, etc.

Notes:

750 SF of floor area provided, 150 SF of casework and 50 SF of toilet room



A. Indoor Storage: There shall be varied and ample types of storage that meets the general classroom needs of both children and staff. Each classroom shall have open, accessible storage, such as cubbies for each child for coat storage, personal papers, and change of clothing.

B. Teacher Storage: Each classroom shall have a space allocated for the teacher's coat and personal items.

C. Classroom Storage: Additional storage shall include an area, inaccessible to children, to store cots, bedding, and storage of classroom materials such as manipulatives, puzzles and art supplies. Hanging mats are a reasonable option for small storage spaces.

**6A:26-6.5 Private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services**

- (a) This section shall govern review of project documents for capital projects at private schools for disabled students which are approved or seeking approval pursuant to N.J.A.C. 6A:14-7 and schools for disabled students operated by the Department of Human Services. Review and approval by the Division is required for the type of work set forth in N.J.A.C. 6A:26-5.1(a).
- (b) Submission and review of plans and specifications shall be conducted as follows:
  - 1. Educational specifications shall be prepared and submitted pursuant to N.J.A.C. 6A:26-5.2, and schematic plans shall be prepared and submitted pursuant to N.J.A.C. 6A:26-5.3 except that they shall be signed by the executive director and board president of the private schools for disabled students or the New Jersey Department of Human Services.
  - 2. A New Jersey registered architect or licensed engineer, as required by N.J.A.C. 5:23-2.15, shall submit project documents for the temporary and permanent construction, alteration, and rehabilitation of facilities to the Division on behalf of either the private schools for disabled students or the New Jersey Department of

Human Services for review and subsequent approval for compliance with this chapter.

3. For review and subsequent approval for compliance with the Uniform Construction Code (UCC), N.J.A.C. 5:23:
    - i. Plans and specifications shall be submitted to the local construction official of the municipality in which the facility will be constructed, in the case of private schools for disabled students; and
    - ii. Plans and specifications shall be submitted to the New Jersey Department of Community Affairs, in the case of private schools for disabled students operated by the Department of Human Services.
  4. The project documents shall be submitted to the Division and reviewed pursuant to N.J.A.C. 6A:26-5.
- (c) Acquisition of land shall be according to N.J.A.C. 6A:26-7.
- (d) Disposal of land shall be according to N.J.A.C. 6A:26-7.4.
- (e) Reviews of project documents for facilities of private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services shall be done by the Division to assure that the design adheres to:
1. School site sizes, N.J.A.C. 6A:26-7.1; and
  2. Educational facility planning standards, N.J.A.C. 6A:26-6.3 and 6.4.
- (f) Provisions for accommodation of students in temporary school facilities operated by private schools for the disabled or the New Jersey Department of Human Services shall be according to N.J.A.C. 6A:26-8.

## **Subchapter 7. Land Acquisition, School Closing, and Land Disposal**

### **6A:26-7.1 Approval of the acquisition of land**

(a) A school district may obtain voter approval pursuant to N.J.A.C. 6A:26-3 or 9 for funding of land acquisition prior to Division approval of the land acquisition. A school district shall not take any action to acquire the land prior to obtaining Division approval.

(b) A school district, or the Development Authority on behalf of a school district, shall submit to the Division the following information to obtain approval under (a) above for land in connection with a school facilities project. The following requirements do not address requirements of other State agencies having approval or permitting jurisdiction over land acquisition.

1. The following information shall be provided by the school district:

- i. A written request for that shall include a statement, signed by the board president and the chief school administrator, indicating the immediate and ultimate proposed uses of the site, in terms of building use, grade organization, and potential maximum enrollment, and whether the land is, or will be, part of a school facilities project indicated in the school district's LRFP;
- ii. A map of the school district showing the location of the land, the location of existing schools in the school district, the attendance area to be served by the school, and the number of students who reside within the attendance area;
- iii. Data regarding the impact of the acquisition upon racial balance within the school district's public schools;
- iv. A full, detailed appraisal of the market value of the property prepared by a licensed professional;
- v. A title report on the property produced by any reputable title insurer licensed in the State of New Jersey evidencing that title is good and marketable;

- vi. A feasibility study evidencing that school-district-owned land within the attendance area to be served by the school is not available, suitable, or sufficient to be used for school purposes, but only if the school district is required to use the Development Authority and seeking approval for a new acquisition of land and not merely a new use for already school district-owned land; and
  - vii. For a school district required to use the Development Authority and seeking approval for the acquisition of land, evidence that the school district has not indemnified the seller of the land for the costs arising from the environmental remediation required for the property to be used for school purposes; acquired the land in its "as is" condition; or acquired the land under terms and conditions that would invalidate the statutory immunity of the school district from liability for the remediation costs associated with pre-existing contamination, whether discovered pre-closing or post-acquisition, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.
2. The following information shall generally be provided by a licensed architect, professional engineer, or professional planner:
  - i. A statement from the licensed architect, professional engineer, or professional planner indicating whether the land is subject to regulation under the Coastal Wetlands Act (N.J.S.A. 13:9A-1 et seq.); the Freshwater Wetlands Act (N.J.S.A. 13:9B-1 et seq.); the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.); the Waterfront Development Act (N.J.S.A. 12:5-3); the Green Acres Acts (N.J.S.A. 13:8A-1 et seq., 13:8A-19 et seq., 13:8A-35 et seq., and 13:8C-1 et seq.); or other statutes, regulations or executive orders administered by agencies of State or Federal government.

- (1) If so subject, the statement shall address the steps necessary to obtain approval from the agencies, and include adequate documentation to demonstrate to the Division the approvals will be obtained and not affect the educational adequacy of the site, as set forth in (d) and (e) below;
- ii. A statement from a New Jersey licensed architect, professional engineer, or professional planner indicating whether the proposed use of the land to be acquired is consistent with the goals and strategies of the New Jersey State Development and Redevelopment Plan (State Plan). If inconsistent with such goals and strategies, the statement shall include adequate documentation to demonstrate to the Division there are no alternative suitable sites available in the school district that are consistent with the State Plan's goals and strategies;
- iii. A statement from a New Jersey licensed architect, professional engineer, or professional planner indicating the land to be acquired is suitable for the proposed use;
- iv. A completed, signed and sealed plot plan of the land to be acquired showing topographical and contour lines; adjacent properties indicating current land uses; access roads; deed restrictions; easements; protective covenants; right of ways; and environmentally sensitive areas such as waterways and wetlands. The acreage and dimensions of the tract proposed for acquisition shall be included as per the application of the standards for minimum acceptable school site sizes in (d) below;
- v. If existing buildings or structures are located on the land to be acquired, the intended use and/or disposition of these buildings. Any building to be acquired and used shall comply with the requirements of the UCC for

educational occupancy and N.J.A.C. 6A:26-5 that apply to the construction of a new building;

- vi. Adequate documentation to demonstrate to the Division that soil conditions for structural integrity and drainage have been examined by the New Jersey licensed architect or professional engineer; and
- vii. Adequate documentation to demonstrate to the Division that soil and groundwater conditions have been examined by a New Jersey licensed architect or professional engineer for suitability for septic systems, if applicable.

3. The following shall be submitted by the school district:

- i. A statement from a local or regional water purveyor or alternatively, a statement from a geologist or professional engineer if the source of water is groundwater, certifying that:
  - (1) The land can be adequately provided with the necessary water for the proposed maximum enrollment, and if the source of water is groundwater, that there will be sufficient groundwater available for the proposed maximum enrollment; and
  - (2) Potable water infrastructure is, or is not, in place to service the site;
- ii. A statement from a local or county sewerage agency certifying that:
  - (1) The land can be adequately provided with the necessary and acceptable sewage disposal system for the proposed maximum enrollment, as evidenced, for example, by consistency with the locally approved wastewater management plan; and
  - (2) Sewer infrastructure is, or is not, in place to service the site. If such infrastructure is not in place, adequate documentation from a professional engineer or licensed geologist to demonstrate that soil

and groundwater conditions are suitable for a septic system or discharge to groundwater; and

iii. Recommendations from the New Jersey Department of Environmental Protection (NJDEP) that there are no substantial reasons why the land acquisition should not proceed within 45 days of its receipt of an environmental site report submitted by the school district or the Development Authority on behalf of the school district addressing the items below, or evidence that 45 days have passed since the NJDEP's receipt of the environmental site report, whichever is earlier:

- (1) A sewer service consistency determination;
- (2) Potable water supply;
- (3) Coastal and freshwater wetlands;
- (4) Green Acres land;
- (5) Stream encroachment;
- (6) Historical or archeological resources;
- (7) Endangered plant species;
- (8) Threatened or endangered animal species; and
- (9) An environmental site assessment to determine whether there is potential contamination on the land, submitted on a form provided by the Department.

4. The following shall be submitted by the school district:

i. Recommendations of the planning board of the municipality in which the land is situated, and that has an approved master plan as required by N.J.S.A. 40:55D-31 and 18A:18A-16, or evidence that the applicable 45 or 55 days have passed, whichever is earlier, from the planning board's receipt of the land acquisition application. The recommendations shall be

sent to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, NJ 08625-0500, and forwarded promptly to the Division at the above address if received by the school district or its architect;

- ii. The recommendation of the executive county superintendent based on the requirements specified in this subchapter; and
- iii. Prior approvals of other agencies, such as the New Jersey Department of Agriculture, NJDEP, and the Pinelands Commission, where such approval is reasonably obtainable prior to acquisition.

(c) A school district that intends to acquire land not in connection with a school facilities project shall submit all of the information required under (b) above except (b)1ii and iii, and shall further be excepted from the requirements of (d) and (e) below. If the school district later intends to change the use of the land and use as a school site, the school district shall be required to submit all of the information required under this section and the aforementioned exceptions shall no longer apply.

(d) School site sizes shall be directly related to the acreage required for the structures and activities to be situated thereon. Except where specifically noted for multiple or shared use, the acreage shall be considered for single use.

(e) All school sites shall have sufficient acreage for the following:

- 1. The placement of the school facility;
- 2. Expansion of the building to its maximum potential enrollment;
- 3. The placement of all other structures, such as greenhouses; storage buildings; school-bus maintenance buildings or garages; and any other above- or below-ground structure that is to be placed thereon;
- 4. Multi-purpose physical education field(s) and, for preschool-through-grade-five school facilities, a playground required to support the achievement of the New



Jersey Student Learning Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model;

5. Disabled-accessible pedestrian walkways, roadways and parking areas on which people and vehicles access the building;
  6. Public- and service-access roads onto the site including, where warranted, a one-way school-bus road of 30-foot width and a two-way road of 36-foot width; a school bus drop-off area; and 18-foot-wide posted fire lanes for fire apparatus; and
  7. A 30-foot-wide access around the entire building.
- (f) Land owned by a district board of education that does not meet the standards of this section may be supplemented by adjacent municipally-owned land if it is formally leased on a long-term basis to the district board of education for exclusive use during school hours and there are no deed restrictions that prohibit school district use.
- (g) The Division's approval shall remain effective for three years, after which time Division approval shall again be required to be obtained prior to acquiring the land.

#### **6A:26-7.2 Approval of the acquisition of land in certain school districts under the Development Authority's auspices**

The Development Authority may acquire land on behalf of a school district eligible for 100 percent State support of final eligible costs for school facilities projects that are consistent with the school district's approved LRFP. For such school districts, the Department shall require submission of all information set forth in N.J.A.C. 6A:26-7.1(b) to demonstrate compliance with this subchapter. The Development Authority may submit the required information on behalf of such school districts.

#### **6A:26-7.3 Approval for the acquisition of existing facilities**

- (a) A district board of education planning to acquire an existing facility through purchase, gift, lease, or otherwise shall comply with all procedures and rules pertaining to the appropriation and use of capital funds as required by N.J.S.A. 18A:20-4 and 4.2. The school district shall also have the facility approved in accordance with N.J.A.C. 6A:26-3, which applies to the acquisition of a school site and for the construction of a new facility.
- (b) Facilities to be procured for temporary use shall comply with N.J.A.C. 6A:26-8 if subject to educational-adequacy review pursuant to N.J.A.C. 6A:26-5.4(c) because the facilities will house students.

**6A:26-7.4 Approval for the disposal of land, including rights or interest therein, or improvements thereon**

- (a) The school district shall make to the Division a written request for school district-owned land to be altered or disposed of through sale, transfer, or exchange of all or part of the total acreage, including rights or interest therein and/or improvements thereon, such as facilities, if applicable.
  - 1. A copy of the request shall be sent by the school district to the executive county superintendent, who shall make recommendations to the Division. The executive county superintendent shall provide to the district board of education a copy of the recommendations.
  - 2. The request shall indicate whether the school district intends to convey the site, rights or interest therein, and/or improvements thereon under an exception to the public sale requirements per N.J.S.A. 18A:20-6.
  - 3. The request shall indicate whether the school district intends to convey the site, rights, or interest therein, and/or improvements thereon that had been conveyed to the school district from the Development Authority or funded in whole or in part by State share under EFCFA.

4. If the land, rights, or interest therein, and/or improvements thereon have been conveyed to the school district from the Development Authority, the request shall provide evidence acceptable to the Department that the property has not reverted to the Development Authority as authorized under N.J.A.C. 19:34-3.6.
5. If a school district seeks to dispose of land, rights, or interest therein, and/or improvements thereon funded in part with debt service aid pursuant N.J.S.A. 18A:7G-9 or 10, and the land and/or improvements are either not needed or not being used for the purposes for which the bonds were issued, any proceeds from the disposal shall be used by the school district first to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt-service principal payments. A district board of education may request approval from the Commissioner to apply the proceeds over the term of the outstanding debt or by some other distribution mechanism if, for example, it is beneficial to stabilizing the school district's debt-service tax levy.
  - (b) The Division shall determine whether the disposal is consistent with the school district's approved LRFP or has a negative impact on the educational adequacy of an individual site.
  - (c) The Division shall notify the school district of its approval or disapproval and send a copy to the executive county superintendent. If the disposal includes a site, rights, or interest therein and/or improvements thereon conveyed to the school district from the Development Authority, is funded in whole or in part by State share under EFCFA, or is in a school district that is required to use the Development Authority, the Division shall also notify the Development Authority.
  - (d) A school district may convey and transfer, without consideration, its right, title, and interest in and to any trunk or other sewer lines to a municipality, pursuant to N.J.S.A. 18A:20-9.1 without requiring approval from the Division.

**6A:26-7.5 Approval for the closing of a school facility**

- (a) To receive approval for the closing of a school, the district board of education shall provide the Division and the executive county superintendent with the following assurances:
  - 1. The proposed closing is consistent with the school district's approved LRFP because:
    - i. The school district has demonstrated that sufficient school-building capacity exists to house students for the five years following the closing; or
    - ii. The school district has demonstrated through a feasibility study that the benefits of undertaking new construction outweigh those of rehabilitating the school proposed for closure.
  - 2. The use of temporary facilities in the remaining schools does not result or increase from an overall facilities shortage caused by the school closing; and
  - 3. The re-assignment of students to other schools in the school district does not produce, sustain, or contribute to unlawful segregation, separation, or isolation of student populations on the basis of race or national origin.
- (b) A request for approval from the Division for the school closing shall include the recommendation of the executive county superintendent.
- (c) A letter of approval from the Division based on the information in (a) above shall be required before the school's closing.
- (d) The Division shall notify in writing the school district of its determination with respect to the requested school closing, with a copy provided to the executive county superintendent.
- (e) Starting in August 2017, the Division of Executive Services shall maintain a list of closed, unused, or unoccupied school facilities, consistent with N.J.A.C. 6A:26-2.2, and make it available on the Department's website.

## Subchapter 8. Temporary School Facilities

### 6A:26-8.1 Temporary facilities standards

- (a) This subchapter sets forth the standards that apply to temporary facilities, whether included as part of a school facilities project, funded as an other capital project, or provided by an approved private school for the disabled. It addresses the applicability of the facilities efficiency standards to temporary facilities, compliance monitoring by the county superintendent of schools, budgeting for deficiencies, and the construction and design standards for a variety of types of temporary facilities, such as leased buildings and pre-manufactured temporary classroom units. Any temporary facility to be used as a school shall comply with the applicable requirements of the UCC, evidenced by a valid certificate of occupancy for the use. If the building currently is not classified as Group E pursuant to the UCC, then it is to comply with the UCC requirements for a change of use at N.J.A.C. 5:23-6.31. If the building is a school that predates the UCC, then it shall comply with the applicable requirements of the Uniform Fire Code.
- (b) When considering educational adequacy, the Division and the executive county superintendent shall apply the minimum-square-foot standards permitted under the facilities efficiency standards. If a district board of education or approved private school for the disabled seeks relief from the minimum-square-foot requirements of the facilities efficiency standards, relief shall be determined upon application to the Division under the procedures for requesting an exception set forth in N.J.A.C. 6A:26-6.2.
- (c) Executive county superintendents shall annually monitor the temporary facilities of school districts and approved private schools for the disabled for compliance with the standards in this subchapter. District boards of education or approved private schools for the disabled shall provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the executive county superintendent on or

before October 1 annually. If the correction of the deficiencies is part of a school facilities project and eligible for the State share, State share shall be applied to meet this budgetary requirement. Failure to budget for the correction of deficiencies and to implement the corrections by the next September 1 following the October 1 notice shall result in the executive county superintendent, in consultation with the Division, ordering that the facility be abandoned immediately.

(d) In making a determination about an application for the use of temporary facilities, the following factors shall be taken into account:

1. Accommodations of students in temporary spaces in an existing public school, in other school-district-owned facilities or in rented or leased buildings not on a school-district-owned site shall comply with the following:

i. Safety factors:

- (1) The floors, walls, and ceilings of rooms used for instruction shall be free of moisture, peeling paint, and potentially hazardous materials;
- (2) The hardware on doors of any space occupied by students shall permit egress from the room at all times. Key-operated locks, thumb-turn locks, hasps or similar types of locking devices shall not be permitted;
- (3) Instructional room doors opening into the corridor shall have vision panels;
- (4) Directions for exiting from the building in case of emergency shall be posted in each space by the exit;
- (5) Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;

- (6) All educational spaces shall be equipped with a telephone connected to the main office and capable of emergency communication to local authorities. Such communication system may be in the form of a telephone system capable of placing 9-1-1 calls; and
  - (7) Provision shall be made for storage of students' clothing in other than a corridor or exitway.
- ii. The average ceiling height shall be at least eight feet for instructional spaces in temporary facilities in an existing public school, in a school-district-owned facility, and in rented or leased buildings not on school-district-owned sites.
  - iii. Heating and ventilation requirements shall be as set forth in N.J.A.C. 6A:26-6.3 and the UCC;
  - iv. Toilet facilities shall meet existing UCC requirements for the E Use Group as determined by the construction official. Toilet facilities shall be available within a reasonable distance not more than one floor away, and shall be equipped with an exterior operable window sash or mechanical exhaust ventilation. Toilet facilities shall be provided for students in preschool and kindergarten programs as per N.J.A.C. 6A:26-6.3 and/or 6.4;
  - v. Potable water shall be available and drinking fountains shall be provided for students in preschool and kindergarten programs in accordance with N.J.A.C. 5:23-7;
  - vi. At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas;

- vii. Furniture and equipment that is in good condition and suitable for the age and size of the students and purposes of instruction shall be provided;
  - viii. Instruction:
    - (1) Chalkboard, or other appropriate writing surface, and a display board suitable for the instructional program shall be provided; and
    - (2) Sufficient electrical duplex outlets shall be provided to satisfy the program needs as provided in N.J.A.C. 6A:26-6.3; and
  - ix. The outside physical education area for students shall include, but not be limited to, sufficient space, equipment, and safe surfaces for the temporary facility enrollment and program needs and be protected from hazards or traffic conditions.
2. Pre-manufactured temporary classroom units, vans, and other mobile units shall comply with the following:
- i. Pre-manufactured temporary classroom units shall be reviewed and approved by the Division for educational adequacy pursuant to N.J.A.C. 6A:26-5.4(c). The Department of Community Affairs or the local construction official shall review and approve the installation and shall issue the certificate of occupancy. Each pre-manufactured temporary classroom unit shall:
    - (1) Have a seal affixed by the manufacturer that indicates it meets the requirements for construction and certification of industrialized/modular buildings for educational use at N.J.A.C. 5:23-4A;
    - (2) Contain square footage appropriate to its use as specified in this chapter;



- (3) Meet code requirements for educational facilities as specified in the UCC and in N.J.A.C. 6A:26-6.3 and 6.4, to the extent the latter code requirements are applicable to temporary facilities;
- (4) A pre-manufactured temporary classroom unit in excess of 20 feet in length shall have two means of clear and unobstructed egress that are remote from each other, consistent with the UCC;
- (5) Have sturdy steps that include a handrail and are barrier free, consistent with the UCC;
- (6) Have heat that provides a temperature of 68 degrees Fahrenheit;
- (7) Have a ceiling height as follows:
  - (A) Vans and other mobile units – seven feet minimum;
  - (B) Temporary classroom unit – seven feet six inches minimum.
- (8) Have provisions for the storage of students' clothing;
- (9) Have a chalkboard and display board appropriate to the instructional program;
- (10) Have floor covering of either carpet that meets UCC requirements or asbestos-free resilient flooring;
- (11) Have interior ceiling and wall materials that are certified free of toxic materials;
- (12) Be provided with an electric smoke detection unit that has an audible alarm for each 900 square feet, or portion thereof, or for each instructional space and that is tied in to the main building fire alarm system; and

- (13) Be situated on a site approved by the Division pursuant to N.J.A.C. 6A:26-5.4(c) and approved by the Division pursuant to N.J.A.C. 6A:26-7.1 if land is acquired for the temporary facility.
- ii. Nonconformance to requirements in (d)2i(1) through (13) above that is found during an evaluation of any pre-manufactured unit placed in service after June 4, 1986, or in a subsequent inspection of a unit approved according to (d)2i(1) through (13) above, shall be corrected within 30 days of the evaluation. Staff of the Division or county offices of education shall order a unit immediately abandoned if the school district fails to correct deficiencies with respect to such requirements.
- iii. A self-propelled van or other pre-manufactured mobile unit used for instruction shall:
- (1) Have mechanical ventilation and exhaust that provides air change per occupant per hour in accordance with the UCC;
  - (2) Have interior ceiling and wall materials that are certified non-toxic and non-combustible;
  - (3) Contain a minimum of 100 square feet;
  - (4) Have electric heat that provides a temperature 68 to 72 degrees Fahrenheit;
  - (5) Provide at least 50 footcandles of uniformly distributed artificial illumination;
  - (6) Have a minimum ceiling height of seven feet;
  - (7) Have two means of clear and unobstructed egress that are remote from each other;
  - (8) Be provided with door hardware that is lever-operated and fully operable at all times from the interior and exterior;

- (9) Be provided with an electric smoke-detection unit that has an audible alarm that can be heard clearly within the unit;
- (10) Be furnished with an electric hook-up cable that is copper, a maximum of 28 feet in length and contains a 220 volt four-prong receptacle that is plugged into an approved twist-type outlet;
- (11) Be furnished with a 2A-10BC fire extinguisher that is maintained in operating order at all times;
- (12) Be furnished with electrical fixtures that meet the UCC;
- (13) Have electrical wire of a minimum size to meet the UCC;
- (14) Have floor covering of either carpet that meets UCC requirements or asbestos-free resilient flooring;
- (15) Be furnished with furniture and equipment that is stabilized while in transit;
- (16) Pass an annual inspection by the New Jersey Motor Vehicle Commission;
- (17) Be evaluated and approved annually by the executive county superintendent; and
- (18) Be furnished with wheel chocks to assure the unit will not move in any direction when parked.

iv. Nonconformance to requirements in (d)3iii(1) through (18) above that is found during an evaluation of any van and/or mobile unit place in service after June 4, 1986, or a subsequent inspection of a van and/or mobile unit approved according to the standards set forth in this subsection, shall be corrected within 30 days of the evaluation. Staff of the Division or the county offices of education shall order a van and/or other mobile unit immediately abandoned if the school district fails to correct deficiencies.

- v. Pre-manufactured vans or mobile units in service longer than five years shall be evaluated by the executive county superintendent in consultation with the Division. The unit shall be abandoned if the evaluation indicates it cannot meet the provisions of this subsection.

### **Subchapter 9. (Reserved)**

### **Subchapter 10. Lease-Purchase and Lease Agreements**

#### **6A:26-10.1 Use of lease-purchase agreements**

- (a) A school district may acquire improvements or additions to school facilities through lease-purchase agreements of five years or less provided that the lease-purchase agreement provides for the funding in full to the school district upon commencement of construction of the school facilities project. School districts shall not enter into lease purchase agreements of more than five years' duration.
- (b) Subject to (a) above, a school district may utilize a lease-purchase agreement to fund the local share or total costs of a school facilities project receiving State debt service aid or to provide the local funding for an other capital project as long as:
  - 1. There are no contingencies pursuant to which such funding could be withheld in whole or in part; and
  - 2. In funding the local share or total costs of a Development Authority-constructed school facilities project, the school district does not encumber what has been lease purchased in favor of another party, such as the lender or trustee unless said interest is subordinated to the Development Authority.
- (c) Lease-purchase agreements in excess of five years duration entered into prior to July 18, 2000, may continue in effect through the term of the agreement. However, as of July 18,

2000, no lease-purchase agreement entered into by a school district for improvements or additions to school buildings or for equipment shall exceed five years' duration.

(d) A school district may acquire equipment, as provided in N.J.A.C. 6A:26-3.2(a), through lease-purchase agreements that are not subject to the ground-lease requirements of N.J.A.C. 6A:26-10.5. Lease-purchase agreements for acquisition of equipment do not require Commissioner approval, but shall be filed with the executive county superintendent and shall include:

1. The lease-purchase agreement, which shall contain the following provision:

"Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f)";

2. A resolution of the district board of education approving the application on a Commissioner-prescribed form and authorizing submission to the executive county superintendent; and

3. Evidence acceptable to the Department that the school district has procured the equipment in accordance with N.J.S.A. 18A:18A-1 et seq.

#### **6A:26-10.2 Costs of lease-purchase agreements of five years or less**

(a) All payments by a school district and other costs arising from a lease-purchase agreement of five years or less shall not be considered to constitute debt service and shall not be eligible for State debt service aid under EFCFA and/or this chapter.

(b) Payments of lease-purchase agreements of five years or less shall be recorded as an expenditure of the school district's general fund.

#### **6A:26-10.3 Approval of lease-purchase agreements for improvements or additions to school facilities**

- (a) School districts shall submit to the Division for approval pursuant to this section all lease-purchase agreements to fund the local share or a portion of the total costs of a school facilities project for improvements or additions to a school facility that has no excess costs. No lease-purchase agreement that will fund excess costs of a school facilities project for improvements or additions to a school facility or the local funding of an other capital project shall be submitted to the Division for approval. If the Division does not approve a lease-purchase agreement, the school district shall frame a separate question to authorize the lease-purchase agreement and obtain voter or board of school estimate approval to enter into the agreement. No lease-purchase agreement for a capital project shall be executed by a school district unless it has received written approval of the Division, voters, or board of school estimate, as appropriate.
- (b) School districts shall file with the Division a copy of all lease-purchase agreements approved by voters or the board of school estimate.
- (c) A school district shall not enter into a lease-purchase agreement until the Division has notified the school district of the final eligible costs of a school facilities project or the consistency of an other capital project with the school district's approved LRFP and other applicable standards, as set forth in N.J.A.C. 6A:26-3.11.
- (d) The Division shall approve a lease purchase-agreement for local share or total costs of a school facilities project receiving State debt service aid payments that does not include excess costs only upon a demonstration by the school district that the payments for a lease-purchase agreement and any operating expenses related to the agreement can be included within the school district's net budget spending growth limitations and will not result in the need for approval by voters or the board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities.

- (e) All requests for approval of lease-purchase agreements for capital projects that are required to be filed with, and approved by, the Division shall include the following:
1. A copy of the Department's approval letter for the school facilities project and calculation of final eligible costs;
  2. The lease agreement in accordance with N.J.A.C. 6A:26-10.4;
  3. If applicable, an intercept agreement among the school district, the lessor and the State, executed by the school district and the lessor, providing that the State shall have the right to withhold the portion of State support owed to the school district necessary to make timely payments under the lease-purchase agreement and the agent agreement if the school district should fail to make timely payment of amounts owed under the lease-purchase and agent agreements, and apply the withheld State support to pay the school district's obligation, subject to available State appropriation;
  4. The ground lease in accordance with N.J.A.C. 6A:26-10.5, except for the lease-purchase of equipment only;
  5. Evidence of clear title to the proposed building site(s) and any land stated in the ground lease except for the lease-purchase of equipment only;
  6. A resolution of the district board of education approving the application and authorizing submission to the Division of an application on a form prescribed by the Commissioner;
  7. A copy of the newspaper advertisement for the public hearing;
  8. A copy of the newspaper advertisement for request for proposals;
  9. A copy of detailed board minutes for the public hearing resolution and vote on the approval of the lease-purchase concept, approval of the projected maximum funding level, assurance that annual lease payments can be included within the school district's base budget spending growth limitation, and authorization for the

chief school administrator or board secretary to advertise for proposals for the selection of underwriter/lessor; and

10. Any additional information that a school district deems relevant for the Division's review of the lease purchase agreement.
- (f) Upon receipt of an application for approval of a lease-purchase agreement for a capital project, the Division shall review the application and inform the school district in writing whether the application is complete. If the application is determined incomplete, the Division shall request additional information from the school district.
  - (g) After reviewing and assessing a complete application, the Division shall notify the school district in writing whether the lease purchase is approved and, if the lease purchase is not approved, the reason(s) for not approving it.
  - (h) For lease-purchase agreements that must be submitted to the Division, a district board of education shall conduct a minimum of one public hearing prior to adoption of a resolution endorsing the lease-purchase concept and approving the submission of an application to the Division. All provisions of the Open Public Meetings Act (N.J.S.A. 10:4-6 through 21) shall be followed for the public hearing. In addition, notice of the public hearing shall be published not less than seven days prior to the date fixed for each public hearing in at least one newspaper published in the school district or circulating in the school district if no newspaper is published therein. The notice shall fix a date, place, and time for holding the public hearing and shall include a description of the proposed capital project, the estimated cost and the proposed method of project financing.
    1. The public hearing shall provide taxpayers and other interested persons an opportunity to present to the district board of education questions or other commentary with respect to the proposed capital project, the estimated cost thereof and the proposed financing method.



2. After the public hearing, a district board of education shall adopt by affirmative vote of at least two-thirds of the full board membership a resolution that includes the following provisions:
  - i. Approval of the lease purchase concept;
  - ii. Approval of the projected maximum funding level;
  - iii. An assurance that annual lease payments and any operating expenses related to the agreement can be included within the school district's net budget spending growth limitations and will not result in the need for approval by the voters or board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities; and
  - iv. Authorization for the chief school administrator and board secretary to advertise and solicit proposals for the selection of a lessor and underwriter in connection with a lease-purchase agreement and to request Departmental approval of a lease-purchase agreement not including excess costs.
- (i) A district board of education having entered into a lease-purchase agreement for a capital project shall not terminate, materially change, or alter the approved lease-purchase agreement and accompanying legal documents without first obtaining the Division's written approval.
- (j) Upon completion of the transaction, the school district shall file with the Division an opinion from the school district's legal counsel stating the following:
  1. The transaction is in conformance with local, State and Federal law; and
  2. The parties hereto are properly organized; are in good standing; have the requisite power; and have been properly authorized to enter into the transaction.

- (k) Upon completion of a lease-purchase agreement, a district board of education shall file with the Division the Official Statement (Prospectus) of the transaction.

#### **6A:26-10.4 Contents of lease-purchase agreement**

- (a) Lease-purchase agreements shall contain the following provisions:
1. Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f);
  2. All construction contracts let by public school districts, developers, or owners of property used for school purposes shall be competitively bid pursuant N.J.S.A. 18A:20-4.2(f); and
  3. The district board of education may refinance the lease-purchase agreement or purchase the leased premises, by defeasance or otherwise, at any time during the lease period.

#### **6A:26-10.5 Contents of ground lease**

- (a) A ground lease shall contain the following provisions:
1. A legal description of the land;
  2. Lease of the land and the term of the lease;
  3. A warranty that the district board of education has good and marketable title to the land;
  4. A warranty that the land is properly zoned for school purposes including the proposed project;
  5. A warranty that the leased land and current land uses comply with all local, State, and Federal environmental laws;
  6. Termination; and

7. Use of land.

#### **6A:26-10.6 Approval procedures to refinance a lease-purchase agreement**

- (a) A district board of education proposing to refinance a lease-purchase agreement entered into at any time, including lease-purchase agreements in excess of five years, shall adopt a resolution requesting the Division's approval of the transaction.
- (b) A district board of education requesting approval to refinance a lease-purchase agreement shall submit to the Division on a Commissioner-prescribed form an application for refinancing. A district board of education shall also file with the Division the following documents:
  1. A copy of the district board of education resolution requesting approval of the refinancing and the board's vote;
  2. An opinion of counsel stating that the refinancing is permitted under the original or modified lease-purchase agreement and is in conformance with local, Federal, and State statutes;
  3. The list of persons and/or firms the district board of education contacted concerning the refinancing, the one selected and the specific reasons for the selection;
  4. A copy of the amended rent payment schedule;
  5. A schedule of sources and uses of the lease-purchase agreement refinancing proceeds;
  6. An analysis of the escrow account under the proposed refinancing;
  7. A copy of the documents in final draft form with amendments and modifications to the lease-purchase, ground lease, trustee or agent, and assignment agreements, if necessary, that effect the refinancing;

8. A copy of the updated insurance or other credit-enhancement commitment, modified to cover refinancing, if applicable;
  9. Proposed credit ratings on the issue and credit-rating agencies; and
  10. A detailed analysis of the percentage of net present value cost savings to the school district of at least three percent using the effective interest cost method as the discount rate based on an analysis of the total refunding issue that includes the following for each payment:
    - i. Date;
    - ii. Prior debt service;
    - iii. New debt service;
    - iv. Savings (prior debt service minus new debt service);
    - v. Present value factor;
    - vi. Present value savings (savings times present value factor);
    - vii. Cumulative present value savings; and
    - viii. Totals of items in (b)10ii through vii above.
- (c) After the receipt of the refinancing application on a Commissioner-prescribed form and related documents, the Division shall endorse the application if satisfied that the refinancing is in the school district's best interest.

#### **6A:26-10.7 Approval procedures for a defeasance of lease-purchase agreements**

- (a) A district board of education proposing to seek voter or board of school estimate approval for the defeasance of a lease-purchase agreement entered into at any time, including lease-purchase agreements in excess of five years, through the issuance of general-obligation bonds shall adopt a resolution requesting the Division's approval of the transaction.

- (b) A district board of education requesting approval for the defeasance of a lease-purchase entered into at any time, including lease-purchase agreements in excess of five years, shall submit to the Commissioner an application for defeasance on a Commissioner-prescribed form and the following documents:
1. A copy of the district board of education resolution requesting the Division's approval of the defeasance of the lease-purchase agreement through the issuance of general obligation bonds and the district board of education's vote;
  2. An opinion of counsel stating that the prepayment of the lease-purchase agreement is in conformance with local, State, and Federal statutes;
  3. A copy of the documents in final draft form with amendments and modification to the lease-purchase, ground lease, trustee or agent, and assignment agreements, if necessary, that effect the defeasance;
  4. A schedule of sources and uses of bond issue proceeds; and
  5. A detailed analysis of the percentage of net present value cost savings to the school district using the effective interest cost method as the discount rate based on an analysis of the total new bond issue to include the following for each payment:
    - i. Date;
    - ii. Prior debt service;
    - iii. New debt service;
    - iv. Savings (prior debt service minus new debt service);
    - v. Present value factor;
    - vi. Present value savings (savings times present value factor);
    - vii. Cumulative present value savings; and
    - viii. Totals of items in (b)5ii through vii above.

- (c) The application shall support a net present value cost savings and shall be reviewed strictly on the merits of the cost savings without consideration of any debt service aid to which the district board of education may be entitled.
- (d) After the receipt of the application for defeasance and related documents, the Division shall endorse the application, if the Division determines the defeasance of the lease-purchase agreement is in the school district's best interest. Approval shall be contingent upon board of school estimate approval or voter adoption of the specific ballot question, as applicable.

**6A:26-10.8 Lease-purchase agreements entered into prior to July 18, 2000**

- (a) Approved lease-purchase agreements in excess of five years duration shall be accorded the same accounting treatment as school bonds. The payments by a school district on such lease-purchase agreements shall be considered debt service and may be eligible for State debt service aid under EFCFA.
- (b) The provisions of N.J.A.C. 6A:26-10.6 and 10.7 shall apply to lease-purchase agreements entered into prior to July 18, 2000.
- (c) A district board of education having entered into a lease-purchase agreement prior to July 18, 2000 for a capital project shall not terminate, change, or alter the approved lease-purchase agreement and accompanying legal documents without first obtaining the Division's written consent.
- (d) Upon completion of a lease-purchase agreement entered into prior to July 18, 2000, a district board of education shall file with the Division the Official Statement (Prospectus) of the transaction.
- (e) A school district that entered into a lease-purchase agreement prior to July 18, 2000, and applies for a State support under EFCFA for any school facilities project relating to a site or school building subject to the lessor's lien under the lease-purchase agreement shall be

required to enter into an intercept agreement with the State and the lessor that provides the State shall have the right to withhold that portion of State support owed to the school district necessary to make timely payments under the lease-purchase and agent agreements if the school district fails to make timely payment of amounts owed under agreements. The State also shall have the right to apply the withheld State support to pay the school district's obligation, subject to available State appropriation. The Division's receipt of an intercept agreement executed by the school district and lessor, and acceptable to the Division, shall constitute a prior condition for the school district to receive State support under EFCFA for any school facilities project relating to a site or school facility subject to the lessor's lien under the lease-purchase agreement.

#### **6A:26-10.9 Approval of lease agreements for facilities to be used for school purposes**

Without authority first obtained from voters, the board of school estimate or the capital project review board, as appropriate, a school district may rent facilities to use for school purposes on a year-to-year basis or for up to five years in case of emergency. "Emergency" for the purposes of this section shall include an emergent condition or the circumstances that warrant emergency stabilization as defined in N.J.A.C. 6A:26-1.2.

#### **6A:26-10.10 Limitation on multiyear leases of facilities**

All multiyear leases of facilities, including one- or two-year extensions, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or shall contain an annual cancellation clause.

#### **6A:26-10.11 Public hearing for facility leases in excess of five years**

- (a) A district board of education shall conduct a minimum of one public hearing prior to adoption of a resolution endorsing a facility lease in excess of five years. All provisions

of the Open Public Meetings Act, N.J.S.A. 10:4-6 through 21, shall be followed for the public hearing. In addition, notice of the public hearing shall be published not less than seven days prior to the date fixed for each public hearing in at least one newspaper published in the school district, or circulating in the school district if no newspaper is published therein. The notice shall fix a date, place, and time for holding the public hearing and shall include a description of the proposed facilities to be leased, the estimated cost, and the proposed method of funding the lease.

- (b) The public hearing shall provide taxpayers and other interested persons an opportunity to present to the district board of education questions or other commentary with respect to the proposed lease, the estimated cost, and the proposed funding method.
- (c) After the public hearing, a district board of education shall adopt by affirmative vote of at least two-thirds of its full membership a resolution that includes the following provisions:
  - 1. Approval of the lease concept;
  - 2. Approval of the projected maximum funding level;
  - 3. An assurance that annual lease payments and any operating expenses related to the lease agreement can be included within the school district's net budget spending growth limitations and will not result in the need for approval by the voters, board of school estimate, or capital project review board as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities; and
  - 4. Authorization for the district board of education to request approval of an amendment of the LRF to reflect the leased facility and request any other approvals needed to enter into the lease.
- (d) In the case of an SDA district, the district board of education shall provide the Department with a copy of the proposed lease and a copy of detailed board minutes for the public hearing resolution and vote on the approval of the lease concept.



## **Subchapter 11. County Vocational School District Facilities Rehabilitation Fund**

### **6A:26-11.1 County vocational school district facilities rehabilitation fund**

Subject to appropriation and availability of funds, a county vocational school district may apply to the Commissioner for a maximum grant of \$500,000 to be matched dollar for dollar by the school district to fund health and safety school facilities rehabilitation projects. The grant and matching funds shall be maintained by the school district in a special revenue fund as certified by the district board of education and its chief financial officer and shall be subject to annual audit. A project funded through the grant fund shall not require the Commissioner's approval pursuant to N.J.S.A. 18A:7G-5 but shall meet all other requirements of EFCFA and this chapter pertaining to school facilities projects.

### **6A:26-11.2 Application for funds**

- (a) Any county vocational school district seeking a grant from the County Vocational School District Facilities Rehabilitation Fund shall apply to the Commissioner on a Commissioner-provided form. The application shall, at a minimum, contain the following information:
1. A description of the school facilities project to be undertaken with the funds;
  2. A schematic drawing of the project or, at the option of the school district, preliminary plans and specifications for the project to be funded;
  3. A delineation and description of each of the functional components of the project to be funded;
  4. The estimated cost to complete the project as determined by the school district on a form prescribed by the Commissioner; and
  5. Any additional information the Commissioner deems relevant for the project's review.

- (b) The Division shall review an application for funds. If the project conforms with the requirements of EFCFA and regulations for approval of school facilities projects, the Division shall notify the county vocational school district of the amount of any grant within 90 days of receiving a grant application.
- (c) Any county vocational school district that receives grant funding pursuant to N.J.S.A. 18A:7G-32 and N.J.A.C. 6A:26-11.1 shall not be eligible to receive State support pursuant to any other provision of EFCFA for a period of five years from the school district's receipt of the grant, except that the school district may receive debt service aid pursuant to N.J.S.A. 18A:7G-10; and any county vocational school district that receives aid under any provision of EFCFA other than N.J.S.A. 18A:7G-10 shall not receive a grant pursuant to this subsection for five years after approval of a project that is otherwise funded under EFCFA.

## **Subchapter 12. Safety Requirements for School Facilities**

### **6A:26-12.1 Facilities maintenance requirements**

All facilities and structures and parts thereof shall be maintained in a safe, healthy, and energy-efficient condition. All service equipment, means of egress, devices, and safeguards that are required by the UCC in a building or structure, when erected, altered, or repaired, shall be maintained in good working order.

### **6A:26-12.2 Policies and procedures for school facility operation**

- (a) District boards of education shall adopt written policies and procedures regarding the following:
  - 1. Safe and sanitary operation and maintenance of school facilities and grounds according to the provisions of this chapter;
  - 2. Supervision of pupil safety in school facilities that shall include:

- i. Safe storage and use of potentially hazardous materials on school property;
  - ii. Compliance with community right-to-know requirements;
  - iii. Prevention of accidents, panic, and fire; and
  - iv. Provision and maintenance of suitable and safe equipment;
3. Organization of school safety patrols pursuant to N.J.S.A. 18A:42-1, if the decision is made to organize safety patrols; and
  4. Prohibition of smoking in public school buildings pursuant to P.L. 1989, c.96.

### **6A:26-12.3 Health facilities, equipment and supplies**

District boards of education shall provide the necessary facilities, equipment, and supplies for the performance of the duties required under State law and rules by health services personnel.

### **6A:26-12.4 Safe drinking water**

- (a) The rules in this subchapter for the provision of safe drinking water shall apply to all New Jersey public school districts, charter schools, renaissance schools, jointure commissions, educational services commissions, approved private schools for students with disabilities acting under contract to provide educational services on behalf of New Jersey public school districts, State-funded early childcare facilities pursuant to N.J.A.C. 6A:13A, and receiving schools as defined by N.J.A.C. 6A:14-7.1(a). Throughout this subchapter, “district board of education” refers to the governing authority for all of the entities identified in this subsection, unless otherwise indicated.
- (b) District boards of education shall assure the availability of potable drinking water through sanitary means in school facilities or upon school grounds in accordance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and 6A:26-6, Planning and Construction Standards for School Facilities.

- (c) Testing of school drinking water quality shall be in accordance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and 6A:26-6, Planning and Construction Standards for School Facilities.
- (d) All district boards of education shall conduct lead sampling and analysis, as described in (d)1 and 2 below, in all drinking water outlets to which a student or staff member has, or may have, access, in each school facility, other facility, or temporary facility, as those terms are defined in this chapter. Any district board of education granted an extension of time to conduct initial testing beyond the July 13, 2017, deadline shall complete the initial testing no later than July 13, 2018. District boards of education that completed initial testing prior to July 13, 2017, shall perform follow-up testing in accordance with the schedule in (g) below.
1. Sampling shall be conducted in accordance with a lead sampling plan, which shall include:
    - i. A plumbing survey for each facility that identifies how water enters and flows through each facility, the types of plumbing materials used in the facility, such as the service line, piping, solder, fixtures, drinking water outlets where students or staff have or may have access, and point of use treatment, such as drinking water filters;
    - ii. The names and responsibilities of all individuals involved in sampling; and
    - iii. The following sampling procedures:
      - (1) Samples shall be taken after water has sat, undisturbed in the school pipes for at least eight hours but no more than 48 hours before the sample is taken.

- (A) 24-hour school facilities shall collect first-draw samples at drinking water outlets following a stagnation time that would likely result in the longest standing time;
  - (2) At least eight hours prior to sampling, signs shall be posted to indicate that water shall not be used and access to the buildings subject to the sampling shall be restricted to all but authorized staff members;
  - (3) Existing aerators, screens, and filters shall not be replaced or removed prior to or during sampling; and
  - (4) All samples shall be collected in pre-cleaned high-density polyethylene (HDPE) 250 milliliter (mL) wide-mouth single-use rigid sample containers that are properly labeled.
2. Analysis of samples shall be conducted as follows:
- i. Analysis shall be conducted by a certified laboratory to analyze for lead in drinking water;
  - ii. The laboratory shall use an approved analytical method pursuant to the Federal Safe Drinking Water Act at 40 CFR 141.23(k)(1); and
  - iii. Sample analysis shall be conducted in accordance with a Quality Assurance Project Plan (QAPP), which shall be signed by the district board of education, the certified laboratory, and the individual responsible for conducting sampling. The QAPP shall include the identification of analytical methods, chain of custody procedures, data validation and reporting processes, detection limits, reporting to three significant figures, field blanks, and quality control measures required by the certified method.

3. The Department, in consultation with the Department of Environmental Protection (DEP), will develop a technical guidance manual to assist district boards of education in complying with the sampling and analysis requirements of this subchapter.
- (e) The district board of education, or its designee, shall complete a review of final laboratory results within 72 hours of receipt. Within 24 hours after the district board of education, or its designee, has reviewed the final laboratory results, the district board of education shall:
1. Make the test results of all water samples publicly available at the school facility in accordance with (f) below and make the results from the most recent required Statewide testing available on the district board of education's website; and
  2. If any results exceed the permissible lead action level, provide written notification to the parents/guardians of all students attending the facility, facility staff, and the Department. This written notification shall also be posted on the district board of education's website and shall include a description of the following:
    - i. Measures taken by the district board of education, or its designee, to immediately end use of each drinking water outlet where water quality exceeds the permissible lead action level;
    - ii. Any additional remedial actions taken or planned by the district board of education;
    - iii. The measures taken to ensure that alternate drinking water has been made available to all students and staff members at the school(s) where the water outlet(s) is located; and
    - iv. Information regarding the health effects of lead.
- (f) The district board of education's test results of all water samples shall remain publicly available in accordance with the timeline established by the Department of the Treasury

in the [Records Retention Schedule under record series number 0021-0000](#), which is available at [https://www.nj.gov/treasury/revenue/rms/pdf/m700104\\_001.pdf](https://www.nj.gov/treasury/revenue/rms/pdf/m700104_001.pdf).

- (g) Notwithstanding the results or date of any prior testing, all district boards of education shall continue to test drinking water outlets as provided below in the designated Statewide required testing year, which shall be every third school year beginning with the 2021-2022 school year and subsequently occurring in the 2024-2025 school year:
1. By no later than June 30 of the designated Statewide required testing year, all district boards of education shall test all drinking water outlets. Sampling shall be prioritized, such that buildings and facilities that previously had outlets with results above the action level or identified in the plumbing profile as high risk for lead shall be sampled first in accordance with the sampling plan; and
  2. All district boards of education shall sample for lead after the replacement of any drinking water outlet or any other alteration to plumbing or service lines that may impact lead levels at the outlet.
- (h) If district boards of education test drinking water outlets for lead more frequently than the three-year cycle set forth at (g)1 above, the notification requirements set forth in (e) and (f) above shall apply.
1. District boards of education that test drinking water outlets more frequently in accordance with (h) above shall make the most recent results for each facility available on the district board of education's website.
- (i) All district boards of education shall submit to the Department by June 30 each year a statement of assurance that lead testing was completed in accordance with this section, that notifications were provided consistent with this section, and that alternate drinking water continues to be made available to all students and staff in accordance with this section.

- (j) District boards of education may request an exemption from the testing requirements set forth in (d) above if they can demonstrate that they do not use any drinking water outlets for consumption or food preparation in any of their facilities. District boards of education seeking an exemption pursuant to this provision shall submit an application to the Department documenting that no drinking water outlets are used in their facilities and the provisions for an alternative source of drinking water. A district board of education that receives an exemption from the Department from testing pursuant to this subsection shall make available for public inspection at the school facility and on the district board of education's website, if applicable, confirmation that the district board of education is exempt from testing. No later than June 30 of each Statewide required testing school year as set forth in (g) above, a district board of education shall either begin testing procedures in accordance with (g) above or reapply for an exemption under this subsection.
- (k) All district boards of education shall be eligible to be reimbursed for the water supply testing and analysis conducted pursuant to (g) above after July 1, 2021, as approved by the Department and subject to available funds. To be eligible to receive reimbursement, the district board of education shall complete and submit to the Department a reimbursement application on a form, or in a format, supplied by the Department. The Department will make the reimbursement application available on its website. Nonpublic schools that conducted testing in accordance with (g) above after July 1, 2021, may submit a reimbursement application to the Department, approval of which is subject to available funds. A school district that conducts additional testing in a year other than the Statewide required testing school year as set forth in (g) above shall not be eligible for reimbursement.
- (l) A district board of education's failure to comply with any requirement in this section may result in any of the following:



1. The district board of education's disqualification for reimbursement pursuant to (k) above;
2. The Department's initiation of an investigation by the Office of Fiscal Accountability and Compliance; and
3. The Commissioner's withholding of State aid pursuant to N.J.A.C. 6A:2-1.2.

#### **6A:26-12.5 Eye protection in schools**

- (a) Each district board of education shall require each student, staff member, and school visitor, including individuals present for evening adult-school programs, to wear appropriate eye protective devices while participating in educational activities and programs as defined in N.J.A.C. 6A:7-1.3 that use caustic or explosive chemicals or materials, hot liquids, or solids, or molten materials, or that engages in welding operations of any type, repairing, or servicing of vehicles, heat treatment or tempering of metals, the shaping of solid materials, laser-device operation and experimentation, or any similar process or activity is engaged in, exposure to which might have a tendency to cause damage to the eyes.
- (b) The term "appropriate eye protective device" shall include plain or prescription lenses provided the lenses and other portions of the device meet or exceed the prescribed specifications for the device. Specifications for appropriate eye protection for various activities shall meet or exceed standards described in (b)1 and 2 below. The standards, with all subsequent amendments and supplements, are hereby adopted as rules and incorporated herein by reference.
  1. American National Standard Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1989.

2. American National Standard Practice for the Safe Use of Lasers, ANSI Z136.1-1986 and eye protective procedures recommended by the manufacturer of the laser device.
- (c) The documents in (b)1 and 2 above are available for review at the Office of School Facilities, 200 River View Plaza, Trenton, New Jersey. The documents can be purchased from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.
- (d) Emergency eye wash fountains, or similar devices capable of a minimum 15 minutes continuous flow of eye-wash solution, shall be provided in classrooms, shops, laboratories, or other area where pupils or instructors are exposed to caustic materials that can cause damage to the eyes.
- (e) The following types of eye protective devices shall be used to fit the designated activities or processes:
1. Caustic or explosive - Goggles, flexible fitting, hooded ventilation; add plastic-window face shield for severe exposure;
  2. Dust-producing operations - Goggles, flexible fitting, hooded ventilation;
  3. Electric arc welding - Welding helmet in combination with spectacles with eye cup or semi- or flat-fold side shields;
  4. Oxyacetylene welding - Welding goggles, eye-cup type with tinted lenses; welding goggle, coverspec type with tinted lenses or tinted plate lenses;
  5. Hot liquids and gases - Goggles, flexible fitting, hooded ventilation; add plastic-window face shield for severe exposure;
  6. Hot solids - Clear or tinted goggles or spectacles with side shields;
  7. Molten materials - Clear or tinted goggles and plastic- or mesh-window face shield;

8. Heat treatment or tempering - Clear or tinted goggles or clear or tinted spectacles with side shields;
  9. Glare operations - Tinted goggles; tinted spectacles with side shields or welding goggles, eye cup or coverspec type with tinted lenses or tinted plate lenses;
  10. Shaping solid materials - Clear goggles, flexible or rigid body; clear spectacles with side shields; add plastic-window face shield for severe exposure;
  11. Laser device operation or experimentation - Appropriate for specific hazard;
  12. Vehicle repair or servicing - Clear goggles, flexible or rigid body; clear spectacles with side shields;
  13. Other potentially eye-hazardous processes or activities - Appropriate for specific hazard.
- (f) Each district board of education shall establish and implement a specific eye protective policy and program to assure:
1. No staff member, student or visitor shall be subjected to any hazardous environmental condition without appropriate eye protection;
  2. The detection of eye hazardous conditions shall be continuous;
  3. Eye protection devices shall be inspected regularly and adequately maintained;
  4. Shared eye protective devices shall be disinfected between uses by a method prescribed by the local school medical inspector;
  5. All eye protective devices shall meet or exceed the appropriate specifications for the various types of devices and suppliers of eye protective devices shall certify, in writing, that the devices meet or exceed said specifications;
  6. Specific policy and procedures shall be established to deal with individuals who refuse to abide by established eye-safety practices and procedures;
  7. The use of contact lenses shall be restricted in learning environments that entail exposure to chemical fumes, vapors, or splashes, intense heat, molten metals, or

highly particulate atmospheres. When permitted, contact lenses shall be worn only in conjunction with appropriate eye protective devices, and the lens wearer shall be identified for appropriate emergency care in eye hazardous learning environments;

8. All spectacle-type eye protective devices shall have side shields of the eye-cup, semi- or flat-fold type; and
  9. Pupils, staff members, or visitors wearing personal corrective eyewear shall be required to wear cover goggles or similar devices unless a competent authority can certify the personal eyewear meets or exceeds standards identified in (b) above.
- (g) Each school district shall provide annual training and appropriate supplies and equipment to all school personnel responsible for implementing the eye-safety policies and program. The training shall cover all aspects of eye protection in schools as described in (a) through (f) above.

### **Subchapter 13. (Reserved)**

### **Subchapter 14. Withholding of State Support for Non-Compliance**

#### **6A:26-14.1 Withholding of State support for non-compliance**

- (a) Pursuant to N.J.S.A. 18A:55-2, the Commissioner shall direct the State Treasurer to withhold funds payable by the State from any school district that fails to obey the law, or the rules or directions of the State Board or the Commissioner. "Funds payable by the State" include State support under EFCFA. A failure to obey the rules shall include non-compliance with this chapter. The non-compliance may:
1. Constitute a default under a grant agreement between the Development Authority and the school district for school districts receiving State support under N.J.S.A.

18A:7G-5 (preconstruction activities), 13(a), or 15. It also may subject the school district to Development Authority remedies for the default, including the reimbursement or withholding of State support under EFCFA. If the Development Authority refers the matter to the Department in lieu of withholding State support under EFCFA, the Department may upon review of the matter direct the State Treasurer to withhold funds payable by the State from the school district;

2. Result in reducing to zero the “M” factor in the debt-service-aid formula in N.J.A.C. 6A:26-3.8 pursuant to N.J.S.A.18A:7G-9.b(1) and (2) and/or subject the school district to a withholding of State support under EFCFA if the school district receives debt service aid under N.J.S.A. 18A:7G-9 or 10; or
  3. Subject a school district for which the Development Authority constructs the school facilities project to a withholding of funds payable by the State, including State support under EFCFA.
- (b) Pursuant to N.J.S.A. 18A:4-23, the Commissioner shall enforce these rules by any means permitted by law, including, but not limited to, issuing to the school district under N.J.A.C. 6A:3-3.1 an order to show cause why the reimbursement or withholding of State support should not be imposed.

### **Subchapter 15. (Reserved)**

### **Subchapter 16. Certified Educational Facilities Manager**

#### **6A:26-16.1 Certified educational facilities manager**

- (a) Effective September 1, 2002, no person shall be employed by a district board of education to supervise buildings and grounds unless he or she meets the criteria established in N.J.S.A. 18A:17-49 et seq.

- (b) An applicant for certification as an educational facilities manager shall submit to the Division documentation demonstrating compliance with one of the criteria in N.J.S.A. 18A:17-49 et seq. After verifying compliance with one of the criteria, the Division shall issue to the applicant an authorization to serve as an educational facilities manager and shall add the applicant to the Division's master list of certified educational facilities managers.
- (c) When a vacancy occurs in a position in which the duties of a supervisor of buildings and grounds are performed, a district board of education may select a person who is not a certified educational facilities manager to perform the duties of a supervisor of buildings and grounds for a period not to exceed two years commencing on the vacancy date. At the expiration of the two-year period, the district board of education shall employ to supervise its buildings and grounds a person certified by the Division as an educational facilities manager.

### **Subchapter 17. Appeals**

#### **6A:26-17.1 Appeals of Commissioner determinations**

- (a) All appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the Appellate Division of the Superior Court.
- (b) Appeals arising from decisions of the Department's Division of Administration and Finance may be requested in writing, and an opportunity given for an informal hearing before the Assistant Commissioner or other designated official. A written request for an informal hearing shall be made within 30 days of the school district's receipt of the Division's decision.
- (c) In the event of an adverse decision after an informal hearing under (b) above, or if a school district determines not to seek an informal hearing, a school district may request, within 90 days of the decision of the Assistant Commissioner or the Division's

determination if an informal hearing is not sought, a formal hearing pursuant to N.J.S.A. 18A:6-9 and 18A:6-24 and N.J.A.C. 6A:3, Controversies and Disputes.

**Subchapter 18. Section 15 Grants for Regular Operating Districts, Including County  
Vocational School Districts**

**6A:26-18.1 Eligibility for section 15 grants for RODs, not including county vocational  
school districts**

- (a) Any ROD applying for a section 15 grant shall conform at a minimum with the requirements of this subchapter, as applicable.
- (b) Any eligibility determination for a section 15 grant shall be subject to the availability of funds.
- (c) If the school facilities project or a portion of it is eligible for State support, the ROD may request State debt service aid pursuant to N.J.S.A. 18A:7G-9 in lieu of a section 15 grant.
- (d) All of the following conditions shall apply regarding eligibility for a section 15 grant:
  - 1. A ROD shall have an approved LRFP, pursuant to N.J.A.C. 6A:26-2.1(b).
  - 2. The school facilities project has been approved pursuant to N.J.A.C. 6A:26-3.3 and has no excess costs.
  - 3. The proposed school facilities project shall fall within one or more of the priority project categories described below.
    - i. Level 1 are school facilities projects that address the most critical operational building needs, including health and safety issues, and program mandates. The projects shall consist of one or more of the following:
      - (1) Upgrades to essential building systems;
      - (2) Repair or replacement of a building skin element;
      - (3) Fire or life safety building code issues;

- (4) Upgrades consistent with the Americans with Disabilities Act;
  - (5) Hazardous materials abatement;
  - (6) Security and communication systems;
  - (7) Site drainage to correct existing conditions;
  - (8) Upgrades to existing elementary school playgrounds as per N.J.A.C. 6A:26-3.2(a)5;
  - (9) Renovated or up to a maximum of six new early childhood classrooms; or
  - (10) Special population needs.
- ii. Level 2 are school facilities projects that address the rehabilitation of existing buildings, the easing of overcrowding, and/or improving the quality of existing instructional spaces. The projects shall consist of one or more of the following:
- (1) Repair or replacement of existing building systems and components not included in Level 1;
  - (2) Existing site upgrades excluding upgrades to athletic fields or tracks; or
  - (3) Renovation or new construction of capacity-generating classrooms to address overcrowding or a substandard condition.
- iii. Level 3 are school facilities projects that are either new construction or rehabilitation that also qualifies as reconstruction. For purposes of this subsection, “reconstruction” means reconstruction as defined in the UCC, N.J.A.C. 5:23-6.3. Reconstruction and/or new construction projects shall be evaluated based upon the following attributes:
- (1) Districtwide unhoused students and overcrowding;
  - (2) Early childhood program accommodations;



- (3) Compliance with facilities efficiency standards;
  - (4) Use of temporary or leased facilities;
  - (5) Building age;
  - (6) Project scope; and
  - (7) Prior section 15 funding.
- (e) If the school facilities project fits into more than one of the priority project categories, the entire school facilities project shall be deemed to fall within the lowest category for which it qualifies.
- (f) If a ROD submits more than one application for a section 15 grant for a school facilities project that includes new construction, all applications for section 15 grants shall not have any excess costs to qualify for a section 15 grant.
- (g) A ROD shall be eligible to receive a section 15 grant for a school facilities project involving the replacement of a building system that was all or part of a school facilities project that previously received State support, provided the building system to be replaced has approached or exceeded its life expectancy. The school district shall provide documentation concerning the building system's life expectancy, including, but not limited to, the original installation date or the building system manufacturer's warranty.
- (h) A ROD may request on a Department-supplied form a preliminary ROD grant eligibility determination for the scope of work of a school facilities project.
- (i) RODs may take one of the following actions, as applicable, for a school facilities project that has been submitted to the Department for approval or has received approval from the Department prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a):
1. A ROD that has submitted to the Office of School Facilities an application for approval of a school facilities project but has not yet received project approval may submit an application for a section 15 grant pursuant to this subchapter in

accordance with the grant deadlines set forth in this subchapter.

2. If a ROD plans to submit an application for a section 15 grant pursuant to this subchapter for a project that previously was reviewed pursuant to N.J.A.C. 6A:26-3.12 as an “other capital” project, the ROD shall withdraw from the Office of School Facilities the prior application and resubmit a new one.
  3. If a ROD plans to submit a school facilities project for a section 15 grant pursuant to this subchapter for a school facilities project that previously was approved for State debt service aid and has accepted the preliminary eligible costs as the final eligible costs prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a), the ROD shall withdraw from the Office of School Facilities the prior application and resubmit a new one.
  4. If a ROD plans to submit a school facilities project for a section 15 grant pursuant to this subchapter for a school facilities project that previously was approved for State debt service aid but has not accepted the preliminary eligible costs as the final eligible costs prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a), the ROD may request that the school facilities project be considered for a section 15 grant instead of State debt service aid.
  5. If a school facilities project is cancelled pursuant to this subsection and an application for a section 15 grant for the project is then submitted, the school facilities project must meet the eligibility requirements and deadlines set forth in this subchapter.
  6. Any submission by a ROD for a section 15 grant pursuant to this section shall include a resolution from the school board of the district requesting the cancellation of the prior application and submission of a new application for a section 15 grant for the specified school facilities project.
- (j) A school facilities project or other capital project shall not be eligible for a section 15

grant pursuant to this subchapter where:

1. A construction contract has been awarded in connection with the school facilities project or other capital project; or
2. The local share for the school facilities project or other capital project has already been approved pursuant to N.J.A.C. 6A:26-3.7.

**6A:26-18.2 Funding options for school facilities project in RODs, other than county vocational school districts, that are not awarded a section 15 grant**

- (a) If the school facilities project met the criteria for inclusion in one of the three priority project categories but was not awarded funding in a grant cycle, the ROD may resubmit in a subsequent grant cycle an application for a section 15 grant for the school facilities project.
- (b) If the school facilities project did not fall into one of the three priority project categories or contained work that prevented its placement in a higher priority project category, and was not awarded funding, the ROD may revise and resubmit in a subsequent grant cycle an application for a section 15 grant for the school facilities project.
- (c) If a ROD does not obtain a section 15 grant for the school facilities project and also does not want State debt service aid, the ROD may instruct the Office of School Facilities to consider its application for the school facilities project as an other capital project and fully fund the project without State support.

**6A:26-18.3 Deadlines for submission of section 15 grant applications for RODs, not including county vocational school districts**

- (a) The Commissioner annually shall determine the amount of funds allocated to section 15 grants for the year, and shall notify the RODs regarding the amount of funds allocated, and the date on which the Commissioner shall begin to receive applications for the

funding.

- (b) Applications for section 15 grants shall be submitted by school districts within 90 days of the date upon which the Commissioner indicates applications may be filed.
- (c) Within any grant cycle, section 15 grants shall be awarded first to school facilities projects that fall within Level 1. If the total amount of section 15 grants approved in any grant cycle for Level 1 school facilities projects is less than the amount of the annual allocation, section 15 grants shall be awarded to school facilities projects that fall within Level 2. If the total amount of section 15 grants approved in any grant cycle for Level 2 school facilities projects is less than the amount of the annual allocation, section 15 grants shall be awarded to school facilities projects that fall within Level 3. If the total amount of section 15 grants approved in any grant cycle is less than the amount allocated by the Commissioner for grant cycle, the amount remaining shall be added to the allocation for the next grant cycle.
- (d) A ROD shall obtain the local share pursuant to N.J.A.C. 6A:26-3.7 within 18 months of notification by the Department of the final eligible costs. If the local share is not obtained within such time period, the award of a section 15 grant shall be rescinded. The ROD may resubmit a grant application for reconsideration in a future grant cycle.
- (e) Changes to a school facilities project after notification of the final eligible costs shall be submitted to the Department for its approval. The school facilities project shall meet the eligibility requirements to continue to be eligible for the section 15 grant.

**6A:26-18.4 Section 15 grants for county vocational school district school facilities projects**

- (a) A county vocational school district school facilities project shall be eligible for a section 15 grant provided the school district has an approved LRFP pursuant to N.J.A.C. 6A:26-2.1(b), there are no excess costs, and the project falls within either the Level 1 or Level 2 priority project categories described as follows:

1. Level 1 county vocational school district school facilities projects.
  - i. Level 1 county vocational school district school facilities projects address the most critical operational building needs, including health and safety issues. The projects must consist of one or more of the following:
    - (1) Capital maintenance projects (maintenance intended to extend the useful life of a school facility, including upgrades and replacement of building systems such as structure, enclosure, mechanical, plumbing, and electrical systems, and can be considered to constitute or be part of a school facilities project);
    - (2) Projects that address handicapped accessibility, including site and building access, toilet room renovations, or program expansion or educational adequacy for special population needs;
    - (3) Building code issues; or
    - (4) Technology infrastructure for classroom instruction in accordance with the Department's Technology Plan, not including equipment.
2. Level 2 county vocational school district school facilities projects.
  - i. Level 2 county vocational school district school facilities projects must consist of one or more of the following:
    - (1) Upgrades to existing vocational instructional space to meet certification requirements;
    - (2) Renovations to existing vocational instructional space to support new programs approved by the Office of Career and Technical Education; or
    - (3) Additions for existing vocational instructional space to meet industry certification standards.

ii. Level 2 projects shall be evaluated based upon attributes that include, but are not limited to, the following:

- (1) Industry certification requirements or standards;
- (2) Gap analysis between existing facilities and industry requirements or standards;
- (3) Enrollment or anticipated enrollment;
- (4) Priority of the related career cluster in the State and local approved Carl D. Perkins Career and Technical Education five-year plan;  
and
- (5) Labor market demand.

(b) Section 15 grants shall be allocated to school facilities projects in the county vocational school districts that fall first within Level 1 and then Level 2 in the following order of priority until the entire allocation has been awarded:

1. County vocational school districts that received no State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects. If the total amount requested by county vocational school districts in this category exceeds the amount available, the State share of the preliminary eligible costs approved shall be adjusted on a pro rata basis calculated by multiplying the eligible State share by the ratio of the available funds divided by the total eligible State share. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.
2. County vocational school districts that received less than \$1,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond

proceeds originally allocated for the State share of county vocational school district school facilities projects. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.

3. County vocational school districts that received greater than \$1,000,000 but less than \$5,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.
4. County vocational school districts that received greater than \$5,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects.
5. If the entire \$50 million available for school facilities projects in county vocational school districts has not been allocated pursuant to (c)1 through 4 above, additional allocations shall be made based on the same order of funding indicated in (c)1 through 4 above, and on the total of new funding received from the allocation and funding received from the original allocation.

- (c) If a school facilities project has been previously approved by the Department and the county vocational school district would like it to be considered for section 15 grant funding, one of the following options may be selected based on the type of project approval:

1. If the project was approved as an other capital project, the county vocational school district may cancel the project application and resubmit to the Department a new project application in accordance with the grant deadlines established pursuant to N.J.A.C. 6A:26-18.3(a) and (b).
  2. If the project was approved for State debt service aid, two options shall be available:
    - i. If the county vocational school district has accepted the preliminary eligible costs as the final eligible costs, it may cancel the project and submit to the Department a new project application.
    - ii. If the county vocational school district has not accepted the preliminary eligible costs as the final eligible costs, it may request the school facilities project to be considered for a section 15 grant.
  3. All cancellation requests and resubmissions shall include a resolution from the county board of chosen freeholders requesting the cancellation and resubmission of the specified project and shall meet the grant application deadlines established pursuant to N.J.A.C. 6A:26-18.3(a) and (b).
- (d) If a county vocational school district elects to cancel a project and apply for a section 15 grant, the school facilities project shall meet the eligibility requirements listed in (a) above.
- (e) If a school facilities project in a county vocational school district does not receive section 15 grant funding, the county vocational school district shall have one of the options listed below, depending upon the type of school facilities project.
1. If the proposed school facilities project is not included in Level 1 or Level 2 project priority categories per (a) above, the county vocational school district may revise and resubmit the school facilities project.



2. If the school facilities project has eligible costs for State support, the county vocational school district may request State debt service aid instead of a section 15 grant pursuant to N.J.S.A.18A:7G-9.
3. If the county vocational school district does not want State debt service aid, it may revise and resubmit an application for an other capital project pursuant to N.J.A.C. 6A:26-3.1(b) and for full funding without State support.

## **Subchapter 19. Management of A School Facilities Project by A Schools Development**

### **Authority (SDA) District**

#### **6A:26-19.1 Purpose**

The rules in this subchapter are adopted to implement subsection 13.e(1) of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, as amended by section 24 of P.L. 2007, c. 137, to set forth the requirements that a Schools Development Authority district must satisfy to be considered eligible by the Development Authority to manage a school facilities project or projects. N.J.S.A. 18A:7G-13, as amended, requires the Commissioner, in making this determination to consider the school district's fiscal integrity and operations, the school district's performance in each of the five key components of school district effectiveness under Quality Single Accountability Continuum (QSAC), N.J.S.A. 18A:7A-10 et seq.; N.J.A.C. 6A:30; and other relevant factors.

#### **6A:26-19.2 Determination of eligibility by the Commissioner**

- (a) An SDA district, upon authorization by its district board of education, may request in writing that the Commissioner determine whether it has satisfied the requirements necessary to be considered eligible by the Development Authority to manage its own school facility project(s) pursuant to N.J.S.A. 18A:7G-13.e. The school district's written request shall include:

1. A resolution or certified minutes of the district board of education authorizing the request;
  2. A description of the SDA district personnel who will be managing the school facilities project(s), including the individual(s)' title, certification held, and minimum experience in managing projects of similar scope and complexity to the projects for which the school district might be eligible; and
  3. A statement that the school district has not received an adverse opinion or a disclaimer of opinion by its independent audit in its annual audit required pursuant to N.J.S.A. 18A:23-1 for the school year prior to the request for a determination of eligibility.
- (b) The Commissioner shall determine whether an SDA district that submitted a request pursuant to (a) above is eligible to be considered by the Development Authority to manage a school facilities project(s). The determination shall be based upon review of the school district's submission of the items in (a) above and its performance in each of the five key components of school district effectiveness under QSAC in accordance with N.J.S.A. 18A:7A-10 at the time of the application, and other relevant factors as set forth in this subchapter.
1. To be eligible for consideration by the Development Authority to manage a school facilities project(s), the SDA district shall attain the high-performing school district designation for QSAC as defined in N.J.A.C. 6A:30-1.1.
  2. In determining whether an SDA district is eligible to be considered by the SDA to manage a school facility project or projects, the Commissioner may also consider whether the district meets the criteria to have a fiscal monitor appointed to the district pursuant to N.J.S.A. 18A:7A-55.
- (c) A school district determined eligible by the Commissioner for consideration by the Development Authority to manage a school facilities project(s) shall be presumed to be

eligible during the intervening years between QSAC reviews. If the Commissioner orders a comprehensive review pursuant to N.J.A.C. 6A:30-3.1, the Commissioner may re-evaluate the school district's continued ability to manage school facilities projects.

### **6A:26-19.3 Notification of SDA districts**

- (a) The Commissioner shall notify the school district regarding the results of the eligibility determination. If determined eligible, the Department shall notify SDA that the school district was determined eligible to be considered by the Development Authority to manage a schools facilities project(s).
- (b) A school district that the Commissioner determines to be ineligible for consideration by the Development Authority to manage a school facilities project may request that the Commissioner review its eligibility determination upon the school district satisfying the requirements described in N.J.A.C. 6A:26-19.2.
- (c) If the Commissioner orders a comprehensive review pursuant to N.J.A.C. 6A:30-3.1 of any school district previously found eligible to manage a school facilities project, and finds that the school district is no longer able to manage school facilities projects, the Commissioner shall notify the Development Authority that the school district has lost its eligibility based on the Commissioner's assessment as per N.J.A.C. 6A:30-3.1. The Commissioner may rescind at any time a school district's eligibility determination if circumstances arise such that the school district no longer meets the eligibility requirements.

### **6A:26-19.4 Limitation of the subchapter's applicability**

This subchapter shall not apply to any school facilities project in an SDA district under the provisions of N.J.S.A. 18A:7G-13.a.

## **Subchapter 20. Comprehensive Maintenance Plans**

### **6A:26-20.1 Purpose**

The rules are intended to implement the provisions of EFCFA, specifically N.J.S.A. 18A:7G-3, 9.b(3), and 13.d, which require the Commissioner to promulgate rules requiring school districts to have comprehensive maintenance plans for school facilities and to make the appropriate investment in the maintenance of school facilities.

### **6A:26-20.2 Scope**

- (a) The rules in this subchapter shall apply to every school district that owns school facilities or operates school facilities owned by another party, when the operating school district is responsible for maintenance of the school facilities.
- (b) Each school district that operates school facilities owned by other school districts shall include the school facilities in the operating school district's comprehensive maintenance plan, and shall forward a copy of the comprehensive maintenance plan to the owning school district.

### **6A:26-20.3 Required maintenance activities**

- (a) Required maintenance activities shall include, but are not limited to, the following:
  - 1. Periodic inspection, testing, and certification of building systems or components required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
  - 2. Periodic service required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;

3. Periodic replacement of consumable parts required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
  4. Repairs or localized replacements of system components resulting from breakage, misuse, or vandalism;
  5. Refinishing of interior floors and walls, including preparation, stripping, painting, and refinishing;
  6. Consulting services needed to determine required maintenance; and
  7. Tests to monitor indoor air quality.
- (b) Each school district shall determine the required maintenance activities to reasonably maintain each school facility in the school district, and shall report the activities in its annual comprehensive maintenance plan pursuant to N.J.A.C. 6A:26-20.5.

#### **6A:26-20.4 Required maintenance expenditures**

- (a) Expenditures for required maintenance activities set forth in N.J.A.C. 6A:26-20.3 shall qualify as investments in maintenance for purposes of calculating the required maintenance expenditure in (d) and (e) below, the annual required maintenance budget amount pursuant to N.J.A.C. 6A:26-20.8, and the maintenance factor (M) in N.J.S.A. 18A:7G-9.
- (b) Expenditures that qualify as required maintenance include supplies and materials, contracted labor, and salaries of school district employees who are exclusively dedicated to the performance of required maintenance activities or for the payment of contracts for required maintenance.
1. When school district personnel who are not exclusively dedicated to the performance of required maintenance activities perform required maintenance activities, school districts may credit that portion of the salaries of such personnel

to required maintenance expenditures where task-specific documentation of such activities is available and subject to audit.

- (c) School districts shall maintain their accounting records for required maintenance at the school-facility level and report the final expenditures by school facility in the school district's comprehensive annual financial report. School districts shall have available the expenditure records, detailed by school facility, for verification by the school district auditor.
- (d) Beginning in the fourth year after occupancy of a school facility that was funded as a school facilities project under EFCFA, the required maintenance expenditure shall be equal to or exceed 0.2 percent of the related school facility's replacement cost per year.
- (e) For existing school facilities for which a school district seeks State facilities aid pursuant to EFCFA for rehabilitation or alteration, the required maintenance expenditure shall be equal to or exceed two percent of its replacement cost over the previous 10 years.

**6A:26-20.5 Requirements for comprehensive maintenance plans**

- (a) Each school district shall develop a comprehensive maintenance plan to document prior-year required maintenance activities and expenditures, and the school district's planned required maintenance activities and budgeted costs for the filing year and one subsequent year. The plan shall incorporate the requirements of N.J.A.C. 6A:26-3.9(h) or 3.10(c), as applicable. The plan shall not include activities for capital maintenance or routine maintenance.
  - 1. The comprehensive maintenance plan shall be submitted to the executive county superintendent by November 15 of every school year accompanied by a district board of education resolution approving the submission of the plan.

- (b) Each school facility in the school district shall be included in the comprehensive maintenance plan. Other facilities shall not be included in the comprehensive maintenance plan. However, school districts are encouraged to maintain other facilities.
- (c) The comprehensive maintenance plan shall contain the following information:
1. For the year prior to the filing year, a list of the completed maintenance activities for each school facility that corresponds to the actual expenditure for each school facility as reported in the school district's most recent comprehensive annual financial report (CAFR) on the schedule of required maintenance expenditures. A copy of the CAFR's schedules of required maintenance expenditures shall be attached to the activities list.
    - i. The expenditures for required maintenance activities for the years prior to the filing year shall be reported by school facility in the school district;
  2. A worksheet in a Commissioner-provided format of total expenditures for required maintenance by school facility for 10 years prior to the filing year, compared to each school facility's required maintenance expenditure amount under N.J.A.C. 6A:26-20.4(d) and (e), as applicable;
  3. For the filing year, the required maintenance activities planned for each school facility and estimated costs included in the filing-year budget;
  4. For the year subsequent to the filing year:
    - i. The required maintenance activities planned for each school facility and estimated costs; and
    - ii. The required annual maintenance budget amount for each school facility pursuant to N.J.A.C. 6A:26-20.8;
  5. Asbestos abatement activities planned for the year, in conformance with the school district's asbestos management plan pursuant to Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §§ 2641 et seq.;

6. A schedule for required radon testing for each school facility specifying the spaces to be tested every five years pursuant to N.J.S.A. 18A:20-40 and safe drinking-water testing per N.J.A.C. 7:10; and
7. A plan to correct deficiencies identified in the approved LRFP regarding substandard spaces, temporary classroom units, and dual-use spaces approved by the executive county superintendent for use in the school district pursuant to N.J.A.C. 6A:26-8.1(d).

#### **6A:26-20.6 Submission and review of comprehensive maintenance plans**

- (a) The comprehensive maintenance plans shall be submitted to the executive county superintendent by district board of education resolution every school year.
- (b) The district board of education resolution shall include a certification that the comprehensive maintenance plan:
  1. Is complete and in compliance with this chapter; and
  2. Includes activities and expenditures for each school facility that qualify as required maintenance pursuant to N.J.A.C. 6A:26-20.3, are reasonable to ensure the facilities are kept open and safe for use or in their original condition, and maintain the validity of warranties.
- (c) The executive county superintendent shall notify a school district if a comprehensive maintenance plan is found to be deficient based upon the standards set forth in this chapter. In response to the notification, the school district shall submit to the executive county superintendent a revised comprehensive maintenance plan that addresses the identified deficiencies. The revised comprehensive maintenance plan shall be submitted within 30 days from the date of notification. The plan shall be deemed approved if a school district does not receive notification from the executive county superintendent within 90 days from submission date.



- (d) The executive county superintendent shall review the implementation of the comprehensive maintenance plans in each school district at the time of cyclical evaluations of the school district pursuant to N.J.S.A. 18A:33-1 et seq. and N.J.A.C. 6A:30-2 to ensure the plan addresses required maintenance activities and the reported activities actually occurred.

**6A:26-20.7 Requirements for a maintenance package for newly completed school facilities projects**

- (a) As a condition for the completion of a school facilities project, the school district shall obtain from the architect or engineer, or the Development Authority in the case of an SDA project, a certification that the contractor for the school facilities project has provided a maintenance package containing all of the following:
1. Manufacturer's warranties;
  2. Owner's and training manuals;
  3. Required maintenance and testing instructions; and
  4. A summary of (a)1 through 3 above.
- (b) The maintenance package shall cover the useful life of the school facilities project and be incorporated into the school district's comprehensive maintenance plan.
- (c) At the completion of a school facilities project, the school district shall certify in writing to the Office of School Facilities that the architect, engineer, or contractor provided all of the required items listed in (a) above to close out the school facilities project.

**6A:26-20.8 Required maintenance budget amount**

- (a) The required annual maintenance budget amount for each school district, as reported in its comprehensive maintenance plan, shall be included in the school district's annual

budget certified for taxes in the required maintenance line-item accounts and/or as a deposit into the maintenance reserve in accordance with N.J.A.C. 6A:23A-14.2.

(b) The required annual maintenance budget amount shall be calculated by totaling the sum of the replacement cost as of the current year for each school facility multiplied by 0.002 and shall correspond to the amount reported in the most recent comprehensive maintenance plan submitted pursuant to N.J.A.C. 6A:26-20.6.

1. The required annual budget amount may be adjusted up or down, with the executive county superintendent's approval, based upon prior-year expenditures to ensure an overall expenditure of two percent on required maintenance per school facility over 10 years.

2. The replacement cost of the current year of a school facility shall be calculated by multiplying the area cost allowance by the current gross square footage of the building.

(c) If a school district does not annually include in the budget certified for taxes the required amount calculated pursuant to this section, the executive county superintendent shall not approve the school district's budget unless he or she determines that the school district may budget less than the full amount as follows:

1. If a school district determines it cannot budget the required amount, the school district shall submit to the executive county superintendent along with its budget acceptable proof of its inability to budget the required amount. The proof shall be accompanied by a plan to ensure that the required two percent will be expended over 10 years pursuant to EFCFA and this chapter.

i. If the executive county superintendent concurs with the school district's explanation of its inability to budget the full amount and approves its plan, the school district may budget less than the full amount as approved. The

executive county superintendent shall not reject the school district's budget on this ground.

- ii. If the executive county superintendent does not concur with the school district's explanation of its inability to budget the full amount or does not approve of its plan, the school district shall budget the full amount. The executive county superintendent shall not approve a budget that does not comply with this section.

#### **6A:26-20.9 The maintenance factor in State debt service aid**

(a) State debt service aid shall be calculated pursuant to N.J.A.C. 6A:26-3.8. The Maintenance Factor "M," pursuant to N.J.A.C. 6A:26-3.8(a), shall be 1.0 except when one of the following conditions applies, in which case the maintenance factor shall be as specified:

1. The maintenance factor for aid for reconstruction, remodeling, alteration, modernization, renovation, or repair, or for an addition to a school facility, shall be zero for all school facilities projects for which the school district fails to demonstrate that over the 10 years preceding issuance of the school bonds it incurred a net investment in maintenance of the related school facility of at least two percent of the replacement cost of the school facility, pursuant to N.J.S.A. 18A:7G-7.b and N.J.A.C. 6A:26A-4.1, using the area cost allowance of the year 10 years preceding the year in which the school bonds are issued; or
2. For new construction, additions, and school facilities aided under N.J.S.A. 18A:7G-7.b supported by financing issued for projects approved by the Commissioner after July 18, 2000, beginning in the fourth year after occupancy of the school facility, the maintenance factor shall be reduced according to the schedule in (b) below for all school facilities projects for which the school district

fails to demonstrate in the prior fiscal year an investment in maintenance of the related school facility of at least 0.002 percent of the replacement cost of the school facility, determined pursuant to N.J.S.A. 18A:7G-7.b and N.J.A.C. 6A:26-20.8.

- (b) A school district's failure to make the required expenditures for maintenance for existing or new facilities pursuant to (a) above shall result in a Maintenance Factor (M) of less than one, and shall reduce debt service aid as follows:

*Table 3 Maintenance Factor (MF)*

Annual Maintenance Percentage	Maintenance Factor (M)
.199 percent to .151 percent	75 percent
.150 percent to .100 percent	50 percent
Less than .100 percent	Zero