



12. Justin M. Siesta, Principal  
Windsor Bergen Academy
13. Pamela Volpe, CFO  
Summit Speech School
14. Mary Anne McStravick, School business administrator  
New Roads School of New Jersey Inc.
15. Paula Pine, Vice President of Finance  
Durand Inc.
16. Jerry Dougherty, Executive Director  
Oakwood School
17. Liliana Falvo-Broselli, Teacher  
The Newgrange Schools
18. Mary Ellen Graham, Executive Director  
Pinelands Learning Center
19. Dr. Dennis P. McCarthy, Director  
North Hudson Academy
20. Ronald Lieberman, Principal  
Banyan Elementary
21. Michael Somers, Director  
Chapel Hill Academy
22. Regina Irwin, Assistant Director  
Hampton Academy
23. Jamie Wessner, Speech language pathologist  
ECLC of New Jersey
24. Susan Lafferty, Executive Director  
Archway Programs
25. Jamie Willard, Teacher  
ECLC of New Jersey
26. Carol Jackson, Accounting manager  
Princeton Child Development Institute
27. Denise Harrigan, Administrative assistant  
The Laurel School of Princeton
28. Patricia Walters-DiGiaimo, Assistant Principal  
Banyan Elementary School
29. Ryan Kimmins, Director

- Honor Ridge Academy
30. Stephen Kuwent  
Homestead School
  31. Rachel Herrington, Executive Director  
North Jersey Elks Developmental Disabilities Agency
  32. Dr. Maura L. Roberts, Executive Director  
Mary A. Dobbins School and Woods School System of Care
  33. Elizabeth Favata  
ECLC of New Jersey
  34. George M. Murn III
  35. Bindu M. Gottlieb
  36. Victoria Gavin  
Windsor Bergen Academy
  37. Tamara Bernard, Parent
  38. Brianna Periu, Teacher  
Windsor Bergen Academy
  39. Christine Higgins  
Windsor Bergen Academy
  40. Andrea Capelli, Teacher  
ECLC of New Jersey
  41. Linda Ruggero  
Windsor Bergen Academy
  42. Jon Ellis  
Windsor Bergen Academy
  43. Nancy Di Salvo, School psychologist  
Banyan Elementary School
  44. Najat Rosario, School social worker  
Windsor Bergen Academy
  45. Taras Jones  
Windsor Bergen Academy
  46. Nancy Silverberg, School nurse  
The Laurel Education Group
  47. Lisa McConagly, Supervisor  
Chancellor Academy

48. Taryn Jacobi, Teacher  
ECLC of New Jersey
49. Melissa Borrello  
ECLC of New Jersey
50. Kelly Loeffler, R.N.  
Windsor Bergen Academy
51. Rachel Chan, CEO  
Kingsway Learning Center and Services
52. Sarita Despradel
53. Jovanna Beardsworth, BCBA  
YALE School Earleton
54. Annette Hockenjos, Executive Director  
New Roads School of New Jersey Inc.
55. Barbara Chichele, Supervisor of Curriculum and Instruction  
Windsor Bergen Academy
56. Kaylyn Butynes, School counselor  
Windsor Bergen Academy
57. Nancy Periu, School secretary  
Windsor Bergen Academy
58. Jamilah Asfour  
Windsor Bergen Academy
59. Meghan Ferrara
60. Jodi Coates, Executive Director  
HollyDELL School and Adult Programs
61. Jeanne Whalen, Board Chairperson  
Kingsway Learning Center
62. Anthony Lucibello, Executive Director  
Northwest Essex Community Healthcare Network
63. Sandra Coy, Parent
64. Michele McCloskey, Executive Director/Principal  
Archbishop Damiano School
65. Paul W. Houser, Executive Director/Principal  
Hampton Academy

66. Lori Gucia, Paraprofessional  
Hampton Academy
67. Susan Fanaras
68. Michael Murray, Parent
69. Richard Murphy
70. Wanda Leeds
71. Linda Melloy  
Princeton Child Development Institute
72. Gloria Katz  
Windsor Bergen Academy
73. Lisa Canino  
Windsor Bergen Academy
74. Carina Mistrette
75. Peter Robinson
76. Kristen Johannessen, Teacher
77. Dana Cucolo, Parent/Paraprofessional
78. Anthony Jiménez Mendieta
79. Jamillah Fryar, Parent
80. Michael T. Byrne, Parent and Board of Directors member  
Kingsway Learning Center
81. Mr. and Mrs. Gyori
82. Dana Theresa Fritzky, Principal  
The Calais School
83. John Cohrs, Executive Director  
The Calais School
84. Sara Duffin
85. Paul T. Vitaletti, Assistant Director  
The Calais School
86. Cara Moccio
87. Stephanie Sette

88. Robert Melloy, Parent
89. Colleen Rowan Valentino, Principal  
Bancroft School at Voorhees Pediatric Facility
90. Dr. Patrick Kiernan, Executive Director/Superintendent  
Brookfield Schools
91. Taiwo Odubote, School business administrator  
The Bancroft School Network
92. Jessica Guarino, Parent
93. David Feinhals, Executive Director  
St. Joseph's School for the Blind
94. Kayla Naughton  
Windsor Bergen Academy
95. Brian Blanchard  
Windsor Bergen Academy
96. Gary Pignatello, Principal/Clinical Supervisor/Homeless Liaison  
Kohler Academy, A Bancroft School
97. Caroline Oolie, Occupational therapist  
ECLC of New Jersey
98. Lisa A. Scaringelli, Principal  
Preschool and Early Education Program, Bancroft
99. Linda Pepe, CFO  
Pillar Care Continuum
100. Lee H. Kraus, Business manager  
The Calais School
101. Sophia Clarke, Business administrator  
Essex Valley School
102. Robert L Edwards  
Kingsway Learning Center
103. Jennifer Beronio, Assistant to the Executive Director  
The Calais School
104. Renee Roberts, Parent
105. Mary Kate Enright
106. Dr. Carmen Catanese

107. Matthew and Corinna Funk, Parents
108. Azize Cornejo, Parent
109. Anne Donahue, School social worker  
Pineland Learning Center
110. Jillian Gergely, Occupational therapist  
Windsor Bergen Academy
111. Lisa Antes, School social worker  
Buena Regional School District
112. Shana McCusker, Speech-language pathologist  
Pineland Learning Center
113. Jane and Damon DeVito
114. Amanda Freeman, Executive Director  
Princeton Child Development Institute
115. Jacqueline Tran
116. Barbara K. Schoor
117. Nicole DeSantis  
Collier Middle School
118. Virginia Daniels, Board Member  
Collier School
119. Dean Phillips-Page  
Collier Middle School
120. Stacey Amato, Recording secretary, New Jersey Cooperative Education  
Association, and structured learning experience coordinator and cosmetology  
instructor, Collier Youth Services
121. Laura Alverio, BCBA  
Collier Middle School
122. Jackie Jester  
Collier High School
123. John Curcio  
Collier Youth Services
124. Daisy Nugent, Administrative assistant  
Collier Schools
125. Peter Salmon, Teacher

Collier Middle and High School

126. Courtney Gural, Administrative assistant  
Collier Youth Services
127. Christine DelCuore, Executive administrative assistant  
Collier Youth Services
128. Christella Villasenor, Educational coordinator  
Collier School
129. Aideen Bugler  
Collier High School
130. Peter C. Gensicke, Board Treasurer  
The Jardine Academy
131. Amanda DiMilia, Paraprofessional  
Collier Middle School
132. Stephanie Englander, Counselor/Student assistance coordinator  
Collier School
133. Yash Gupta
134. Maximilian Bossi
135. Walter J. Krako, Member, Board of Directors  
The Jardine Academy
136. Cleo D'Cruz, Member, Board of Directors  
The Jardine Academy
137. Nadia Braun, Parent
138. Jose Aguilin, Member, Board of Directors  
The Jardine Academy
139. Peter Cook, Parent
140. Dr. Kate Cerino, Supervisor of Education/Director of Quality Assurance  
Alpine Learning Group
141. Tamara Bernard, Parent
142. Dr. Steven Morse, Executive Director/Superintendent  
Garfield Park Academy
143. Patricia Carlesimo, Executive Director  
LADACIN Network Inc.
144. Patrick Cooper, Assistant Principal



The Calais School

145. Alice Garbarini Hurley, Parent
146. Patricia Gianone, Parent
147. Suzanne Buchanan, Executive Director and Public Policy Director  
Autism New Jersey
148. Raymond Dorso, Executive Director  
Summit Speech School
149. Anne Ogden, Executive Director  
CTC Academy
150. Andy Waller, Teacher  
Shepard High School
151. Peter Petrou, Executive Director  
ECLC of New Jersey
152. Christa Kassalow, BCBA  
Princeton Child Development Institute
153. Eric Alter, Director  
The Deron School of New Jersey
154. Patricia Sly, Executive Director  
P.G. Chambers School
155. Patricia Maida, Teacher  
Windsor Preparatory High School
156. Anonymous Student  
Windsor Preparatory High School
157. Dr. Lauren Nava, Principal  
Shepard Schools
158. John J. Mulholland Jr., Executive Director  
Association of Schools and Agencies for the Handicapped (ASAH)
159. Sarah Harrison, BCBA  
Pineland Learning Center
160. Mary Ellen Graham, Executive Director  
Pineland Learning Center
161. James F. Anderson, CPA  
Nisivoccia LLP
162. Abraham Mathew, Assistant Director/Principal

Westbridge Academy

163. Dr. Regina Peter, Executive Director  
Newmark Education
164. John Cohrs, Executive Director  
Calais School
165. Regina Irwin, Executive Director  
Hampton Academy
166. Anthony Hadzimichalis, Executive Director  
Westbridge Academy
167. Mary A Bawarski, Partner  
School Accounting Professionals LLC
168. Annmarie Scorzo, Business manager  
Windsor and Shepard Schools
169. Brian Detlefsen, President, Association of Schools and Agencies for the  
Handicapped (ASAH), and Director, The Forum School
170. Emily Aprea, Director of Finance and Operations  
Alpine Learning Group
171. Dr. Kevin Brothers, Executive Director  
Somerset Hills Learning Institute
172. Freda Wolfson Esq., Lowenstein Sandler Law Firm, on behalf of the Council of  
Private Schools for the Disabled
173. Jennifer Kaufman, Principal  
Educational Partnership for Instructing Children
174. Wendy Palmer, Parent
175. Katie Dulfer, School psychologist
176. Bridget Palmer, Director of Government Relations  
Bancroft and the Bancroft Schools
177. Anthony Gebbia, Educator and administrator  
Montgomery Academy
178. Joanne Delli Santi, Parent
179. Alvin Doyle, Director  
Y.A.L.E. Schools, Northfield Campus
180. Jennifer Montesano, Director  
The Deron School

181. Samad Siddiqui, Parent
182. Lynn Muir, Admissions coordinator  
Spectrum360
183. Lisa Pronti, Parent
184. Therese Tierney Hendricks, Board of Directors member  
Collier Youth Services
185. Eric Rozenblat, Executive Director  
Institution for Educational Achievement
186. Buzz Mingin, Certified integrative health care practitioner and school social worker
187. Evonya Simmons, Parent
188. Dr. Vito Gagliardi, Board of Trustees member  
Advocates for Children of New Jersey
189. Cliff Yearby, Parent
190. Christine Carpena, Parent
191. Dr. Steven A. Morse, Executive Director/Superintendent  
Garfield Park Academy
192. Tamara Bernard, Parent
193. Glenn Famous, Executive Director  
Rock Brook School
194. Patrick Cooper, Assistant Principal  
The Calais School
195. Alice Garbarini Hurley, Parent
196. Irit Maor, Parent
197. Lisa Axe, Parent
198. Elizabeth O. and Sean G. McGlynn, Parents
199. Jennifer Strahan, Parent
200. Man-ying Wong, Parent
201. Dr. Kevin Brothers, Executive Director  
Somerset Hills Learning Institute

- 202. Roopa Maniktala, Parent
- 203. Jessica Wilson, Parent
- 204. Tammmy Chance
- 205. Julia Candela
- 206. Nina C. Peckman Esq., Staff attorney  
Advocates for Children of New Jersey
- 207. Jaimie Bartushak, Parent
- 208. Senator Joseph Cryan  
Legislative District 20
- 209. Senator Declan J. O'Scanlon Jr.  
Legislative District 13
- 210. Ashley Bednarski, Parent
- 211. Jackie Goodell, Parent
- 212. Luz Vellon, Parent
- 213. Lacreshia Ducre, Parent
- 214. Ladia Lazzarini, Parent
- 215. Danielle Fields, Parent
- 216. Michael Farrelly, Director  
Gramon Family of Schools
- 217. John Gonzalez, Principal  
Alpha School
- 218. Cynthia D'Arcy, Director  
Collier School
- 219. Fernando Correia, Former student and current staff member at Newmark

1. **COMMENT:** The commenters acknowledged that the Department has been meeting with stakeholders to discuss the proposed readoption with amendments at N.J.A.C. 6A:23A-18 (Subchapter 18). The commenters stated that the stakeholders' recommendations were not considered by the Department and that the proposed readoption with amendments shows no consideration of the negative impact the proposed amendments will have on approved private schools for students with disabilities (APSSDs) or their students. **(1 through 148, 189 through 192, 194, and 195)**

**RESPONSE:** The Department thanks the commenters for acknowledging the significant stakeholder engagement. The Department disagrees that it did not consider the impact of the proposed readoption with amendments at Subchapter 18. After numerous discussions with State Board members and stakeholders, the Department has determined that proposing Subchapter 18 without change is the best course of action at this time. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

2. **COMMENT:** The commenters objected to the proposed amendments at Subchapter 18 and requested that the subchapter be readopted without amendments. **(20, 140, 141, 159, 160, 162, 163, 164, 165, 167 through 189, 204, 205, 206, 210, 212, and 213)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

3. **COMMENT:** The commenter emphasized the concerns expressed to the Legislature by educational advocates regarding the proposed readoption with amendments at Subchapter 18. The commenter stated that, as public servants, the Department must take steps to ensure protections for the students served by APSSDs. The commenter also stated that enacting maximum salaries for consultants and contractors would affect the quality and availability of applicants. The commenter further stated that capping tuition rate increase at two percent threatens APSSDs’ financial viability. The commenter also stated that arbitrary restrictions on administrative costs and behavioral modification would pose greater pitfalls to the financial outlook of APSSDs. The commenter requested that the State Board adopt Subchapter 18 without amendments. **(208)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

4. **COMMENT:** The commenter echoed the concerns expressed by fellow legislators and by advocacy groups regarding the proposed readoption with amendments at Subchapter 18. The commenter stated that the proposed readoption with amendments would hinder APSSDs’ operation. The commenter urged the State Board to readopt Subchapter 18 without amendments. **(209)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

5. **COMMENT:** The commenters asserted that there is insufficient time between the first discussion of the proposed readoption with amendments at Subchapter 18 and the expiration date of the existing chapter to address the commenters’ concerns. The commenters requested that the State Board readopt the existing chapter without amendments and begin the amendment process again with more input from stakeholders. **(1 through 148, 189 through 192, 194, and 195)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

6. **COMMENT:** The commenters stated that the proposed readoption with amendments at Subchapter 18 will have a negative effect on APSSDs and their students. **(1 through 149, 152, 153, 158, 163, 165, 189 through 192, 194, 195, and 218)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

7. **COMMENT:** The commenter stated that the proposed amendments at Subchapter 18 will not fulfill the constitutional mandate that students with disabilities must be provided a thorough and efficient education. The commenter also stated that the proposed amendments will cause APSSDs to close. **(172)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

8. **COMMENT:** The commenter stated that the proposed amendments at Subchapter 18 would hamstring APSSD operations. The commenter also stated that the proposed amendments to tuition rate calculations, restrictions on consultants and professional services, and the maximum salary cap calculations are examples of bureaucratic overreach and are unnecessarily punitive to APSSDs and their students. The commenter further stated that the proposed amendments would negatively affect APSSDs' ability to convey real estate and would increase its mortgage rates. **(51)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

9. **COMMENT:** The commenter objected to the proposed amendments at Subchapter 18. The commenter stated that cutting funds for APSSDs and imposing spending restrictions on APSSDs would hinder their effectiveness, which, the commenter asserted, would harm students who lack suitable public-school placements. The commenter requested that the Department devote additional funds to support APSSDs. **(196)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

10. **COMMENT:** The commenter stated that the proposed amendments at Subchapter 18 will inhibit APSSDs' ability to operate at the levels necessary to serve students. The commenter also stated that the proposed amendments would cut funding to APSSDs and would have a direct impact on students. **(174)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

11. **COMMENT:** The commenter stated that the proposed readoption with amendments at Subchapter 18 will put the continued operation of APSSDs in jeopardy. The commenter stated the Department did not consider feedback from stakeholders. The commenter urged that Subchapter 18 be readopted without amendment to allow all stakeholders more involvement with the process. **(193)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

12. **COMMENT:** The commenter stated that the commenter's child will never be a taxpaying citizen if the Department moves forward with the proposed readoption with amendments at Subchapter 18. The commenter stated that the proposed readoption with amendments would cost the tax payers more than it saves due to increased future public expenditures.

(146)

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

13. **COMMENT:** The commenter asked the Department to consider the consequences for students due to the proposed readoption with amendments at Subchapter 18. The commenter stated that the commenter's child struggled in a mainstream setting but is thriving at an APSSD. (211)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

14. **COMMENT:** The commenter stated that the proposed readoption with amendment at Subchapter 18 will put APSSD students at risk. The commenter stated that the commenter's child has transformed as a result of attending an APSSD. (212)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

15. **COMMENT:** The commenter stated that the need for APSSDs has increased since the COVID-19 pandemic. The commenter objected to the proposed amendments related to salary caps and consultants because the proposed amendments would jeopardize the ability of the students to progress toward their academic goals and would limit APSSDs' ability to meet individualized education program (IEP) requirements. The commenter stated that the proposed changes may be arbitrary and capricious. (206)

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

16. **COMMENT:** The commenter stated that the proposed readoption with amendments at Subchapter 18 will cause APSSDs to shut down. The commenter stated that APSSDs serve students between the ages of five and 21 with IEPs documenting extremely complex disabilities and dangerous behaviors. The commenter noted that APSSDs no longer participate in drafting IEPs and that APSSDs' work is reviewed by the sending districts' child study teams multiple times a year. The commenter stated that students are only sent to APSSDs after all in-district resources have been expended with little to no progress and when students have needs that require a higher level of intervention than the school district can provide. The commenter stated that APSSDs are not competitors with public schools and that they are a necessary part of the education continuum. (166)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

17. **COMMENT:** The commenter stated that an APSSD created an environment that supported the educational, social, and emotional needs of the commenter's child. The

commenter also stated that the proposed readoption with amendments at Subchapter 18 would be harmful to the students served by APSSDs. **(197)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 18. COMMENT:** The commenter objected to the proposed readoption with amendments at Subchapter 18. The commenter stated that an APSSD provides for the educational needs of the commenter's child. The commenter also stated that, without APSSDs, many students would be denied a free and appropriate public education. The commenter further stated that students should not be treated as line items to be evaluated on a basis of cost. **(198)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 19. COMMENT:** The commenter stated that the proposed readoption with amendments at Subchapter 18 would be harmful to students. The commenter also stated that APSSDs better meet the needs of students with disabilities than in-district placements. The commenter further stated that an in-district placement did not help the commenter's child achieve established goals and, instead, lowered them, but attending an APSSD has improved the social and emotional development of the commenter's child. **(200)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 20. COMMENT:** The commenter stated that APSSDs are important to students with disabilities because APSSDs have the resources necessary to meet the student's needs. The commenter stated that the proposed readoption with amendment at Subchapter 18 would be harmful to APSSD students. **(202)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 21. COMMENT:** The commenters stated that the proposed readoption with amendment at Subchapter 18 would put the continued operation of APSSDs in jeopardy and would cause students with disabilities and their families to suffer. The commenters also stated that the Department did not complete the required salary study and that the working group never met. **(45, 204, and 205)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 22. COMMENT:** The commenter provided information regarding the commenter's child, who has been diagnosed with developmental delays and dysphagia. The commenter stated



that, after years of difficulty with the public school district, the APSSD that the commenter's child now attends has had a positive effect. The commenter expressed concern that the proposed amendments at Subchapter 18 will be damaging to APSSDs. The commenter stated that it is unfair that the proposed amendments affect only APSSDs and not public schools, and that, in doing so, it tilts the scales in favor of public schools. The commenter also stated that this is a direct contravention to the Federal American with Disabilities Act (ADA). **(181)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 23. COMMENT:** The commenter stated that the proposed amendments at Subchapter 18 are not student-centered and will negatively impact students with disabilities who need the highest levels of intervention. The commenter also stated that public schools that send students to APSSDs are making student-centered decisions and the commenter asked the State Board to do the same. The commenter further stated that APSSDs have to turn prospective students with disabilities away because their capacity cannot meet the critical need and that adequate funding is required. The commenter also stated that the restrictions placed on APSSDs are difficult to deal with and the proposed amendments would cause unnecessary restrictions that will deny students with disabilities access to the special services and supports that they are entitled to receive and that are beyond public-school program offerings. **(182)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 24. COMMENT:** The commenter stated that the proposed amendments at Subchapter 18 will decimate special education services at every level, such as creating staff salary caps, demanding that APSSDs serve more students, limiting IEPs, and underfunding and denying appropriate wages to providers. The commenter also stated that the proposed amendment will pit public schools and APSSDs against each other and that the proposal will deliberately and systematically undercut required services for students with disabilities. The commenter further stated that public schools do not have the time or tools to assist students with disabilities as well as APSSDs can support students. **(184)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 25. COMMENT:** The commenter stated that APSSDs take students when a sending district has exhausted its resources. The commenter requested that Department consider the impact the proposed readoption with amendments at Subchapter 18 will have on the students attending APSSDs. The commenter stated that the proposed amendments lack an understanding of the APPSD and its work, and will severely jeopardize the stability and education of students with disabilities. **(159)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

26. **COMMENT:** The commenter stated that the proposed amendments at Subchapter 18 will jeopardize the education of the State’s neediest students. The commenter also stated that the proposed amendments are punitive to APSSDs and will force them to spend valuable resources chasing compliance requirements and distract them from their mission to educate and support students. The commenter further stated efficiency should not be the goal because APSSDs are teaching the State’s most vulnerable children. **(160)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

27. **COMMENT:** The commenter stated that the proposed readoption with amendments at Subchapter 18 would be harmful to APSSD students. The commenter stated that the commenter’s child previously attended an in-district school and it had low expectations for the student, but there was immediate improvement once the commenter’s child began attending an APSSD. The commenter stated that their child’s needs were not being met in an in-district school, now is flourishing at an APSSD and is less disruptive. The commenter also stated that their child is allowed, for the first time, to walk halls, use a locker, and eat lunch with other students. **(203)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

28. **COMMENT:** The commenter stated that APSSDs are necessary because public school teachers experience difficulties educating students with disabilities if they are not provided training needed to educate students with disabilities. The commenter expressed concern regarding the proposed amendments to the maximum salary calculation and the proposed amendments related to consultants. The commenter stated that the proposed amendments to the definition of “school year” would limit when an APSSD can start its year. **(20)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

29. **COMMENT:** The commenter expressed concern with the cost of APSSDs to sending school districts and indicated that the commenter kept their child in-district as long as possible. The commenter stated that not the proposed readoption with amendments at Subchapter 18 will not allow APSSDs to remain competitive and will harm their students. **(178)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

30. **COMMENT:** The commenter stated that the commenter's APSSD specializes in educating children aged 5 to 21 with multiple disabilities who face bullying and social challenges in mainstream settings, and shared the stories of two students who overcame behavioral issues and integrated back into their sending school districts' schools. The commenter also stated the proposed amendments at Subchapter 18 would limit behavior modifications and professional development as well as caps salaries. **(164)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

31. **COMMENT:** The commenter emphasized the importance of individualized support and creative planning in promoting student success and requested decision makers to retain the existing rules at Subchapter 18 to ensure equal access education for all students in New Jersey. **(165)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

32. **COMMENT:** The commenter stated that the Department has increased control over APSSD operations since 1986, while never imposing the same restrictions on the operators of charter schools, educational services commissions, or school districts. The commenter requested that the State Board consider only amendments that would support, and not impede, the education of students with disabilities. **(151)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

33. **COMMENT:** The commenter stated that the Department indicated in its second discussion responses that the proposed amendments are only technical in nature. The commenter disagreed and stated that previous years' amendments have created a burden on APSSDs and the proposed amendments will add more. The commenter described effects that previous amendments have had on the commenter's small APSSD, including the need to increase enrollment, increase staff, and redesign classrooms. **(152)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

34. **COMMENT:** The commenter stated that the proposed readoption with amendments at Subchapter 18 will do more to restrict the functioning of APSSDs than support it. The commenter also stated that the proposed readoption with amendments does not address long-standing issues such as prohibition on expense allocations. The commenter further stated that the Department did not inform the public at large or stakeholders of the proposed amendments until after the release of the agenda for the State Board of Education's January meeting. The commenter contended that the Department was being disingenuous when stating that there has been a great deal of correspondence from the public. **(201)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

35. **COMMENT:** The commenter stated that many of the changes in the proposed readoption with amendments at Subchapter 18 will harm APSSDs. The commenter suggested that

given the imminent change in leadership Subchapter 18 should be readopted without amendment to give time for a full review of the changes. (154)

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

36. **COMMENT:** The commenter stated that APSSDs fill gaps left in the public school system. The commenter provided several anecdotes regarding some of the students who were placed at the Pineland Learning Center. The commenter requested that the Department consider the 120 students that the APSSD currently educates and that the students' academic and emotional success is based on the community that the APSSD builds and supports. (109)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities.

37. **COMMENT:** his wife who is deaf and their son who is on the autism spectrum. The commenter stated that adopting Subchapter 18, as proposed for readoption with amendments, sends a message that the commenter's wife, who is deaf, and child, who has autism, are not worth it. The commenter also stated that educating individuals with disabilities in APPSDs that have effective programs benefits everyone. The commenter further stated that school districts rely upon APSSDs and that the APSSD educating commenter's child has changed the course of the child's life. The commenter also stated that readopting Subchapter 18 with the proposed amendments is not fiscally responsible. (189)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

38. **COMMENT:** The commenter stated that APSSDs provide critical support to public school students and that school districts need APSSDs' assistance in educating students with disabilities. The commenter also stated that some APSSDs are the only option available for students who have the most challenging needs. The commenter requested that the Department consider the 118 students who attend Pineland Learning Center and where the students would be without the APSSD, especially since it may be the students' second or third chance to achieve success and confidence. The commenter stated that Subchapter 18, as proposed for readoption with amendments, shows a lack of understanding about APSSDs and their work. (112)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

39. **COMMENT:** The commenter stressed the importance of APSSDs to students and their families. The commenter stated that thousands of students with disabilities will be affected if funding for APSSDs is cut. (152)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for

details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

40. **COMMENT:** The commenter thanked the Department for meeting with stakeholders and listening during the meeting and to the public comments. **(201)**

**RESPONSE:** The Department appreciates the support.

41. **COMMENT:** The commenter stated that there has not been meaningful stakeholder engagement and that the Department's response to the public comments regarding tuition monies paid by public schools to APSSDs is disingenuous and is a mask for funding cuts for students served by APSSDs. The commenter also asserted that the Department's response to the public comments demonstrates the Department's animosity toward APSSDs. **(168)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

42. **COMMENT:** The commenter objected to the Department's reliance on IRS Publication 15 in the proposals concerning consultants and purchased professional service providers. The commenter stated that the IRS Publication 15 talks primarily about employees and that independent contractors are treated differently. The commenter asserted that it is not reasonable to equate a fee for outside services to that of an employee's salary and that this type of treatment will not allow APSSDs to attract service providers because APSSDs will not be able to pay the prevailing rate. **(168)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

43. **COMMENT:** The commenter stated that the proposed amendments at Subchapter 18 will greatly impede APSSDs' ability to provide services at the level that students require. The commenter also stated that APSSD students require specialized services and instructors and that the proposed amendments to the maximum salary cap will affect APSSDs' ability to hire qualified staff because they will not be able to compete with public schools, which, the commenter stated, are not subject to salary caps. The commenter further stated that the proposed amendments regarding consultants and professional service providers would lead to APSSD closures. The commenter questioned why the Department would attempt to cap the tuition rate increase at two percent. **(31)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

44. **COMMENT:** The commenter stated that Subchapter 18, as proposed for readoptions with amendments, seeks to impose salary caps for teachers working in APSSDs. The commenter also stated that school districts are having difficulty finding and retaining teachers, that public school teachers generally need to gain specialized skills or experience required to address the needs of students with disabilities, which is why an out of district placement is needed. The commenter further stated that it does not make sense to require APSSDs to adhere to salary caps when there is difficulty in finding staff. **(188)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

45. **COMMENT:** The commenter stated that principals have many responsibilities directly related to instruction. The commenter also stated that the Department has increased the percentage of required instructional costs while preventing allocation of costs for professionals whose jobs exist to meet instructional needs. The commenter further stated that the Department has reduced the percentage of administrative costs while requiring more administrative tasks. The commenter requested the following amendment to N.J.A.C. 6A:23A-18.3(a)2: **(201)**

2. The salary of a chief school administrator, SBA, or principal/vice principal [shall not be prorated between other functions, except as otherwise provided in] **may be fully allocated or prorated to**

**instruction when:**

- i. **Providing direct classroom instruction as part of the APPSD’s educational program;**
- ii. **Planning and attending IEP meetings; and**
- iii. **Providing staff training and development to certified and non-certified instructional personnel.**

**RESPONSE:** Since the Department now is proposing to delete all amendments at Subchapter 18 as part of the readoption of N.J.A.C. 6A:23A-16 to 22, the Department will take the commenter’s suggestion under consideration if amendments are considered in the future.

46. **COMMENT:** The commenter objected to the proposed amendments at N.J.A.C. 6A:23A-18.3(a)3 that set the maximum salary caps because they will add to the current struggles that APSSDs experience in trying to find qualified teachers. The commenter also objected to the proposed amendments at N.J.A.C. 6A:23A-18.3(o) that will exclude “longevity pay, stipends, bonuses, dual position compensation, advanced degrees, unused sick and vacation days, and severance pay” from the calculation of the maximum salary. The commenter stated that the proposed amendments would limit APSSD employees to the entry-level salaries in public schools and would cause APSSDs to be noncompetitive in the market for qualified teachers. The commenter also stated that school salaries and pay scales are based on longevity and advanced degrees. The commenter further stated that the proposed amendments would be an end run around Federal law that protects the provision of services from a state’s financial considerations. The commenter also stated that the Department’s completion of the pending salary study is necessary for determine the appropriate maximum salary cap. **(158)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

47. **COMMENT:** The commenters opposed the proposed amendment at N.J.A.C. 6A:23A-18.3(i)1 that would limit, at two percent, the increase in tentative tuition rates and stated that the limit will harm APSSDs. **(153, 154, and 166)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

48. **COMMENT:** The commenter expressed concern regarding N.J.A.C. 6A:23-18.3(i)1 and the revised tuition increase cap to a fixed two percent annually because it is not connected to economic reality. The commenter stated that the cost of living and inflationary pressures exceed two percent. **(172)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

49. **COMMENT:** The commenter stated that APPSDs are seeing an all-time high in referrals. The commenter stated that the proposed amendments at Subchapter 18 will severely compromise APSSDs' ability to motivate students and support families. The commenter also stated that mandating salary caps for APSSD teaching staff and administrators without appropriate comparisons to public schools will make it extremely difficult to recruit, hire, and retain top-tiered professional staff. The commenter opposed the proposed amendments at N.J.A.C. 6A:23A-18.3(i)1 related to the maximum tentative tuition rate per student because they will have a catastrophic effect on APSSDs' ability to provide services to their students. **(44)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

50. **COMMENT:** The commenter stated that APSSDs with small student populations find it hard to work with the existing administrative cap and contended that the proposed reduction will further make things more difficult. The commenter also stated that small APSSDs have the same administrative needs as larger schools. The commenter further stated that one APSSD requires six board-certified behavior analyst (BCBAs) whose salaries are disallowed as an instructional costs, despite the crucial function they play in the school, which, the commenter contended forces the APSSD to fundraise. **(173)**

**RESPONSE:** The Department is aware that small APSSDs, like small school districts, do not benefit from the same economies of scale in larger schools, and is proposing to withdraw the amendment to reduce the administrative limit.

Beginning in fiscal year 2014-2015, APSSDs were advised that an individual employed as a BCBA is required to hold a Behavior Analyst Certification Board (BACB) certification. Based upon the nature of the services provided by BCBA staff (i.e., direct instruction with students), the Department provided guidance that APSSDs may record the salary as instructional, support, or administrative costs. Consistent with existing N.J.A.C. 6A:23A-18.6(a)9, the salary of a BCBA staff member cannot be in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable

salaries determined at existing N.J.A.C. 6A:23A-18.3(o), (p), and (q). Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 51. COMMENT:** The commenter stated that maximum salary caps at N.J.A.C. 6A:23A-18.3(o) and (p) make it more difficult to hire highly specialized staff. The commenter also stated that there is in a labor market shortage and that APSSDs must be allowed to pay market rates. The commenter further stated that plumbers would not accept less than the rate set by PSE&G and that the rate is even higher in emergencies. The commenter also stated that the proposed amendments at Subchapter 18 will restrict the commenter's ability to retain consultants. The commenter further stated that plumbers, HVAC companies, elevator repair people, and other service providers will not answer the phone if they are required to accept below-market rates. The commenter also stated that APSSDs are the emergency schools for students with disabilities and that restrictions on consultants will cause APSSDs to close. **(166)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 52. COMMENT:** The commenters requested that the Department release the salary study that was required pursuant to N.J.A.C. 6A:23A-18.3(o)3. **(153 and 158)**

**RESPONSE:** The Department will form a workgroup to gather valuable input from the stakeholders and will be issuing the maximum salary study 2018 through 2022 after those discussions are held.

- 53. COMMENT:** The commenter requested that "longevity" be removed from the excluded considerations for maximum salary at N.J.A.C. 6A:23A-18.3(o) and (p) because it is commonly used to set salaries and retain talent. The commenter stated that all schools, including APSSDs, are suffering from staffing shortages due to the COVID-19 pandemic. The commenter also stated that APSSDs have to do more than sending school districts to recruit staff and ask more of their staff to ensure the safety and well-being of their students. The commenter further stated that it is vital that APSSDs be able to hire staff with the appropriate experience and subject-matter expertise to match the highly specialized needs of their student populations. **(147)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 54. COMMENT:** The commenters stated that the maximum salary caps at N.J.A.C. 6A:23A-18.3(o) and (p) are problematic for APSSDs and that they cannot recruit staff and pay salaries and benefits that are competitive with public schools. **(64, 147, 149, 152, 154, 155, 157)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 55. COMMENT:** The commenter expressed concern regarding N.J.A.C. 6A:23A-18.3(p) and the proposed potential cap on monies paid to outside consultants or contractors. The commenter stated that the proposed amendments will force APSSDs to forego necessary



services and that the proposed new caps on salaries will prevent APSSDs from attracting talented teaching staff and being competitive. (172)

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

56. **COMMENT:** The commenter stated that the Deron School's tuition is fully used to provide up-to-date curriculum, related services, and methods to help students when they cannot learn in a traditional classroom. The commenter also stated that the APSSD provides lessons aligned with the New Jersey Student Learning Standards (NJSLS) and also provides daily living skills. The commenter provided anecdotal information about a student who attends one of the APSSD's campuses and how the APSSD's program has helped the student overcome difficulties with speech to find a job. The commenter stated that the proposed amendments at Subchapter 18 could prevent the APSSD from providing the type of support that students with disabilities require and could compromise many basic health needs and opportunities. The commenter also stated that the restrictions on consulting as proposed at N.J.A.C. 6A:23A-18.3(p) would interfere with the APSSD's daily operations and affect student behavior programming. The commenter further stated that the proposed amendments would damage the APSSD's connection with Rutgers University, which guides the school's board certified behavior analysts (BCBAs) in developing effective behavior modifications and plans to help students with disabilities study to their best abilities. The commenter also stated that the proposed amendments to remove the consumer price index (CPI) in tuition increase will cost sending districts and New Jersey taxpayers more money. The commenter also expressed concern about the salaries of APSSD employees and that the commenter feels that the Department is manipulating them. The commenter further stated that APSSD employees work hard to assist students with disabilities and should be treated better, considering that they are not a part of the State pension or health care systems. (180)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

57. **COMMENT:** The commenters stated that the proposed amendments at N.J.A.C. 6A:23A-18.3(p) and (q) that will apply the maximum salary cap to consultants and purchased professional services and new N.J.A.C. 6A:23A-18.6(a)12iii would limit an APSSD's ability to retain contractors even though purchasing the services from contractors results in a cost savings. (64, 149, 153, and 169)

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

58. **COMMENT:** The commenter objected to the extension of the maximum salary to apply to consultants as proposed at N.J.A.C. 6A:23A-18.3(p) and (q) and new N.J.A.C. 6A:23A-18.6(a)12iii. The commenter stated that the proposed amendments and new rule would extend the salary maximum applicable to APSSD employees to any outside entity that provides services to an APSSD. The commenter also stated that the market rate for an outside entity providing services to an APSSD exceeds the maximum salary for an employee providing the same service. The commenter further stated that APSSDs will be unable to afford basic services (that is, accounting, legal, technology, trash collection, snow removal, and maintenance) as the result of the proposed amendment. The commenter also

stated that APSSDs cannot be expected to hire employees to provide basic services because it is more expensive than retaining an outside provider for the services. **(158)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 59. COMMENT:** The commenter stated that APSSDs face greater challenges than the public schools in attracting special education teachers. The commenter also stated that most maximum salaries have been frozen since 2009. The commenter further stated that the Department never completed the required salary study. The commenter also stated that there are waiting lists for seats at APSSDs since the COVID-19 pandemic. The commenter further stated that APPSDs are important and necessary for the students they serve. **(168)**

**RESPONSE:** The Department will form a workgroup to gather valuable input from the stakeholders and will be issuing the maximum salary study 2018 through 2022 after those discussions are held. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 60. COMMENT:** The commenter asserted that the system used to apply the maximum salary guide for APSSDs is discriminatory. The commenter cited the teacher of students with disabilities endorsement to the instructional certificate as an example of creating additional educational and certification requirements for special education teachers, even though the maximum salary for special education teachers is lower than the maximum salary for general education teachers. The commenter asserted that the maximum salaries for various APSSD professionals has remained unchanged for significant periods of time. The commenter also asserted that APSSDs are singled out because their teaching salaries are regulated based upon geographical location and the commenter contended that this is discriminatory. The commenter also stated that behavior analysts should be included on the maximum salary schedule. The commenter questioned the inclusion of consultants and professional service providers in the positions subject to the maximum salary caps. The commenter also stated that the Department has not released the maximum salary study that it promised to release in 2023. The commenter further stated that the proposed re Adoption with amendments is arbitrary and capricious without completion of the salary study. The commenter suggested that maximum salaries have not increased in the past seven years and requested an independent audit of salaries. **(169)**

**RESPONSE:** The Department disagrees that the maximum salary calculations are discriminatory; rather, they are consistent with the highest salaries paid for similar positions in school districts. Pursuant to N.J.A.C. 6A:23A-18.3(o), maximum salaries for non-administrative positions, including teachers, are calculated based on the highest salary for each position by county to account for cost differences across the State. This is consistent with the Department's funding for school districts, which includes a county geographic cost index in the school funding formula calculations. Therefore, any variation in salaries between job titles is a result of actual salary differences in school districts. Since BCBA's do not receive a Department-issued certificate, the salary is limited to the lowest maximum salary.

The existing freeze on maximum salaries will end on June 30, 2024, after which time, the maximum salaries will be recalculated according to the previous formula at existing N.J.A.C. 6A:23A-18.3(o) and (p) to ensure that maximum salaries will remain in line and increase with the highest public school salaries in the appropriate comparison groups, Statewide (for administrators) or countywide (for non-administrative positions). The recalculated max salaries will be published before the end date of June 30, 2024.

Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 61. COMMENT:** The commenter stated that the COVID-19 pandemic has increased the need for APSSDs to support students with learning and mental health issues. The commenter also stated that a class that does not usually open until February was full in January and that APSSDs have waiting lists that are months to years long. The commenter further stated that public schools are not designed to handle the needs of the students served by APSSDs. The commenter also stated that the proposed readoption with amendments will require APSSD staff to provide more care for less money. The commenter further stated that the salary caps tells APSSD teachers that they are worth less than public school teachers and the proposed salary caps limit an APSSD's ability to recruit quality staff. **(175)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 62. COMMENT:** The commenter stated that the proposed maximum tuition rate of two percent without consideration of CPI would have a severe impact on APSSDs. The commenter shared the story of an APSSD student and stated that APSSDs have the expertise necessary to instruct this student and other students with disabilities and that funding is necessary to carry out this work. **(170)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 63. COMMENT:** The commenter requested that the Department clarify how the maximum salaries apply to employees, consultants, and professional service providers, and consider the discrepancy between proposed rates and actual market rates for services like audits, the inclusion of necessary costs like fringe benefits, and other unique costs associated with hiring consultants/professional services providers. **(161)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 64. COMMENT:** The commenter provided several examples of students who were helped by an APSSD. The commenter stated that the proposed amendments at Subchapter 18 would limit APSSDs' ability to meet the needs of their students. The commenter stated that the Department should consider that APSSD employees do not have access to the same benefits as public school staff when determining salary caps. **(177)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 65. COMMENT:** The commenter stated that a maximum salary cap will prevent APSSDs from being able to recruit quality staff. The commenter also stated that maximum salary caps and maximum tuition rates discriminate against the State's most vulnerable students. The commenter further stated that having different rules for APSSDs makes it more difficult to meet Federal requirements. The commenter also stated that the proposed restrictions on consultants and professional services will put an end to the LADACIN

Network's medical clinics, which will require students and families to seek medical appointments with specialists who may not accept Medicaid, have accessible offices, or understand the students' complex needs. **(143)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 66. COMMENT:** The commenter stated that APSSDs save taxpayers money by returning students to public schools or, if students are unable to return, they require far fewer adult services by attending APSSDs until the age of 21. The commenter also stated that students with autism need individualized education that requires highly educated staff in intensive staff-to-student ratios. The commenter further stated that APSSDs that are effective in educating students with autism have highly educated administrators who have duties related to instruction, but the associated cost is categorized as administrative and, instead, needs to be included as an instructional cost. The commenter also stated that no new APSSDs dedicated to students with autism have opened in New Jersey due to the proposed imposition of a minimum average daily enrollment of students. **(171)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 67. COMMENT:** The commenter objects to the proposed amendments at N.J.A.C. 6A:23A-18.4(b) and (c) to raise the average daily enrollment (ADE) to 35 from 24. The commenter stated that only one science-based, behavior-analytic APSSD for autism has been established since the imposition of a minimum ADE in the early 2000s. The commenter also stated that an APSSD opened with only five students and it took eight years to reach an ADE of 24 students. The commenter further stated that the APSSD would not have been successful if it was required to start with an ADE of 35 students. **(201)**

**RESPONSE:** The Department proposed at second discussion to delete the proposed amendments N.J.A.C. 6A:23A-18.4 to increase the number of public school placement students required for new APSSD applicants.

- 68. COMMENT:** The commenter stated that the costs of 1:1 aides and behavior modification should be included as instructional expenses that can be included in the tuition charged by APSSDs. **(169)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 69. COMMENT:** The commenters requested a change at N.J.A.C. 6A:23A-18.6(a)11 to delete "or unsuccessful." The commenters stated that the prohibition on including the cost of unsuccessful litigation in the tuition charged to public schools is a limitation of an APSSD's due process. **(149 and 151)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 70. COMMENT:** The commenter stated that the proposed amendments at N.J.A.C. 6A:23A-18.6(a)11 regarding legal expenses are unfair and will deter good faith challenges to

Department action. The commenter also stated that existing regulations already do not include frivolous legal challenges to Department action as allowable expenses. (172)

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

71. **COMMENT:** The commenter stated that APSSDs are an inextricable part of the public education system and they partner with public schools. The commenter also stated that there has been an increased need for the services provided by APSSDs since the COVID-19 pandemic. The commenter opposed the proposed restriction at N.J.A.C. 6A:23A-18.6(a)11 regarding costs for unsuccessful challenges to audits. The commenter also opposed holding consultants to the maximum salary of staff members, as proposed at N.J.A.C. 6A:23A-18.3. The commenter further opposed the proposed amendments to the calculation of salary caps for staff members. (176)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

72. **COMMENT:** The commenter opposed the proposed amendments at N.J.A.C. 6A:23A-18.6(a)12, which detail how consulting fees for “purchased professional services” that fail to meet certain criteria are to be added to the list of non-allowable costs. The commenter stated that high hourly rates are sometimes necessary and provided examples such as high hourly rates charged by auditing firms and higher costs for contracting services to quickly fill a position due to unexpected leave of staff. The commenter also stated that contracted services are often used to fill temporary positions and should be afforded greater flexibility. The commenter further stated that the proposed amendments lack clarity and would have unintended consequences for APSSDs and their service providers. (161)

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

73. **COMMENT:** The commenter stated that N.J.A.C. 6A:23A-18.6(a)67 is unnecessary as APSSDs are already limited to a cap on administrative costs. The commenter stated that limiting administrative full-time equivalents (FTEs) to only three regardless of an APSSD’s size is unreasonable and unsafe, as some schools are larger or have multiple locations. The commenter stated that the proposed deletion of “unrecognized position titles in the administrative category” should be reversed. The commenter requested that the rule be deleted or amended to state the following instead: (147)

Proportional costs of salary and fringe benefits for any administrative staff member, as defined in N.J.A.C. 6A:23A-18.29(o), that are in excess of a total of 3.0 FTE administrative positions per APSSD campus location, per fiscal year. If the combined administrative positions exceed 3.0 FTE, the disallowed amount will be apportioned equally across all positions. The following position titles are excluded from the 3.0 FTE administrative position total: principal, non-certified

position titles in the administrative category, the director, when the responsibilities of the director position do not overlap and are aligned to the general population's objectives for learning and instruction, as directed by student IEPs.

**RESPONSE:** Since the Department now is proposing to delete all amendments at Subchapter 18 as part of the readoption of N.J.A.C. 6A:23A-16 to 22, the Department will take the commenter's suggestion under consideration if amendments are considered in the future.

74. **COMMENT:** The commenter requested that N.J.A.C. 6A:23A-18.12 be amended to require the Commissioner to establish a working group and to specify required members rather than the existing language that allows the Commissioner to decide whether to create the working group and determine its members. The commenter also requested amendments to specify that the working group's purpose is to discuss "programmatic and administrative" issues impacting APSSDs and to establish the number of times the group must meet annually. The commenter requested that the section be amended to read as follows:

**F**

The Commissioner, or the Commissioner's designee, shall create a working group that shall consist of, at a minimum, Department staff and representatives from the APSSD community, including at least two of each of the following representatives: executive directors, business administrators, clinical/curriculum directors, independent auditors, advocacy organizations, and others as the Commissioner deems appropriate. The working group's purpose shall include, but shall not be limited to, discussing programmatic and administrative issues that impact APSSDs. The working group shall meet no less than once per quarter of every fiscal year.

The commenter stated that the requested changes would promote stakeholder engagement and have a positive impact on transparency and communication between APSSDs and the Department. The commenter also stated that the requested change aligns with the Department's goals of ensuring the efficient use of public school dollars. The commenter further stated that it is sensible to mandate the working group to understand the chapter's nuance and its impact in the field. The commenter also stated the no-cost working group can address ongoing implementation and interpretation of the chapter and ensure consistency among stakeholders by being the avenue to bring forth concerns to address the chapter's real-world application and clearly and consistently resolve identified discrepancies in interpretation. The commenter further stated that, due to the history of tense relations between the Department and APSSDs, it is vital for APSSDs to have an opportunity to engage with the Department on an ongoing basis. (147)

**RESPONSE:** Since the Department now is proposing to delete all amendments at Subchapter 18 as part of the readoption of N.J.A.C. 6A:23A-16 to 22, the Department will take the commenter's suggestion under consideration if amendments are considered in the future.

75. **COMMENT:** The commenter stated that N.J.A.C. 6A:23A-18.12 should be amended to make the working group mandatory. **(201)**

**RESPONSE:** Since the Department now is proposing to delete all amendments at Subchapter 18 as part of the readoption of N.J.A.C. 6A:23A-16 to 22, the Department will take the commenter's suggestion under consideration if amendments are considered in the future.

42. **COMMENT:** The commenter objected to the proposed rules at N.J.A.C. 6A:23A-18.15(f)2 and N.J.A.C. 6A:23A-18.17. The commenter acknowledged that a meaningful consequence for non-compliance is necessary but contended that the proposed method of revocation would be harmful to students. The commenter stated that any closure should take place after the school year following the year in which approval is revoked. The commenter also stated that dialog between the APSSD and the Department's Office of Special Education is necessary to remedy the problem. **(201)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

76. **COMMENT:** The commenter objected to proposed new N.J.A.C. 6A:23A-18.18(e). The commenter used the following example to illustrate the effect of the proposed new rule: an APSSD bought a building for \$6 million, sold it for \$10 million, and purchased a new building for use as an APSSD for \$18 million. The commenter stated that existing regulations allow the APSSD to use the \$10 million to reduce the mortgage on the new building. The commenter stated that proposed new N.J.A.C. 6A:23A-18.18(e) will require APSSDs to return all \$10 million (if the old building was fully depreciated) to the sending districts and would either have to come up with \$10 million or not use the money received from the sale for the purchase of a new building for the APSSD. **(167)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

77. **COMMENT:** The commenters opposed proposed new N.J.A.C. 6A:23A-18.18(e), which will require APSSDs to return the gain from the sale of a building to each sending district in proportion with the public funds that were used for purchasing the building. **(149 and 154)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

78. **COMMENT:** The commenter objected to the proposed amendment at N.J.A.C. 6A:23A-18.18(e) regarding the sale of buildings. The commenter stated that the proposed amendment would prevent the commenter's APSSD from expanding. **(173)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

79. **COMMENT:** The commenters stated that APSSDs provide specialized programming to their students and partner with local businesses to prepare students for a variety of future experiences. The commenters objected to the proposed restrictions on consultants and professional services and to the proposed amendment at N.J.A.C. 6A:23A-18.18(e) related to real estate transactions. **(61 and 80)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

80. **COMMENT:** The commenter opposed proposed new N.J.A.C. 6A:23A-18.18(e). The commenter provided an example that the commenter alleged demonstrated that an APSSD would be required to return all proceeds from the sale of real property to the sending school districts even if the money was used to purchase real property for the purpose of operating an APSSD. **(167)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

81. **COMMENT:** The commenter opposed proposed new N.J.A.C. 6A:23A-18.18(e) because it does not take into account improvements to the building that have nothing to do with school district funding. The commenter stated that the proposed new rule would prevent the APSSD from upgrading to a new facility and would harm the school's students. **(5)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

82. **COMMENT:** The commenter opposed proposed new N.J.A.C. 6A:23A-18.22(b)4, which would limit trinkets or rewards as behavior modification to \$20 per year per student. The commenter stated that one of the commenter's first experiences with an APSSD was sitting on the floor of a bathroom helping to toilet train a student, and the use of primary reinforcement and other rewards eventually led to a successful outcome. **(216)**

**RESPONSE:** The Department deleted proposed new N.J.A.C. 6A:23A-18.22(b)4 at second discussion.

83. **COMMENT:** The commenter objected to proposed new N.J.A.C. 6A:23A-18.22(b)4, which would limit, at \$20.00 per student per year, the reimbursement to APSSDs for trinkets and awards used for behavioral modification. **(163)**

**RESPONSE:** The Department deleted proposed new N.J.A.C. 6A:23A-18.22(b)4 at second discussion.

84. **COMMENT:** The commenter stated that the proposed restriction on behavioral modification at proposed new N.J.A.C. 6A:23A-18.22(b)4 disregards the needs of students. **(169)**



**RESPONSE:** The Department deleted proposed new N.J.A.C. 6A:23A-18.22(b)4 at second discussion.

85. **COMMENT:** The commenter stated that APSSDs are not receiving fair and equal treatment, and the Department needs to prioritize equality and inclusivity. The commenter opposed N.J.A.C. 6A:23A-18.22(b)4, which will limit, at \$20.00 per student per year, the reimbursement to APSSDs for trinkets and awards used for behavioral modification. **(217)**

**RESPONSE:** Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

86. **COMMENT:** The commenter stated that a sizeable percentage of the matters in which the Advocates for Children of New Jersey’s staff attorney is involved relate to out-of-district placements with APSSDs, which generally are due to a student’s needs being greater than the resources that the school district can provide. The commenter also stated that the need for out-of-district placements has increased since the COVID-19 pandemic and there are waiting lists due to several factors, including school districts not being able to adequately staff special education programs and the dramatic increase in children experiencing mental health and/or behavioral issues that cannot be addressed through public school resources. **(188)**

**RESPONSE:** The Department appreciates the comments and recognizes the important role that APSSDs play in educating students with disabilities.

87. **COMMENT:** The commenter provided information regarding a student with disabilities who was supposed to begin attending an APSSD at the three years old but did not begin attending until five years old. The commenter stated that the two-year wait was damaging, as the student did not receive proper education and intervention, which resulted in bad habits. The commenter also stated that financial resources and restrictions on spending, as it relates to administrative percentages, are challenging. The commenter further stated that the existing administrative cap is challenging and frustrating because no money from any other executive director’s salary is allocated to instructional costs. The commenter also stated that administrative and clinical responsibilities and salary should be appropriately allocated. **(185)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

88. **COMMENT:** The commenter stated that APSSDs serve a great purpose and save thousands of students with disabilities every year. The commenter provided a list of reasons to support APSSDs, including allowing students with disabilities to be themselves without fear of being bullied, providing students with disabilities with greater access to necessary interventions, and treating students who demonstrate “at-risk” behaviors with a comprehensive approach to reducing risks. The commenter stated that reducing the resources to APSSDs is reckless and that, if too many students with disabilities are being sent out-of-district, then public schools need to be given the tools, leadership, and resources to successfully and responsibly educate students with disabilities. The commenter stated that APSSDs should not be targeted for reduction of resources. **(186)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for

details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 89. COMMENT:** The commenter stated that APSSDs create value for their students and enable students to succeed. The commenter also stated that the commenter's child now participates in extra-curricular activities such as marching band, jazz band, and chorus due to attendance at an APSSD and even received a driver's license can drive to the extra-curricular activities. The commenter further stated that the focus should be on student's outcomes and not operational metrics when adopting regulations. The commenter also stated that the Department should support and maintain what is necessary, remove the waste, and invest in the future. **(207)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 90. COMMENT:** The commenter stated that the Northfield campus of the Y.A.L.E. School provides services such as psychiatric services, differentiated academic instruction and comprehensive related services, and its students often face health and psychiatric issues, such as attention deficit/hyperactivity disorder, oppositional-defiant disorder, autism spectrum disorder and mood disorder, and external issues, such as violence in their neighborhoods, drug use by family members, and lack of food at home. The commenter also stated that students have been confrontational with teachers, at times leading to violence. The commenter further stated that the students with disabilities in the community come to the APSSD and learn how to get along with others, instead of becoming or remaining enemies. The commenter also stated that the APSSD works to develop relationships and positive peer influences to help students with disabilities support each other, while also working to maintain a safe environment for student learning. The commenter further stated that staff work long hours and take part in community service programs. The commenter also stated that the APSSD's teachers leave yearly for a public-school job because the APSSD cannot compete with the benefits that public schools provide. The commenter further stated that the APSSD works with the most difficult students with disabilities, but that the APSSD's hands are tied by policymakers. The commenter asked for the Department to do what is in the students' best interests and give the resources needed to assist them. **(179)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 91. COMMENT:** The commenter stated that the commenter's child currently attends an APSSD and was not adequately educated at an in-district school because it did not have the resources to address the student's needs. The commenter stated that focusing on public schools that are failing students would be a better place to start saving money than APSSDs. **(214)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

92. **COMMENT:** The commenter stated that the commenter makes significantly less than the maximum salary for the position. The commenter also stated that the APSSD provides all of its academic and related services in the least restrictive enforcement to ensure that students feel accepted and loved. The commenter further stated that the APSSD's program has changed many times to meet the various needs of students. The commenter also stated that no public school can provide the same services to the students served by APSSDs. **(218)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

93. **COMMENT:** The commenter related personal stories about how APSSDs helped the commenter become a successful person. The commenter stated that APSSDs were a lifeline and, without APSSDs, the commenter would not have been able to attend college and later return to an APSSDs as a staff member. The commenter urged the State Board to consider the consequences of stringent regulations on APSSDs. **(219)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

94. **COMMENTS:** The commenter expressed support for APSSDs and shared a video of a former student describing the positive impact the APSSD program had on the student's life. **(162)**

**RESPONSE:** The Department appreciates the comment and recognizes the important role that APSSDs play in educating students with disabilities.

95. **COMMENT:** The commenters stated that public schools can offer higher salaries and better health benefits than the APSSDs can offer. **(149, 155, and 157)**

**RESPONSE:** The Department disagrees. As private entities, APSSDs can establish salary and benefit packages for their employees that best suit their needs. APSSDs are prohibited only from including, in the final tuition rate charged to school districts, the cost of salaries that exceed the maximum salary by job title in accordance with N.J.A.C. 6A:23A-18.3(o) and (p), as well as the cost of fringe benefits that have not been provided pursuant to an existing written uniform policy in accordance with N.J.A.C. 6A:23A-18.6(a)23i. The maximum salaries established pursuant to N.J.A.C. 6A:23A-18.3(o) and (p) are competitive with the salaries paid by public schools in the same county and in the State for schools serving a similar number of students each day.

96. **COMMENT:** The commenters stressed the importance of APSSDs to the public school system. The commenters stated that students are sent to APSSDs for more intensive services when their sending districts cannot provide appropriate accommodations. **(64, 147, 148, 149, 150, 151, 152, 153, 155, 157, 158)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities.

97. **COMMENT:** The commenter stated that APSSDs provide unique services to students who have experienced mental health challenges, trauma, conflict, and who struggle academically and socially. The commenter shared personal stories about former students who came from difficult circumstances, and the commenter’s own experience with special education services provided for the commenter’s child. The commenter emphasized the significance of the impact that specialized services, therapies, and a caring environment can have on a child, and requested help to make sure APSSDs can do their jobs effectively. **(150)**

**RESPONSE:** The Department appreciates the comments and recognizes the important role that APSSDs play in educating students with disabilities.

98. **COMMENT:** The commenter stated that attending Spectrum360 has greatly improved life for the commenter’s. The commenter requested that the Department consider what would happen to students with disabilities if APSSDs did not exist or if they did not receive the proper funding. **(215)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

99. **COMMENT:** The commenter stated that their child’s educational outcomes have improved significantly since enrolling at an APSSD. **(210)**

**RESPONSE:** The Department appreciates the comment and recognizes the important role that APSSDs play in educating students with disabilities.

100. **COMMENT:** The commenter stated that, prior to attending an APSSD, the commenter’s child was not receiving the education necessary to become an independent person. The commenter also stated that their child’s social well-being and emotional health would suffer if forced to leave the APSSD. **(199)**

**RESPONSE:** The Department appreciates the comments and recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department’s determination to withdraw all amendments proposed at Subchapter 18.

101. **COMMENT:** The commenter shared a letter from a student’s parent that described the student’s individual medical diagnosis of CHARGE syndrome and states that the school’s intervention services have helped the student thrive. The commenter described the types of interventions provided in the program and the success the student has had in learning to walk with a gait trainer, learning to read, and grasping mathematics concepts, despite early prognosis from doctors that suggested these achievements may not be possible. **(154)**

**RESPONSE:** The Department appreciates the comments and recognizes the important role that APSSDs play in educating students with disabilities.

102. **COMMENT:** The commenter related the story of the commenter’s sister, who was born legally blind but received an education that led to two master’s degrees and a 26-year career as a public school teacher. The commenter also stated that the focus should be on the

abilities of students with disabilities and what they can do to reach their full potential. (168)

**RESPONSE:** The Department appreciates the comments and recognizes the important role that APSSDs play in educating students with disabilities.

- 103. COMMENT:** The commenter provided information regarding how the Pinelands Learning Center has helped the commenter's child. The commenter stated that the services that the APSSD provides, such as transportation to and from the school, has enabled the commenter to maintain a job and provide for the commenter's son. (187)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 104. COMMENT:** The commenter praised the Reach Program and how it and a specific teacher prepared the commenter for life outside of school, including managing money, trade school, academic work, culinary arts, and volunteering in the community. (156)

**RESPONSE:** The Department appreciates the comments and recognizes the important role that APSSDs play in educating students with disabilities.

- 105. COMMENT:** The commenter provided anecdotal information regarding the commenter's child, who has been diagnosed with autism, severe cognitive delays, learning disabilities, obsessive compulsive disorder, apraxia, and hypotonia. The commenter stated that after early intervention, the commenter's child was placed into the multiply disabled program at the local public school, but it proved to be ineffective over the years. The commenter supported APSSDs. (183)

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities. Please see the agency-initiated change below for details regarding the Department's determination to withdraw all amendments proposed at Subchapter 18.

- 106. COMMENT:** The commenter expressed support for APSSDs and described some of the intensive services provided by the commenter's APSSD, including clinical interventions, life skills and social skills training, family support, case-management services, community engagement, transitional planning and support services, psychiatric evaluations and medication services, and other related services. The commenter provided examples of individual student success stories. The commenter stated that the goal of the programs at Hampton are to transition students back to their sending school districts. (165)

**RESPONSE:** The Department appreciates the comments and recognizes the important role that APSSDs play in educating students with disabilities.

- 107. COMMENT:** The commenter stated that the APSSD receives letters from public school case managers extolling the benefits of APSSDs. The commenter provided an example of a student who required three aides when entering an APSSD but now requires only one aide most of the time. (140)

**RESPONSE:** The Department appreciates the comment and recognizes the important role

that APSSDs play in educating students with disabilities.

- 108. COMMENT:** The commenter stated that the commenter’s child struggled at an in-district school but is thriving at an APSSD. **(141)**

**RESPONSE:** The Department appreciates the comment and recognizes the important role that APSSDs play in educating students with disabilities.

- 109. COMMENT:** The commenter expressed support for the education and services provided by an APSSD for the commenter’s child and stated that the child’s future is promising thanks to the APSSD. **(213)**

**RESPONSE:** The Department appreciates the comment and recognizes the important role that APSSDs play in educating students with disabilities.

- 110. COMMENT:** The commenter highlighted the innovative programs and success stories of the APSSD’s students and emphasized the critical role of consultants and behavior modification systems in the APSSD’s education programs. **(163)**

**RESPONSE:** The Department appreciates the comment and recognizes the important role that APSSDs play in educating students with disabilities.

- 111. COMMENT:** The commenter shared comments from a special education professional from Gloucester County who expressed a need for more partnership between public schools and APSSDs. **(64)**

**RESPONSE:** The Department recognizes the important role that APSSDs play in educating students with disabilities and agrees that partnerships between public schools and APSSDs are important.

- 112. COMMENT:** The commenter stated that the Department’s characterization of New Jersey being 50th in the nation in educating students in the resident school district’s schools is not accurate and further creates the perception that an out-of-district placement is bad for students. **(201)**

**RESPONSE:** While the Department appreciates the comment regarding the importance of the full continuum of placement options and agrees that APSSDs and receiving schools can be an appropriate placement option for some students with disabilities, the Department’s focus remains on ensuring that students with disabilities are placed in the least restrictive environment (LRE), as appropriate, while maximizing optimal academic and developmental outcomes for students with disabilities. The LRE requirements at section 612(a)(5) of the IDEA reflect the IDEA’s strong preference for educating students with disabilities in regular classes with appropriate aids and supports. Pursuant to section 612(a)(5) of the IDEA, to the maximum extent appropriate, students with disabilities must be educated with students who are not disabled. Further, special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of a student’s disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. The Department emphasizes that students should be receiving services in the LRE to the maximum extent appropriate, which may include an APSSD.

- 113. COMMENT:** The commenter stated that APSSDs were not provided the same bleed kits that were provided to all schools through a grant the commenter learned about in a recent security drilling presentation by the Department’s Office of School Preparedness and Emergency Planning. The commenter suggested that APSSDs should be treated like all other public schools. **(64)**

**RESPONSE:** The commenter appears to be referring to a grant awarded to the Department by the New Jersey Office of Homeland Security for the purpose of distributing kits to public schools. The Department was required to distribute the kits and training in compliance with the terms of the grant.

#### **AGENCY-INITIATED CHANGE**

1. After numerous discussions with State Board members and stakeholders, the Department has determined that proposing Subchapter 18 without change is the best course of action at this time. All amendments to Subchapter 18 that were proposed at first discussion and second discussion have been withdrawn, and the subchapter now is being presented without change. Please see the [rule text portion](#) of this document.



**State of New Jersey**  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

**Proposal Level**  
**March 6, 2024**

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lt. Governor*

KEVIN DEHMER  
*Acting Commissioner*

**TO:** Members, State Board of Education

**FROM:** Kevin Dehmer  
Acting Commissioner

**SUBJECT:** N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency and Budgeting  
Procedures, Subchapters 16 through 22

**AUTHORITY:** N.J.S.A. 18A:4-15, 18A:36A-18, 18A:36C-7, 18A:36C-7, and 18A:46-15

**REASON  
FOR ACTION:** Readoption with Amendments

**SUNSET DATE:** April 6, 2024

### **Summary**

The Department of Education (Department) proposes to readopt Subchapters 16 through 22 at N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency, and Budgeting Procedures, with amendments. N.J.A.C. 6A:23A was scheduled to expire on April 6, 2024. As the Department submitted a notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to October 3, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2).

Subchapters 16 through 22 provide for fiscal accountability, financial accounting and recordkeeping, calculation of tuition for public schools and approved private schools for students with disabilities (APSSDs), residency determination, and the financial operations of charter schools.

The rules at existing subchapters 16 through 22 previously were located at N.J.A.C. 6A:23, Finance and Business Services, until the chapter was recodified at N.J.A.C. 6A:23A-16 through 22, effective December 21, 2009. Shortly before the recodification, the Commissioner of the Department (Commissioner) adopted the first two phases of the fiscal accountability regulations as N.J.A.C. 6A:23A-1 through 15. The combination of the 22 subchapters resulted in the compilation of all regulations concerning the fiscal operations of school districts, charter schools, and APSSDs in one chapter.

Subchapters 16 through 22 are proposed for readoption as State Board of Education rules consistent with the original authority that established the regulations. The Commissioner also will be proposing a simultaneous rulemaking for the readoption of Subchapters 1 through 15.



Proposed amendments throughout the chapter include: replacing references to the “Division of Finance” with “Division of Finance and Business Services” to reflect the existing name; replacing “Comprehensive Annual Financial Report” with “Annual Comprehensive Financial Report” to reflect the change in the report’s title as required by the Governmental Accounting Standards Board (GASB); adding “renaissance school projects” or “board of trustees” to the applicable rules; and using gender-neutral pronouns in this chapter.

Unless otherwise specified in this Summary, all other amendments are for clarity, grammatical or stylistic improvement, or to update New Jersey Administrative Code cross-references.

## **Subchapter 16. Double-Entry Bookkeeping and GAAP Accounting**

This section provides the requirements for school district accounting and financial reporting.

### **N.J.A.C. 6A:23A-16.1 Prescribed system of double-entry bookkeeping and GAAP accounting**

This section requires district boards of education and charter school boards of trustees to maintain a uniform system of financial bookkeeping and reporting consistent with generally accepted accounting principles (GAAP), and the Federal financial accounting terminology and classifications for local and state school systems.

The Department proposes amendments at N.J.A.C. 6A:23A-16.1(b) to replace the date reference for the “Financial Accounting for Local and State School Systems” with “the most recent addition” so the rule remains up to date. The same amendment is proposed throughout the chapter, where necessary. The Department also proposes to add a reference to the Uniform Minimum Charter of Accounts for New Jersey Public Schools to ensure that the required uniform system is consistent with the most recent editions of the chart, which is published on the Department’s website and updated annually.

### **N.J.A.C. 6A:23A-16.2 Principles and directives for accounting and reporting**

This section requires school districts and charter schools to follow accounting and reporting directives prepared, published, and distributed by the Commissioner. The section also establishes criteria for the required system of accounting and reporting objectives and for the annual budget and monthly financial statements and reports. The section further requires each school district and charter school to prepare and publish a Comprehensive Annual Financial Report (CAFR) and to maintain legal reserves.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.2(f)2 to specify that the rule applies to a district board of education that formally adopts a resolution to expand upon the minimum requirements for the budget system. Proposed new N.J.A.C. 6A:23A-16.2(f)2.i will require a district board of education or charter school or renaissance school project board of trustees adopting a resolution to expand upon the uniform minimum chart of accounts to follow the budgetary and over expenditure controls pursuant to N.J.A.C. 6A:23A-16.10(a)3. The proposed amendment will ensure that school districts follow the detailed additional policy at N.J.A.C. 6A:23A-16.10 when changing a chart of accounts.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.2(j) to replace “legal reserves as defined at N.J.A.C. 6A:23A-1.2” with the meaning of legal reserves since the term is not defined at N.J.A.C. 6A:23A-1.2.

### **N.J.A.C. 6A:23A-16.3 Conflicts between legal provisions and GAAP**

This section requires a district board of education or charter school board of trustees to provide additional schedules and a narrative in the CAFR when financial statements prepared in accordance with GAAP do not demonstrate legal, State, or Federal compliance.

### **N.J.A.C. 6A:23A-16.4 Minimum bond requirements for treasurer of school moneys**

This section concerns minimum surety bond requirements for the treasurer of school moneys. The section also requires a district board of education or charter school board of trustees to ensure that an independent school auditor verifies the adequacy of the treasurer's surety bond and includes appropriate comment and a recommendation, if needed, in the annual school audit report.

The Department proposes new N.J.A.C. 6A:23A-16.4(d) to clarify that if a district board of education or charter school or renaissance school project board of trustees eliminates the position of treasurer and delegates responsibilities to another individual, the board is required maintain the same level of insurance coverage related to the performance of the treasurer's functions.

### **N.J.A.C. 6A:23A-16.5 Supplies and equipment**

This section establishes criteria to distinguish between supplies and equipment for accounting purposes. The section also requires a district board of education or charter school board of trustees that elects to purchase food supplies pursuant to the section to adopt a policy that specifies which supplies can be purchased without advertising for bids. The section also requires the district board of education or charter school board of trustees to follow public bidding procedures for supplies that must be advertised.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.5(d)3 to specify that the person designated to purchase food supplies must maintain – for at least seven years – the records related to the purchase of food supplies for any school cafeteria or home economics class up to \$500 on a monthly basis. The addition of the timeframe will align the regulation with the State's record retention requirements for school districts.

### **N.J.A.C. 6A:23A-16.6 Mechanical bookkeeping systems**

This section requires a district board of education or charter school board of trustees that contracts for electronic data processing bookkeeping services to have an annual audit prepared or to obtain and maintain a copy of an audit of the internal controls of the service company or agency as prescribed by Statement of Auditing Standards (SAS) No. 70, as amended by SAS No. 88 of the American Institute of Certified Public Accounts.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.6 to state that the American Institute of Certified Public Accountants produces the Statement of Standards for Attestation Engagement (SSAE) No. 16 Reporting on Controls as Services Organizations.

### **N.J.A.C. 6A:23A-16.7 Employee organizational dues**

This section authorizes deductions made from employee's compensation for the purpose of paying dues to a bona fide employee organization and requires the deductions to be submitted

to the employee organization. The section also requires school district or charter school employees who select to have payroll deductions of organizational dues to indicate, in writing, their choice of employee organization, which can be withdrawn at any time.

The Department proposes an amendment to the second sentence at N.J.A.C. 6A:23A-16.7(b) to replace how written authorization may be withdrawn with “in accordance with the procedures set forth at N.J.S.A. 52:14-15.9e.” The proposed amendments will align the regulation with changes to the statute.

#### **N.J.A.C. 6A:23A-16.8 Petty cash fund**

This section permits the use of a petty cash fund(s) for the purpose of making immediate payments of comparatively small amounts. The section also establishes criteria for establishment of petty cash funds.

#### **N.J.A.C. 6A:23A-16.9 Summer payment plans**

This section authorizes a district board of education or charter school board of trustees to establish a summer payment plan to provide for withholding 10 percent of the salary of 10-month employees during the academic year. The section also requires the district board of education or charter school board of trustees to ensure the amount withheld earns interest and is available to the employee either at the end of the academic year or in installments prior to September 1.

#### **N.J.A.C. 6A:23A-16.10 Budgetary controls and over-expenditure of funds**

This section requires a district board of education or charter school board of trustees to implement controls over budgeted revenues and appropriations and requires any school district or charter school projecting a deficit to follow specific reporting procedures, including the creation of a corrective action plan. The section also requires all district boards of education and charter school boards of trustees to follow detailed financial reporting procedures at every meeting and establishes a timeline for the executive county superintendent to report to the Commissioner any overexpenditure by a school district or charter school. The section further authorizes the Commissioner to reduce State payments to any school district or charter school that fails to implement a corrective action plan.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.10(c)3ii to add a cross-reference to the subchapters regarding transfers at N.J.A.C. 6A:23A-13 and 14.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.10(c)4v to specify that a copy of the monthly financial reports must be provided to the executive county superintendents rather than the Department, in general.

The Department proposes new N.J.A.C. 6A:23A-16.10(g) to set forth rules if the procedures at N.J.A.C. 6A:23A-16.10(b) result in corrective action that is not sufficient to avoid a deficit on a budgetary basis or to correct an actual fund deficit on a budgetary basis. Proposed new N.J.A.C. 6A:23A-16.10(g)1 would allow a district board of education that has an appointed State monitor to apply for an advance of State aid pursuant to N.J.S.A. 18A:7A-56. Proposed new N.J.A.C. 6A:23A-16.10(g)2 would allow a district board of education that does not have an appointed State monitor to apply for Emergency Aid pursuant to the annual Appropriations Act.

#### **N.J.A.C. 6A:23A-16.11 Internal service funds**

This section describes internal service funds, which are used to account for and report any activity that provides goods and services from one department or office to other departments or offices of the district board of education, or to other district boards of education and governmental units, on a cost-reimbursement basis. The section also permits a district board of education providing a shared service within the school district to allocate costs on a user charge or other basis.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.11(a) to add that the rule applies to charter school and renaissance school project boards of trustees. Existing N.J.A.C. 6A:23A-16.11(b) and (c) apply to charter school boards of trustees and are being amended to also apply to renaissance school project boards of trustees.

#### **N.J.A.C. 6A:23A-16.12 Student activity funds**

This section defines student activity funds derived from athletic events or other activities of pupil organizations and requires the funds to be maintained in separate interest-bearing accounts. The section also requires the district board of education or charter school board of trustees to establish activity funds by resolution and to adopt a policy that will ensure appropriate fiscal accountability.

The Department proposes an amendment at N.J.A.C. 6A:23A-16.12(a) to delete the first sentence because the language defines “student activity funds,” which already is defined at N.J.A.C. 6A:23A-1.2. The Department also proposes to replace the description of student activity funds with a reference to the definition in GAAP and to clarify that the funds are generated by student groups for specific uses, such as academic clubs and senior class trips.

The Department further proposes at N.J.A.C. 6A:23A-16.12(a) to add a fourth sentence stating that the district board of education or charter school or renaissance school project board of trustees is required to establish a policy regarding the use of student activity funds. The Department also proposes new N.J.A.C. 6A:23A-16.12(a)1 and 2 to require the policies to include the student activity fund’s purpose and a timeline for the use of the funds generated, and to authorize the allocation of remaining unexpended funds. The proposed new rules will ensure that funds will be properly expended in accordance with the policy and will not remain for years.

#### **N.J.A.C. 6A:23A-16.13 School store business practices**

This section requires a district board of education or any organization under its auspices to comply with the sales tax rules established by the New Jersey Department of the Treasury’s Division of Taxation when operating a school store or offering goods for sale.

The Department proposes an amendment to add that the rule also applies to charter school and renaissance school project boards of trustees.

#### **N.J.A.C. 6A:23A-16.14 Dismissal or re-assignment of a school business administrator**

This section requires notice to the executive county superintendent regarding transfer or dismissal of the school business administrator or the elimination of the position.

The Department proposes amendments at N.J.A.C. 6A:23A-16.14(a) and (b) to add that the section also applies to charter school and renaissance school project boards of trustees.

#### **N.J.A.C. 6A:23A-16.15 Appeals**

This section provides that Commissioner decisions issued pursuant to this chapter can be appealed to the Appellate Division of the Superior Court. Decisions of the assistant commissioner and executive county superintendent issued pursuant to this chapter can be appealed pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

### **Subchapter 17. Tuition Public Schools**

#### **N.J.A.C. 6A:23A-17.1 Method of determining tuition rates for regular public schools**

This section defines the actual cost per student for the calculation of the maximum tuition rate a receiving school district is permitted to charge parents and sending school districts. The section requires the district board of education to apportion expenditures by program category and provides examples of the accounting for various expenditure items. The section also requires the receiving and sending district boards of education to establish, in their contractual agreement, a tentative tuition rate. The section further sets forth how the estimated cost per student must be determined and permits certain district boards of education to change the method of determining their tuition rates, with Commissioner approval.

The Department proposes amendments throughout to replace references to “actual cost per student” with “actual cost per pupil” to align the terminology with the authorizing statutes.

The Department proposes amendment deleting N.J.A.C. 6A:23A-17.1(b)1 because “average daily enrollment” is defined at N.J.A.C. 6A:23A-1.2.

The Department proposes an amendment at N.J.A.C. 6A:23A-17.1(d) to require that a district board of education notify the executive county superintendent and the Office of School Finance prior to March 1 preceding the September of the school year for which the tentative tuition rate is being determined whenever a district board of education determines to change the calculation method. The proposed amendment will ensure the district board of education uses the same method for determining the tentative and certified rates.

The Department proposes an amendment at N.J.A.C. 6A:23A-17.1(e) to clarify that the regulation applies to a receiving district board of education that is approved to use the method at N.J.A.C. 6A:23A-17.1(c)1.

The Department proposes new N.J.A.C. 6A:23A-17.1(e)4xii, xiii, and xiv to add to the list of programs into which expenditures must be allocated for the purpose of calculating district tuition rates. The new rules include the following accounting lines, which were added to the chart of accounts after the passage of P.L. 2007, c.260 (SFRA): programs for before/after school, summer school, alternative education, and other supplemental at-risk programs; energy, including natural gas, gasoline, and oil; and security, care and upkeep of grounds, custodial services, and required maintenance of school facilities.

The Department proposes new N.J.A.C. 6A:23A-17.1(f)1i to require the method used to certify the final certified tuition rate to be consistent with the method used to establish the tentative tuition rate at N.J.A.C. 6A:23A-17.1(f). The proposed amendment will clarify that the calculation of the final rate must use the same method that was used to calculate the tentative tuition rate.

The Department proposes amendments at N.J.A.C. 6A:23A-17.1(f)8 to align the rule with N.J.A.C. 6A:23A-14.3, which allows a district board of education to supplement capital and emergency reserve accounts through a resolution between June 1 and June 30. The proposed

amendment also will clarify that the resolution must include the dollar amount to be reserved, and that the estimated tuition cost is calculated as the estimated cost per pupil multiplied by the estimated average daily enrollment.

The Department proposes to delete N.J.A.C. 6A:23A-17.1(f)8ii, which requires exclusions from the next budget cap calculation, because the limits on budget increases at N.J.S.A. 18A:7F-5 were amended and the budget cap no longer applies.

#### **N.J.A.C. 6A:23A-17.2 Method of determining tuition rate in a new district board of education**

This section applies to establishing tuition rates in school districts in their first year of operation. This section requires new district boards of education to submit, for Commissioner approval, tuition rates based on budgeted costs and requires sending district boards of education to pay the approved estimated tuition rates. The section further requires the sending or receiving district board of education to pay for any over- or under-estimate of the tuition rate once the actual certified rate is determined.

The Department proposes to delete the last sentences at N.J.A.C. 6A:23A-17.2(c) and (d) because they apply only to tuition for students in special education classes and are unnecessary and confusing. The payment required in the second sentence of each rule applies to both regular and special education programs.

#### **N.J.A.C. 6A:23A-17.3 County vocational school districts funding; public school district tuition payments, post-secondary vocational education fund sources**

This section permits county vocational school districts (CVSD) to charge tuition to sending school districts within the county and to charge an additional fee to sending school districts from outside the county. The section also permits CVSDs to receive revenue for post-secondary vocational programs provided to post-secondary students who reside within or outside the county.

The Department proposes amendments throughout the subsection to remove “local public” from all references to “local public school districts” for clarity and accuracy because “school district” is a defined term. Further, all school districts are public, and the rules apply to both local and regional school districts.

The Department proposes to delete N.J.A.C. 6A:23A-17.3(a)3i(3) because it requires a separate calculation for all learning disability program categories for extended-year special education programs. CVSDs have only one tuition rate for special education programs and do not have extended school year programs. Therefore, the existing rule is unnecessary.

#### **N.J.A.C. 6A:23A-17.4 Method of determining tuition rates for county vocational schools**

This section defines the method to determine the actual cost per student for the tuition rate for a CVSD. The section limits the CVSD tuition rate to the maximum (actual) cost for regular or special education programs, less other revenues received by the CVSD, such as State aid, pension and Social Security payments from the State, prior-year tuition adjustments, and county contributions. The section requires the CVSD to establish, with sending district boards of education, contractual agreements that include a tentative tuition rate. The section also requires a tuition adjustment to account for the difference between the estimated cost and the actual cost.

The Department proposes to delete N.J.A.C. 6A:23A-17.4(a)2 because “average daily enrollment” is defined at N.J.A.C. 6A:23A-1.2.

The Department proposes amendments at N.J.A.C. 6A:23A-17.4(e)3i and iv to reference tuition rates as “regular and special educational programs” rather than learning disability and extended school year programs. CVSDs have only one tuition rate for special education programs.

The Department proposes an amendment at N.J.A.C. 6A:23A-17.4(h) to correct the cross-reference to N.J.A.C. 6A:23A-17.1(f) because the current cross-reference to N.J.A.C. 6A:23A-17.1(e) inaccurately references only one type of calculation, while the tuition adjustments required at N.J.A.C. 6A:23A-17.4(h) apply to all send-receive districts, regardless of which tuition calculation method is used. N.J.A.C. 6A:23A-17.1(f) requires a written contract between the sending and receiving districts to establish a tentative tuition charge.

#### **N.J.A.C. 6A:23A-17.5 County special services school districts funding; budget limitations; tuition payments**

This section permits the boards of education of county special services school districts (CSSSDs) to receive tuition for students sent by other district boards of education and prevents the CSSSDs from receiving State aid. The section requires CSSSD boards of education to calculate tuition rates for individual special education programs and permits the CSSSD to charge a fee to sending school districts outside the county. The section also specifies tuition to the CSSSD will be transferred directly from the Department and the sending school district’s State aid will be reduced accordingly.

The Department proposes an amendment at N.J.A.C. 6A:23A-17.5(a)2ii(1) to delete the reference to one tuition rate for all programs for the regular school year because CSSSDs are required to determine different rates for each program and cannot charge a single rate for all programs.

#### **N.J.A.C. 6A:23A-17.6 Calculation of the maximum general fund budget net of county contribution and maximum average tuition rate**

This section defines items the CSSSD must include in its general fund budget for the determination of the tuition rate. The section also limits the tuition charges to the maximum average tuition rate per pupil (maximum tuition revenues divided by average daily enrollment).

The Department proposes to amend the section’s heading to “Calculation of estimated tuition rates for county special services school districts” to more accurately reflect the section’s contents and to delete inappropriate uses of “maximum.”

The Department proposes throughout N.J.A.C. 6A:23A-17.6(b) to replace “maximum” with “estimated” when referring to the amounts calculated pursuant to this section. The same amendments are proposed at N.J.A.C. 6A:23A-17.7(c).

#### **N.J.A.C. 6A:23A-17.7 Method of determining tuition rates for county special services schools**

This section defines the method of determining the actual cost per student for determining a CSSSD’s tuition rate. The section requires the CSSSD to exclude, from the actual cost calculation, certain revenues, including costs for programs funded by other sources (county contributions, Medicaid reimbursements, etc.) and expenditures not associated with specific programs for the sending school districts. The section also requires the CSSSD to allocate funds by program category, according to Commissioner-provided workpapers. Similar to previous sections for other school districts, this section requires the CSSSD to establish tentative tuition

rates by contractual agreements with sending district boards of education and to ultimately adjust payments according to the CSSSD's actual costs.

### **Subchapter 18. Tuition for Private Schools for Students with Disabilities**

The rules in this subchapter provide the methodology for calculation of tuition charged by APSSDs. The rules also establish non-allowable costs and audit requirements.

#### **N.J.A.C. 6A:23A-18.1 Scope and Purpose**

This section states that the subchapter establishes requirements for accounting, financial reporting, and tuition rate setting by APSSDs. The rules also set forth processes and procedures, including, but not limited to, new school applications, non-allowable costs, and audit requirements.

#### **N.J.A.C. 6A:23A-18.2 Definitions**

The section defines terms used in the subchapter.

#### **N.J.A.C. 6A:23A-18.3 Tuition rate procedures**

This section provides the methodology for calculation of tuition rates charged by APSSDs. The Department sets a tentative payment rate for APSSDs based on audited costs of the preceding school fiscal year and then adjusts the rate based on a reconciliation of the allowable spending of each APSSD. Tuition is based on actual allowable costs plus a percentage profit (for-profit APSSDs) or percentage increase in working capital (nonprofit APSSDs). The Department notifies APSSDs and school districts of a maximum tentative tuition rate for the ensuing school year. Further, this section allows APSSDs to charge one tuition rate per school location or separate tuition rates by class type and by school location. An APSSD that charges a rate by class type is required to maintain bookkeeping and accounting records by class type and school location.

#### **N.J.A.C. 6A:23A-18.4 New approved private schools for students with disabilities**

This section provides the framework for establishing a new APSSD. Prospective applicants must file with the Office of Special Education an application to establish an APSSD, complete and file appropriate documentation, and obtain Commissioner approval prior to operating as an APSSD. This section also establishes requirements for the minimum number of public school placement students for new schools and previously approved APSSDs.

#### **N.J.A.C. 6A:23A-18.5 Bookkeeping and Accounting**

This section establishes requirements for accounting and financial reporting by APSSDs. The section also specifies recordkeeping and requires APSSDs to prepare quarterly financial reports in a format prescribed by the Commissioner and submit the reports to the APSSD governing body for acceptance. The section also establishes criteria for when APSSDs may provide merit- or contingent-pay increases. This section sets forth rules on how APSSDs account for the costs of retirement plans or the timing of compensation increases.

#### **N.J.A.C. 6A:23A-18.6 Non-allowable costs**

This section provides a lengthy, yet non-exhaustive, list of 73 types of non-allowable costs that APSSDs cannot include in the calculation of the certified actual cost per student that affects



the final tuition rate the APSSD is permitted to charge New Jersey school districts and State agencies.

#### **N.J.A.C. 6A:23A-18.7 Surcharge**

This section allows for-profit APSSDs to charge a tuition rate that includes an annual surcharge up to 2.5 percent of the APSSD's allowable actual costs.

#### **N.J.A.C. 6A:23A-18.8 Public school placement restricted working capital fund**

This section allows nonprofit APSSDs to establish a working capital fund and requires the balance to not exceed 2.5 percent of the school's actual allowable costs.

#### **N.J.A.C. 6A:23A-18.9 Calculation of student attendance**

This section prescribes student attendance recordkeeping.

#### **N.J.A.C. 6A:23A-18.10 Audit requirements**

This section sets forth requirements for audits of annual financial statements by independent registered municipal accountants of New Jersey or an independent certified public accountant of New Jersey. The section also provides rules related to the audited tuition rate versus the tentative tuition rate.

#### **N.J.A.C. 6A:23A-18.11 Appeals**

This section provides that decisions of the assistant commissioner of the Division of Administration and Finance regarding the calculation or approval of tentative tuition rates and conditional approval status made pursuant to the subchapter can be appealed in accordance with N.J.A.C. 6A:3, Controversies and Disputes. This section also provides that Commissioner decisions regarding new APSSDs may be appealed in accordance with N.J.A.C. 6A:4, Appeals.

#### **N.J.A.C. 6A:23A-18.12 Roundtable work group**

This section authorizes the Commissioner, or the Commissioner's designee, to establish a work group for the primary purpose of discussing issues that impact APSSDs.

#### **N.J.A.C. 6A:23A-18.13 Out-of-State approved private schools for students with disabilities**

This section sets forth procedures for agreement of tuition rates when a student is sent to an out-of-State APSSD or to a facility approved by the New Jersey Department of Human Services.

#### **N.J.A.C. 6A:23A-18.14 Inspection of records**

This section requires financial and accounting records of an APSSD or records maintained by the APSSD, or by a related party for records that pertain to a transaction between the related party and the APSSD, to be available for review and audit by the Commissioner or the Commissioner's designee. The section also requires all auditor workpapers used in the preparation of the year-end audited financial statements to be available for review by the Commissioner or the Commissioner's designee.

### **N.J.A.C. 6A:23A-18.15 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans**

This section provides for fiscal monitoring of APSSDs and corrective action plans when the Department has identified noncompliance.

### **N.J.A.C. 6A:23A-18.16 Fiscal and budget information**

This section requires APSSDs to submit to the Department specified annual fiscal information. This section also requires an affidavit by the APSSD's owners/operators that they are aware of the non-allowable costs in N.J.A.C. 6A:23A-18.5 and the costs charged as allowable costs in the APSSD tuition rate are consistent with the individualized education program of a student with disabilities and are reasonable (that is, ordinary and necessary and not in excess of the cost that would be incurred by an ordinary prudent person in the administration of public funds). The section also requires the Department to publish annually an APSSD spending guide. The section further requires an APSSD to have available, upon the Department's request, a copy of the board of director's minutes or, for a partnership, the minutes of the partners meetings.

### **N.J.A.C. 6A:23A-18.17 Failure to comply with the Department directives**

This section allows the Department to place an APSSD on conditional approval status if the school fails to comply with Department directives such as failure to refund tuition as a result of a Department audit.

### **N.J.A.C. 6A:23A-18.18 Sale of assets of an approved private school for students with disabilities**

This section requires an APSSD that sells its assets to a new or existing APSSD to provide the Department with a copy of the sale agreement, the allocation of purchase price, and a financial report within 90 days of the sale showing asset disposition and any corresponding refund to the sending districts based on the sale of assets.

### **N.J.A.C. 6A:23A-18.19 Annual disclosure statement**

This section establishes the procedures an APSSD must follow in submitting annual disclosure statements to the Department.

### **N.J.A.C. 6A:23A-18.20 Nepotism**

This section sets forth the requirements for APSSDs to establish policies regarding nepotism and to disclose incidents of nepotism to the Department.

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

This section sets forth the requirements for APSSDs to establish policies regarding the use of funds for travel by employees and officials, and details travel-related costs that are not permitted to be included in the calculation of the actual cost per pupil.

### **N.J.A.C. 6A:23A-18.22 Behavior modification**

This section requires APSSDs to adopt a policy regarding the types of behavior modification used by the school and includes what the policy shall and shall not include.

## **N.J.A.C. 6A:23A-18.23 Child nutrition**

This section sets forth the procedures that an APSSD must follow when providing meals to students, and the section also establishes when the cost of providing meals can be included in the certified actual cost per student.

### **Subchapter 19. Emergency State Aid and Residency Determination**

#### **N.J.A.C. 6A:23A-19.1 Emergency aid**

This section sets forth the procedures a school district must follow when applying for emergency aid from the State.

#### **N.J.A.C. 6A:23A-19.2 Method of determining the district of residence**

This section establishes the criteria for determining the district of residence for financial responsibility for students who are placed in State facilities or placed by State agencies.

The Department proposes an amendment at N.J.A.C. 6A:23A-19.2(a)1 to clarify that “resident enrollment” is the defined term at N.J.S.A. 18A:7F-45.

The Department proposes an amendment at N.J.A.C. 6A:23A-19.2(a)3 to shift financial responsibility to the State for subsequent years after a child resides in a domestic violence shelter, homeless shelter, or transitional living facility that is outside the district of residence for more than one year. The proposed amendment will align the rule with P.L. 2017, c. 83 and P.L. 2012, c. 80, which amended N.J.S.A. 18A:7B-12.d.

The Department proposes an amendment at N.J.A.C. 6A:23A-19.2(g) to align the rule with statutes N.J.S.A. 18A:7B-12 and 18A:38-1.d for determining residency, and is further amended to differentiate between this rule and the proposed amendments at N.J.A.C. 6A:23A-19.2(a)3 to clarify that the new school district is responsible for the student’s educational costs pursuant to N.J.A.C. 6A:23A-19.2(g) only when the State has not been deemed responsible pursuant to N.J.A.C. 6A:23A-19.2(a)3.

#### **N.J.A.C. 6A:23A-19.3 Address submission for determining the district of residence**

This section establishes how financial responsibility for a student’s education is assigned based on the address of the child’s parent(s) or guardian(s), the address of the resource family home parents, or the State.

The Department proposes an amendment at N.J.A.C. 6A:23A-19.3(a)1 to shift the district of residence for a student in a family resource home from the school district in which the resource family parents reside to the district of residence of the parent or guardian with whom the child lived prior to the most recent placement for students placed after the law’s effective date of September 9, 2010. The district of residence remains the school district in which the resource family parents reside for students placed prior to that date. The proposed amendments will align the rule with P.L. 2010, c. 69 (N.J.S.A. 18A:7B-12.a).

### **Subchapter 20. Purchase and Loan of Textbooks**

#### **N.J.A.C. 6A:23A-20.1 Eligibility**

This section requires a district board of education in which a nonpublic school is located to purchase and loan, without charge, textbooks to students who are State residents and attend nonpublic schools situated in the school district.

#### **N.J.A.C. 6A:23A-20.2 Responsibility of the district board of education**

This section requires the school district to distribute textbooks on an equitable basis and without discrimination to both public and nonpublic students, pursuant to N.J.S.A. 18A:58-37.1 et seq.

#### **N.J.A.C. 6A:23A-20.3 Individual requests**

This section sets forth the process by which a nonpublic school requests textbooks from the school district. The section also states that requests are due on or before March 1 preceding the school year.

#### **N.J.A.C. 6A:23A-20.4 Ownership and storage of textbooks**

This section requires a school district to maintain the ownership of textbooks and the responsibility for their receipt and inventory. The section also permits the district board of education to require the return of the textbooks at the end of the school year or to enter into an agreement with a nonpublic school to store the books.

#### **N.J.A.C. 6A:23A-20.5 Accounting entries**

This section permits a district board of education to include, on school district financial statements, the cost of freight or postage in expenditures for the purchase of textbooks. The section also requires the district board of education to enter the cost of textbooks for public school students in the general expense fund and the cost of textbooks for nonpublic students in the special revenue fund in the minimum charter of accounts.

The Department proposes an amendment at N.J.A.C. 6A:23A-20.5(b) to state that the cost of electronic textbooks shall be treated in the same manner.

#### **N.J.A.C. 6A:23A-20.6 Charge for textbook loss or damage**

This section allows each district board of education to make reasonable rules and regulations governing the loan of textbooks to both public and nonpublic school students. The section allows the district board of education's rules and regulations to require student reimbursement to the district board of education for damage, loss, or destruction of the loaned textbooks.

### **Subchapter 21. Management of Public School Contracts**

#### **N.J.A.C. 6A:23A-21.1 Change orders and open-end contracts**

This section sets forth procedures for use of change orders.

The Department proposes an amendment at N.J.A.C. 6A:23A-21.1(a)4 to require the authority, responsibility, and required procedures to be clearly spelled out in advance, by resolution, when a district board of education's or charter school board of trustees' authority is to

be exercised by a school official. The proposed amendment will replace vague language and clarify that the best practice is required.

The Department proposes an amendment at N.J.A.C. 6A:23A-21.1(e)2ii to state that the contract is for “professional services,” as defined at N.J.S.A. 18A:18A-2.h,” for clarity.

The Department proposes amendments at N.J.A.C. 6A:23A-21.1(f)1 to clarify when a purchase can be made under an existing open ended contract and when a change order is necessary.

### **N.J.A.C. 6A:23A-21.2 Acceptance of bonds under the Public School Contracts Law**

This section provides requirements related to performance, bid, and/or labor and material bonds.

### **N.J.A.C. 6A:23A-21.3 Public sale of bonds**

This section sets forth procedures related to public sale of bonds.

The Department proposes to amend N.J.A.C. 6A:23A-21.3(a) and (b) to delete the references to the Local Finance Board and the Department of Community Affairs because the adopting authority of the cross-referenced rules is not necessary. The same amendment is proposed at N.J.A.C. 6A:23A-21.6.

### **6A:23A-21.4 Contracts for behind-the wheel driver education**

This section establishes procedures regarding award of contracts for behind-the-wheel-driver education.

### **N.J.A.C. 6A:23A-21.5 Joint purchasing systems**

This section allows a district board of education or charter school board of trustees to establish, by resolution, joint purchasing systems pursuant to N.J.S.A. 40A:11-11 and upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

### **N.J.A.C. 6A:23A-21.6 Multi-year leasing**

This section requires a district board of education or charter school board of trustees to execute multi-year leases only as authorized by the Public School Contracts Law and in accordance with N.J.A.C. 5:34-3.

## **Subchapter 22. Financial Operations of Charter Schools**

### **N.J.A.C. 6A:23A-22.1 Definitions**

This section establishes that the words and terms used in the subchapter are defined at N.J.A.C. 6A:23A-15.1.

The Department proposes an amendment to amend the cross-reference to include N.J.A.C. 6A:23A-1.2.

### **N.J.A.C. 6A:23A-22.2 Bookkeeping and accounting for charter schools**

This section requires charter schools to comply with GAAP and other requirements and provisions at N.J.A.C. 6A:23A-16.

### **N.J.A.C. 6A:23A-22.3 Certification**

This section requires charter schools to employ, or contract with, a person who holds a New Jersey standard or provisional school business administrator certificate to oversee the charter school's fiscal operations.

### **N.J.A.C. 6A:23A-22.4 Financial requirements**

This section limits the amount of time a charter school can incur debt, permits the charter school board of trustees to lease property for use as a school facility, and requires the charter school be granted a charter by the Commissioner before it can receive any payments from a district board of education. The section also requires the charter school's share of per pupil expenditures for classroom instruction to be comparable to the average share of classroom instruction expenditures for other public schools in the State. The section further requires charter school boards of trustees' bylaws to include provisions for the distribution of assets upon insolvency or non-renewal of the charter school charter.

### **N.J.A.C. 6A:23A-22.5 Public school contract law**

This section requires charter schools to comply with the Public School Contracts Law.

### **N.J.A.C. 6A:23A-22.6 Public relations and professional services; board policies; efficiency**

This section requires each charter school board of trustees to establish, by policy(ies), a strategy(ies) to minimize the cost of public relations, as defined at N.J.A.C. 6A:23A-9.3(c)14, and professional services.

### **N.J.A.C. 6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance (OFAC) investigation report**

This section requires a charter school that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) to discuss the findings of the audit or investigation at a public meeting of the charter school board of trustees no later than 30 days after receipt of the findings.

### **N.J.A.C. 6A:23A-22.8 Verification of payroll check distribution**

This section requires all charter schools to verify payroll at least once every three years.

### **N.J.A.C. 6A:23A-22.9 Board of trustees expenditures for non-employee activities, meals and refreshments**

This section provides the allowable and prohibited expenditures for non-employee activities, meals, and refreshments.

### **N.J.A.C. 6A:23A-22.10 Nepotism policy**

This section requires charter school boards of trustees to implement a nepotism policy that prohibits certain administrators from hiring or supervising a relative. The section also prohibits certain charter school administrators from negotiating or voting on any contract when their relative is a member of the affected collective bargaining unit.

### **N.J.A.C. 6A:23A-22.11 Contributions to board members and contract awards**

This section requires charter schools to establish policies and procedures to ensure the maintenance of honest and ethical relations with vendors and to guard against favoritism.

The Department proposes to amend N.J.A.C. 6A:23A-22.11(a) to replace the reference to the public law with a reference to the statute where the definitions appear because the statute has been amended twice, most recently by P.L. 2023, c. 30. The Department also proposes throughout the section to delete the public law references because the corresponding statutes also were amended pursuant to P.L. 2023, c. 30.

### **N.J.A.C. 6A:23A-22.12 Internal controls**

This section requires charter schools to establish specific policies and procedures on internal controls to promote operational efficiency and effectiveness, provide reliable financial information, and safeguard assets and records.

### **N.J.A.C. 6A:23A-22.13 Segregation of duties; organization structure**

This section requires charter schools to segregate duties of all financial processes among business office staff based on available charter school resources, assessed vulnerability, and the associated cost-benefit.

### **N.J.A.C. 6A:23A-22.14 Standard operating procedures (SOPs) for business functions**

This section requires charter schools to establish standard operating procedures (SOPs) for each task or function of the charter school's business operations.

The Department proposes to amend N.J.A.C. 6A:23A-22.14(b)5 to separate the specific purchasing tasks in the SOP manual for charter schools. The Department also proposes new N.J.A.C. 6A:23A-22.14(b)5i to stipulate the requirements for renaissance school project SOP manuals. The two subparagraphs are the same, except renaissance school projects are not subject to bid and quote requirements for purchasing.

### **N.J.A.C. 6A:23A-22.15 Approval of amounts paid in excess of approved purchase orders; board policy**

This section requires charter schools to adopt a policy establishing the approval process for a remittance of payment for invoice amounts greater than the approved purchase order. The section includes specific programming requirements for the charter schools' financial systems. The section also requires the school business administrator to review on a monthly basis all change reports made in excess of the originally approved purchase order amount.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is exempt from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rules proposed for readoption with amendments govern essential activities that support the educational process and enhance fiscal accountability. The proposed amendments increase protections in the public interest by clarifying existing rules regarding fiscal accountability, increasing the proportion of instructional costs within APSSD tuition charges, improving the audit process for APSSDs, and ensuring salary limits for APSSDs are consistently applied for all hired staff. The proposed amendments are essential to promote sound administrative practices and provide for the proper expenditure of public funds.

### **Economic Impact**

The rules proposed for readoption with amendments will have a positive impact on public schools, charter schools, renaissance school projects, and APSSDs through the rules' promotion of the proper expenditure of public funds by providing an orderly and efficient method for conducting essential education support activities. The proposed amendments will continue this process and create an overall positive economic impact in terms of the degree of protection and accountability the rules provide for the proper expenditure of public funds. The rules proposed for readoption with amendments will not require the employment of additional personnel, and will not impose a negative economic impact on school districts, charter schools, renaissance school projects, APSSDs, or the State.

### **Federal Standards Statement**

There are no Federal standards or requirements applicable to the rules proposed for readoption with amendment; therefore, a Federal standards analysis is not required.

### **Jobs Impact Statement**

The Department anticipates the rules proposed for readoption with amendments will have no impact upon the generation or loss of jobs in the State. The rules proposed for readoption with amendments concern the fiscal operations of district boards of education, charter school boards of trustees, renaissance school project boards of trustees, and APSSDs.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact upon the agriculture industry in the State. The rules proposed for readoption with amendments concern the fiscal operations of district boards of education, charter school boards of trustees, renaissance school project boards of trustees, and APSSDs.

### **Regulatory Flexibility Analysis**

APSSDs meet the definition of a small business as that term is defined under Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are 135 APSSDs in New Jersey.

The rules proposed for readoption will continue to require APSSDs to meet reporting, record keeping, and other compliance requirements. As in prior years, APSSDs are required to



maintain financial records in a manner consistent with GAAP on an accrual basis of accounting and in accordance with the Uniform Minimum Chart of Accounts for New Jersey Public Schools. The records include, but are not limited to, the following: a cash receipts journal; a cash disbursements journal; a general ledger; a tuition ledger; a payroll journal; and a fixed assets inventory. As in previous years, the rules proposed for readoption allow APSSDs to charge, for the entire school year, one per diem tuition rate that is based on the certified cost per student, which reduces the reporting and recording requirements. As in previous years, the APSSDs are required to file a year-end audit report, which must be prepared by a licensed public school accountant.

The proposed amendments do not impose additional reporting requirements on APSSDs. The proposed amendments may require APSSDs to maintain records for longer than is currently required, and imposes deadlines for APSSDs to comply with or respond to requests from the Department. As professional services necessary to comply with the regulatory requirements can be included in the tuition rate charged to a district board of education, the proposed amendments for compliance will not impose a financial burden on APSSDs. The proposed amendments also reduce accounting requirements by increasing the threshold for capitalizing fixed asset expenditures. There are no capital costs associated with the proposed readoption with amendments. As compliance requirements and costs are minimal, there should be no adverse impact on small businesses.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will not have an impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the rules proposed for readoption with amendments will evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments pertain to the fiscal operations of school districts, charter schools, renaissance school projects, and APSSDs.

### **Smart Growth Development Impact Analysis**

There is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments pertain to the fiscal operations of school districts, charter schools, renaissance school projects, and APSSDs.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

There is an extreme unlikelihood the rules proposed for readoption with amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules proposed for readoption with amendments pertain to the fiscal operations of school districts, charter schools, renaissance school projects, and APSSDs. Accordingly, no further analysis is required.

**Full text** of the rules proposed for readoption and the proposed amendments follows (additions indicated in boldface **thus** or **thus**; deletions indicated in brackets [thus] or [[thus]]):

## Chapter 23A, Fiscal Accountability, Efficiency, and Budgeting Procedures

### Subchapter 16. Double-Entry Bookkeeping and GAAP Accounting

#### 6A:23A-16.1 Prescribed system of double-entry bookkeeping and GAAP accounting

- (a) Each district board of education and charter school **and renaissance school project** board of trustees shall maintain a uniform system of financial bookkeeping and reporting.
- (b) Each district board of education and charter school **and renaissance school project** board of trustees shall ensure that the uniform system is fully consistent with [the “generally accepted accounting principles“ (henceforth referred to as “[GAAP]”) as set forth in the Governmental Accounting and Financial Reporting Standards Original Pronouncements, published annually by the Governmental Accounting Standards Board ([GASB]; 401 Merritt 7, PO Box 5116, Norwalk CT)], incorporated herein by reference, as amended and supplemented, and is compatible with the financial accounting terminology and classifications established in the **most recent edition of the** Federal accounting manual, Financial Accounting for Local and State School Systems[, 2014 Edition,] by [the National Center for Education Statistics ([NCES]; K Street NW, Washington, DC 20006)], incorporated herein by reference, as amended and supplemented, as prepared, published, and distributed by the Commissioner[, as required by] **in accordance with N.J.S.A. 18A:4-14, and the most recent editions of the Uniform Minimum Chart of Accounts for New Jersey Public Schools and Approved Private Schools for Students with Disabilities, which is incorporated herein by reference, as amended and supplemented, and available at** <https://www.nj.gov/education/finance/fp/af/coal/>.

#### 6A:23A-16.2 Principles and directives for accounting and reporting

- (a) Each district board of education and charter school **and renaissance school project**

board of trustees shall use accounting and reporting directives as prepared, published, and distributed by the Commissioner, in addition to any books, materials, or bulletins, for the guidance of school officials in establishing and maintaining the double-entry bookkeeping and accounting system mandated in this subchapter.

(b) Each district board of education and charter school **and renaissance school project** board of trustees shall develop a system of accounting and reporting objectives that makes it possible to:

1. Present fairly and with full disclosure [the] **all** funds and activities of the district board of education [and] **or** charter school **or renaissance school project** board of trustees in conformity with GAAP; and
2. Determine and demonstrate compliance with finance-related legal and contractual provisions.

(c) Each district board of education and charter school **and renaissance school project** board of trustees shall develop an accounting system that is organized and operated on a fund basis and shall:

1. Report governmental, proprietary, and fiduciary funds in the fund financial statements to the extent that they have activities that meet the criteria for using those funds;
2. Establish and maintain [those] funds required by law and sound financial administration. Only the minimum number of funds consistent with legal and operating requirements should be established;
3. Use the modified accrual or accrual basis of accounting as appropriate in measuring financial position and operating results in accordance with GAAP and regulatory provisions; and
4. Recognize transfers in the accounting period in which the interfund receivable and payable arise.

- (d) Each district board of education and charter school **and renaissance school project** board of trustees shall adopt an annual budget and shall include the adopted annual budget in the minutes of the board.
1. A district board of education or charter school **or renaissance school project** board of trustees shall develop a detailed budget statement, which includes the classification of expenditures by program and function and is prepared on a fund basis in accordance with N.J.S.A. 18A:22-8 and on a form prescribed by the Commissioner.
  2. A district board of education or charter school **or renaissance school project** board of trustees shall prepare a detailed budget for each special project, each capital project as separately identified in a referendum, and each Federal or State grants and maintain the detailed budget, along with all authorized revisions, on file in the [district board of education or charter school board of trustees'] **central** business office.
  3. Each district board of education and charter school **and renaissance school project** board of trustees shall take appropriate action, as necessary, to maintain a balanced budget.
- (e) Each district board of education and charter school **and renaissance school project** board of trustees shall ensure that the accounting system provides the basis for appropriate budgetary control.
- (f) Each district board of education and charter school **and renaissance school project** board of trustees shall use common terminology and classification consistently throughout the budget, accounts, and financial reports of each fund, and shall adopt a **prepared** chart of accounts [prepared in conformity] **that conforms** with the following:
1. Each district board of education and charter school **and renaissance school project** board of trustees shall use, for financial reporting to the Department [of

Education], [a uniform minimum chart of accounts] **the most recent editions of the Uniform Minimum Chart of Accounts for New Jersey Public Schools** published and distributed by the Commissioner consistent with **the latest edition of the** Financial Accounting for Local and State School Systems[, 2014 Edition,] developed by [the National Center for Education Statistics (]NCES[)]; K Street NW, Washington DC 20006[)], incorporated herein by reference, as amended and supplemented, **in accordance with N.J.S.A. 18A:4-14.**

2. A district board of education or charter school **or renaissance school project** board of trustees [wishing] **that formally adopts a resolution** to expand upon the minimum requirements for the budget system [established in] **at (f)1** above shall: [compile]

**i. Be subject to the budgetary and over expenditure controls pursuant to N.J.A.C. 6A:23A-16.10(a)3;**

**ii. Compile** budget data in the expanded and minimum format each month and at the end of the fiscal year[.]; and [shall use]

**iii. Use,** for such expanded systems, the Financial Accounting for Local and State School Systems, developed by NCES, as published and distributed by the Commissioner.

3. A district board of education and charter school **and renaissance school project** board of trustees shall approve and adopt any modifications to the chart of accounts, and shall ensure [conformance of] the modifications [to] **conform with** the standards [established in] **at (f)1 and 2** above.

(g) Each district board of education and charter school **and renaissance school project** board of trustees shall establish an adequate internal control structure and procedures for financial reporting.

(h) Each district board of education and charter school **and renaissance school project**

board of trustees shall prepare monthly financial statements and reports of financial condition, operating results, and other pertinent information, in accordance with directions issued by the Commissioner, to facilitate management control of financial operations, legislative oversight, and, where necessary or desired, for external reporting purposes.

- (i) Each district board of education and charter school **and renaissance school project** board of trustees shall prepare and publish [a Comprehensive Annual Financial Report (henceforth referred to as CAFR)] **an ACFR** in compliance with the standards set forth by the Government Accounting and Financial Reporting Standards Original Pronouncements, incorporated herein by reference, as amended and supplemented, as prepared, published, and distributed by [the Governmental Accounting Standards Board (]GASB[ 401 Merritt 7, PO Box 5116, Norwalk CT 06856-5116)] and GAAP, covering all activities of the district board of education or charter school **or renaissance school project** board of trustees. The district board of education and charter school **and renaissance school project** board of trustees shall ensure that the [CAFR] **ACFR** includes, but is not limited to: an introductory section; basic financial statements; required supplementary information; schedules, narrative explanations, and a statistical section. Each district board of education and charter school **and renaissance school project** board of trustees shall use the uniform program as published and distributed by the Commissioner for preparing the [Comprehensive Annual Financial Report] **ACFR**.

1. A district board of education or charter school **or renaissance school project** board of trustees shall cause an audit of the annual financial statements to be made pursuant to N.J.S.A. 18A:23-1 et seq., and shall engage, **to conduct the annual audit**, only a licensed public school accountant [to conduct the annual audit] who has an external peer/quality report performed in accordance with Government Auditing Standards (Yellow Book) by the Comptroller General of

the United States (U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001). The district board of education or charter school **or renaissance school project** board of trustees shall ensure that the external peer/quality report is completed within the time established by Government Auditing Standards issued by the Comptroller General of the United States unless the accountant or firm can show good cause as to why there is a delay.

2. A district board of education or charter school **or renaissance school project** board of trustees shall require the submission of the most recent external peer/quality report and letter of comment to the district board of education or charter school **or renaissance school project** board of trustees for review and evaluation prior to each appointment of a licensed public school accountant to conduct the annual audit.
  - i. A district board of education or charter school **or renaissance school project** board of trustees shall acknowledge the receipt, review, and evaluation of the external peer/quality report in the public session and minutes in which the district board of education or charter school **or renaissance school project** board of trustees authorizes the engagement of the accountant or firm to perform the audit.
  - ii. A district board of education or charter school **or renaissance school project** board of trustees shall require the submission of an updated external peer/quality report of the **engaged** licensed public school accountant [engaged by the district board of education], within 30 days after the issuance date of the external peer/quality report if such report is issued prior to the date of the audit opinion for the most recent fiscal year.
  - iii. In accordance with NJOMB Circular Letter 15-08, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid, including any

amendments or revisions thereto, a district board of education or charter school **or renaissance school project** board of trustees shall ensure that the public school accountant provides a copy of the most recent external peer/quality report to the Department, within 30 days after the initial engagement of a licensed public school accountant or firm and within 30 days after the issuance of a subsequent peer/quality report.

3. A district board of education or charter school **or renaissance school project** board of trustees shall engage a public school accountant during the audit engagement period for non-auditing, management, or other consulting services only if the services comply with the independence standards as established in Government Auditing Standards (Yellow Book) by the Comptroller General of the United States.
4. [A] **The Commissioner may prohibit, for good cause, a** district board of education or charter school **or renaissance school project** board of trustees [may be prohibited for good cause by the Commissioner] from engaging a particular licensed public school accountant, or may [be directed by the Commissioner on] **direct the use of** a process [to be used in] **for** the appointment of a licensed public school accountant. For the purpose of this provision, good cause shall include documented violations of N.J.S.A. 18A:23-1 et seq., reported deficiencies or violations identified through the American Institute of Certified Public Accountants (AICPAs) Peer Review Process as applied by the New Jersey Society of Certified Public Accountants (NJSCPA), disciplinary action by the State Board of Accountancy or AICPA, or after an investigation by the Department and hearing before the Commissioner or [his or her] **Commissioner's** designee.
5. Documented violations of N.J.S.A. 18A:23-1 et seq. will be reported to the State



Board of Accountancy with a recommendation by the Commissioner to cancel the license of the licensed public school accountant. A district board of education or charter school **or renaissance school project** board of trustees [is] **shall be** prohibited from employing any accountant subject to this provision until the State Board of Accountancy makes a determination on the cancellation of the license.

- (j) [Each] **Pursuant to N.J.S.A. 18A:4-14, each** district board of education shall[, pursuant to N.J.S.A. 18A:4-14,] maintain [legal reserves as defined at N.J.A.C. 6A:23A-1.2] **restricted fund balance categories stipulated by constitution, external resource providers, or through an enabling law in accordance with GAAP accounting standards** and published by [the Governmental Accounting Standards Board (]GASB[; 401 Merritt 7, PO Box 5116, Norwalk, CT)] for encumbrances, or **legal restrictions imposed or permitted by the State or [other] another government**[-imposed or permitted legal restrictions]. A district board of education may request approval to establish a legal reserve other than those authorized herein by submitting a written request to the [Office of School Facilities and] **Division of Finance and Business Services** in accordance with the annual audit program.

#### **6A:23A-16.3 Conflicts between legal provisions and GAAP**

- (a) If financial statements prepared in conformity with GAAP do not demonstrate finance-related legal and Federal or State contractual compliance, a district board of education or charter school **or renaissance school project** board of trustees shall present such additional schedules and narrative explanations in the [Comprehensive Annual Financial Report] **ACFR** as may be necessary to report its legal compliance responsibilities and accountabilities.
- (b) Each district board of education and charter school **and renaissance school project** board of trustees shall maintain the accounting system on a legal-compliance basis, and

shall include sufficient additional records to permit GAAP-based reporting.

**6A:23A-16.4 Minimum bond requirements for treasurer of school moneys**

- (a) Each district board of education and charter school **and renaissance school project** board of trustees shall use as the minimum requirements for the surety bond for the treasurer of school moneys, such percentage of the current year's school budget as required in the schedule set forth below:

Total School Budget	Minimum Bond Required
Up to \$100,000.00	20 percent of budget (Minimum \$10,000)
\$100,000.01 to \$250,000.00	\$20,000 plus 15 percent of all over \$100,000
\$250,000.01 to \$500,000.00	\$42,500 plus 13 percent of all over \$250,000
\$500,000.01 to \$750,000.00 -	\$75,000 plus eight percent of all over \$500,000
\$750,000.01 to \$1,000,000.00	\$95,000 plus four percent of all over \$750,000
\$1,000,000.01 to \$2,000,000.00	\$105,000 plus two percent of all over \$1,000,000
\$2,000,000.01 to \$5,000,000.00	\$125,000 plus one percent of all over \$2,000,000
\$5,000,000.01 to \$10,000,000.00	\$155,000 plus 1/2 percent of all over \$5,000,000
\$10,000,000.01 and upwards	\$180,000 plus 1/4 percent of all over \$10,000,000

- (b) A district board of education or charter school **or renaissance school project** board of trustees, in fixing such minimum bond, shall round to the nearest \$1,000.
- (c) A district board of education and charter school **and renaissance school project** board of trustees shall ensure that the independent school auditor verifies the adequacy of the treasurer's surety bond, [which is required by] **pursuant to** N.J.S.A. 18A:17-32, and includes appropriate comment and a recommendation, if needed, in the annual school audit report.
- (d) **If a district board of education or charter school or renaissance school project board of trustees eliminates the position of treasurer, the person assuming the duties**

**shall have a bond equal to the treasurer's bond or shall have their bond increased up to the amount of the treasurer's bond.**

**6A:23A-16.5 Supplies and equipment**

- (a) Criteria to distinguish between supplies and equipment for accounting purposes as prescribed by GAAP pursuant to N.J.A.C. 6A:23A-16.1 and contained in the Financial Accounting for Local and State School Systems, which is established by [the National Center for Education Statistics (NCEES)], and further specified in the [New Jersey] Department's [of Education's] Uniform Minimum Chart of Accounts for New Jersey Public Schools, is incorporated by reference herein, as amended and supplemented, and on file and may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, PO Box 049, Trenton, New Jersey and the Department of Education, PO Box 500, Trenton, New Jersey.
- (b) For the purpose of this section, "food supplies" includes only [those] supplies that are [to be eaten or drunk] **consumable as food or drink** and [those] substances that may enter into the composition of a food in the operation of a school cafeteria or in a home economics class.
- (c) Whenever any district board of education or charter school **or renaissance school project** board of trustees elects to purchase food supplies pursuant to this section, it shall adopt a policy stating what food supplies will be purchased without advertising for bids, pursuant to N.J.S.A. 18A:18A-5, designating a person(s) [or persons] authorized to purchase food supplies, describing the procedure by which interested vendors may become eligible to submit quotations, and outlining the method by which the district board of education or charter school **or renaissance school project** board of trustees will solicit and accept quotations. A district board of education or charter school **or renaissance school project** board of trustees shall adopt this policy before the opening of

school each year, and shall make the policy known to the public.

(d) A district board of education or charter school **or renaissance school project** board of trustees shall provide definite and uniform specifications governing standards of quality to each eligible vendor from whom quotations are solicited.

1. Each time a purchase of food supplies is to be made, the person(s) designated by the district board of education or charter school **or renaissance school project** board of trustees to purchase food supplies shall solicit quotations from interested, eligible vendors in the manner prescribed in the [adopted district board of education or charter school board of trustees'] policy **adopted in accordance with (c) above**. Quotations for fresh or frozen fruits, vegetables, and meats need not be solicited more than once in any two-week period.
2. The person(s) designated to purchase the food supplies shall purchase them from the vendor giving the lowest quotation, unless the person(s) designated [by the district board of education or charter school board of trustees] to purchase food supplies can justify the purchase from one of the other vendors submitting a quotation. The person(s) designated shall retain, **for a minimum of three years**, such justification, together with all quotations received, in permanent record form, which shall be available to school officials, the district board of education or charter school **or renaissance school project** board of trustees, and the Department [of Education] for review and for audit [for a minimum of three years].
3. Contingent upon approval of the district board of education or charter school **or renaissance school project** board of trustees in its adopted policy, the person(s) designated [by the district board of education or charter school board of trustees] to purchase food supplies may purchase food supplies for any school cafeteria or home economics class [to the extent of] **in an amount** not more than \$500.00 in

any month without soliciting quotations, provided a statement signed by the purchaser is filed with the invoice indicating the reason why quotations could not be obtained, and shall retain such record for **at least seven years** for review and for audit.

- (e) Paragraphs (d)1 and 2 above shall not apply to food supplies purchased by advertising for bids.

#### **6A:23A-16.6 Mechanical bookkeeping systems**

A district board of education or charter school **or renaissance school project** board of trustees or charter school board of trustees that contracts for electronic data processing bookkeeping services shall annually have an audit prepared, or obtain a copy of an audit of the internal controls of the service company or agency and maintain a copy of such audit on file. The audit shall be performed as prescribed by Statement of Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization, **as produced by the American Institute of Certified Public Accountants.**

#### **6A:23A-16.7 Employee organizational dues**

- (a) Pursuant to [provisions of] N.J.S.A. 52:14-15.9e, any person holding employment with a district board of education or charter school **or renaissance school project** board of trustees in this State may have deductions made from this compensation for the purpose of paying dues to a bona fide employee organization.
- (b) A district board of education or charter school **or renaissance school project** board of trustees shall require that employees desiring payroll deductions of organizational dues indicate, in writing, their choice of employee organization. [Any such] **An employee may withdraw** written authorization [may be withdrawn at any time by filing a notice with the secretary of the district board of education or charter school board of trustees] **in accordance with the procedures set forth at N.J.S.A. 52:14-15.9e.**

- (c) Any [secretary of a] district board of education **secretary** or [employee of a] charter school **or renaissance school project** board of trustees **employee** responsible for making organizational payroll deductions shall submit to the designated employee organization, **at least on a monthly basis**, all deductions made for such purposes.

#### **6A:23A-16.8 Petty cash fund**

- (a) Pursuant to [the provisions of] N.J.S.A. 18A:19-13, a district board of education or charter school **or renaissance school project** board of trustees may establish policies for the annual allocation of a petty cash fund or funds for the purpose of making immediate payments of comparatively small amounts.
- (b) A district board of education or charter school **or renaissance school project** board of trustees establishing a petty cash fund shall:
1. Indicate the [amount or amounts] **amount(s)** authorized for each fund;
  2. Set the maximum expenditure that may be made from each fund;
  3. Designate an employee who shall be responsible for the proper disposition of each fund;
  4. Establish the minimum time period in which the designated person shall report to the district board of education or charter school **or renaissance school project** board of trustees on amounts disbursed from each fund; and
  5. Approve a voucher prepared by the school business administrator/board secretary to replenish each fund.
- (c) Each person designated pursuant to (b)3 above shall ensure that all unused petty cash funds are returned to the depository at the close of each fiscal year.

#### **6A:23A-16.9 Summer payment plan**

[A] **In accordance with N.J.S.A. 18A:29-3, a** district board of education or charter school **or renaissance school project** district board of education[, in accordance with N.J.S.A. 18A:29-3,]

**or a charter school or renaissance school project board of trustees** shall establish[, in accordance with N.J.S.A. 18A:29-3,] shall establish a summer payment plan to provide for withholding 10 percent of the salary of 10-month employees during the academic year[. The district board of education], **and** shall ensure that the amount withheld earns interest and is available to the employee either at the end of the academic year or in installments prior to September 1.

#### **6A:23A-16.10 Budgetary controls and overexpenditure of funds**

- (a) A district board of education or charter school **or renaissance school project** board of trustees shall implement controls over budgeted revenues and appropriations as follows:
1. A district board of education or charter school **or renaissance school project** board of trustees shall [only] approve an encumbrance or expenditure (liability or payment) **only after ensuring** that, when added to the total of existing encumbrances and expenditures, **the encumbrance or expenditure** does not exceed the amount appropriated by the district board of education or charter school **or renaissance school project** board of trustees in the applicable line item account established pursuant to the minimum chart of accounts referenced [in] **at** N.J.A.C. 6A:23A-16.2(f)1.
  2. A district board of education or charter school **or renaissance school project** board of trustees shall approve the recording of revenues only when measurable and available, in accordance with GAAP, unless otherwise authorized pursuant to N.J.S.A. 18A:22-44.2.a. State aid and tax levy approved in the budget certified for taxes shall be recorded in full as of July 1. State restricted and unrestricted grants shall be recorded in full upon signing and execution of the grant agreement or as otherwise directed by the grantor.
  3. [When a] A district board of education or charter school **or renaissance school**

**project** board of trustees **that** adopts an expanded chart of accounts, pursuant to N.J.A.C. 6A:23A-16.2(f)2, [such district board of education or charter school board of trustees] shall **also** adopt a policy concerning the controls over appropriations for line item accounts that exceed the minimum level of detail established pursuant to N.J.A.C. 6A:23A-16.2(f)1. [If a] **A** district board of education or charter school **or renaissance school project** board of trustees **that** fails to adopt such a policy[, such school district or charter school] shall apply the restrictions [in] **at** (a)1 above to line item accounts that exceed the minimum level of detail.

4. A district board of education or charter school **or renaissance school project** board of trustees, unless otherwise restricted by law or Commissioner directive, may transfer amounts from line item accounts with available appropriation balances to permit the approval of encumbrances or expenditures otherwise prohibited [in] **at** (a)1 and 3 above. A district board of education or charter school **or renaissance school project** board of trustees shall make [these] **the** transfers prior to the approval of encumbrances or expenditures[. A district board of education or charter school board of trustees], **and** shall make all transfers in accordance with N.J.S.A. 18A:22-8.1, 18A:22-8.2, and 18A:7G-31, and N.J.A.C. 6A:23A-13.14.
- (b) A district board of education or charter school **or renaissance school project** board of trustees incurring or projecting a year-end deficit on a budget basis in the general fund, capital projects fund, or debt service fund, or for a restricted project in the special revenue fund as designated [in] **pursuant to** N.J.A.C. 6A:23A-16.2(c), shall proceed in the following manner:
1. The district board of education or charter school **or renaissance school project** board of trustees shall direct the chief school administrator[, or charter school lead person,] to notify the executive county superintendent, or the Department in the



case of charter schools **or renaissance school projects**, within two working days[,] of the following:

- i. The projected amount of the overexpenditure/deficit; and
  - ii. The preliminary findings of the conditions that caused the projected or actual overexpenditure/deficit.
2. The district board of education or charter school **or renaissance school project** board of trustees shall develop, and adopt at a public meeting, an acceptable corrective action plan to eliminate the projected/actual fund deficit within 30 days of the discovery of such fund deficit, but in no circumstance more than 30 days after completion of the [CAFR] **ACFR** for that year. The corrective action plan shall include:
  - i. The projected or actual amount of the fund deficit;
  - ii. A detailed [list] **accounting** of the line items and the actual or projected deficit amount comprising the overall fund deficit;
  - iii. The conditions producing the deficit; and
  - iv. The corrective actions taken or to be taken to correct or prevent the deficit and dates or projected dates of such actions.
3. The executive county superintendent, or the Department in the case of charter schools, shall immediately notify the Commissioner, in writing, of a school district or charter school with an actual or projected fund deficit and the amount of said deficit.
4. The office of the executive county superintendent, or the Department in the case of charter schools **and renaissance school projects**, shall immediately investigate to determine if the corrective action being taken by the district board of education or charter school **or renaissance school project** board of trustees is sufficient to avoid a fund deficit or correct an actual fund deficit. If necessary, the office of the executive county superintendent or the Department, shall assist the district board

of education or charter school **or renaissance school project** board of trustees in determining what further corrective action can be taken, or request assistance from the [Division of] **Office of School Finance**.

5. The executive county superintendent, or the Department in the case of charter schools **or renaissance school projects**, shall immediately notify the Commissioner, in writing, should it appear that a fund deficit has occurred or may occur and the district board of education or charter school **or renaissance school project** board of trustees is not taking adequate action to avoid the overexpenditure/deficit.
- (c) Each district board of education or charter school **or renaissance school project** board of trustees shall ensure the following occurs at [every] **each of its** regular [district board of education or charter school board of trustees] meetings:
1. The school business administrator/board secretary shall present to the district board of education or charter school **or renaissance school project** board of trustees a report showing all transfers between line item accounts, as well as appropriations, adjustments to appropriations, encumbrances, and expenditures for each line item account shown on the budget form prepared in accordance with N.J.S.A. 18A:22-8. This report shall be in addition to the report required [by] **pursuant to** N.J.S.A. 18A:17-9.
  2. The school business administrator/board secretary shall report to the district board of education or charter school **or renaissance school project** board of trustees any change(s) in anticipated revenue amounts and revenue sources.
  3. A district board of education or charter school **or renaissance school project** board of trustees shall obtain a certification from the school business administrator/board secretary each month **stating** that the total of encumbrances and expenditures for each line item account do not exceed the line item

appropriation in violation of (a) above.

- i. If a violation has occurred, the district board of education or charter school **or renaissance school project** board of trustees, by resolution, **shall** approve by a two-thirds affirmative vote of the authorized membership of the board, pursuant to N.J.S.A. 18A:22-8.1, to either transfer amounts among line items if no [department] **Department** approvals are required pursuant to N.J.A.C. 6A:23A-13, or to direct the school business administrator/board secretary, or the chief school administrator, or charter school **or renaissance school project** lead person, as appropriate, to request **Department** approval pursuant to N.J.A.C. 6A:23A-13 to transfer amounts among line items and/or from undesignated fund balance or other unbudgeted or underbudgeted revenue to eliminate the line item account deficit(s). If the latter option is selected, the appropriate official shall provide **the Department with** a detailed report of approvals granted and the subsequent amounts transferred into and out of the affected line item account(s), undesignated fund balance, or other unbudgeted or underbudgeted revenue account for the board's ratification at the next regularly scheduled meeting.
  - ii. As applicable, the school business administrator/board secretary shall reflect in the minutes of the board, the certification or a detailed account of all transfers and the board's ratification, when this option is selected. The district board of education or charter school **or renaissance school project** board of trustees shall make such transfers in accordance with this subchapter, **N.J.A.C. 6A:23A-13 and 14**, and N.J.S.A. 18A:22-8.1, 18A:22-8.2, and 18A:7G-31.
4. A district board of education or charter school **or renaissance school project**

board of trustees, after review of the school business administrator/board secretary's and treasurer's monthly financial reports and upon consultation with the appropriate school **or school** district [or charter school] officials, shall certify in the minutes of the board each month that no fund has been overexpended in violation of (b) above, and that sufficient funds are available to meet the district board of education's or charter school **or renaissance school project** board of trustee's financial obligations for the remainder of the fiscal year.

- i. If the district board of education or charter school **or renaissance school project** board of trustees is unable to make such a certification, the board shall direct the chief school administrator or charter **or renaissance** school lead person to initiate the steps [outlined in] **at** (b) above and shall reflect such directive in the minutes of the board.
- ii. If the district board of education or charter school **or renaissance school project** board of trustees is able to make such certification, but one or more members of the board votes no to the certification, the [district] board [of education or charter school board of trustees] shall provide, to the executive county superintendent, the board vote, names(s) of the member(s) who voted no, and the reason for the no vote.
- iii. Within 60 days of the month's end, or later upon approval of the executive county superintendent, **district boards of education or charter school or renaissance school project boards of trustees selected at the Commissioner's discretion, and** district boards of education subject to N.J.S.A. 18A:7F-6.b[, district boards of education] that satisfy less than 80 percent of indicators in the fiscal management section of the district performance review located in the Appendix to N.J.A.C. 6A:30, [and other district boards of education] shall provide to the executive county

superintendent a copy of the school business administrator/board secretary's and treasurer's monthly financial reports **as** submitted to the district board of education or charter school **or renaissance school project** board of trustees [under] **pursuant to** (c)1 above and [as required pursuant to] N.J.S.A. 18A:17-9 and 18A:17-36.

- iv. Within 60 days of the December month-end, or later upon approval of the executive county superintendent, every district board of education **and charter school or renaissance school project board of trustees** shall provide to the executive county superintendent a copy of the school business administrator/board secretary's and treasurer's monthly financial reports submitted to the **district** board of education [under] **pursuant to** (c)1 above and [as required pursuant to] N.J.S.A. 18A:17-9 and 18A:17-36.
- v. Within 60 days of the September, December, and March month end, every charter school **or renaissance school project** board of trustees shall provide to the [Department] **executive county superintendent**, a copy of the monthly financial reports submitted to the **charter school or renaissance school project** board of trustees [under] **pursuant to** (c)1 above and [as required pursuant to] N.J.S.A. 18A:17-9 and 18A:17-36.
- vi. Any school business administrator/board secretary who is more than two months behind in submitting **to a district board of education or charter school or renaissance school project board of trustees** the report required pursuant to N.J.S.A. 18A:17-9 [to a district board of education] shall immediately report this noncompliance to the executive county superintendent.

(d) The executive county superintendent shall report to the Commissioner by August 15, all

fund overexpenditures[,], as shown on the June report of the school business

administrator/board secretary filed pursuant to N.J.S.A. 18A:17-10.

1. A district board of education **or charter school or renaissance school project board of trustees** shall immediately develop and adopt an acceptable remedial plan to address any fund(s) deficits consistent with [the provisions of] (b) above.
  2. If necessary, the executive county superintendent shall assist the district board of education **or charter school or renaissance school project board of trustees** in determining what further action can be taken, or request assistance from the [Division of] **Office of School Finance**.
  3. The executive county superintendent shall immediately notify the Commissioner, in writing, if it appears the district board of education **or charter school or renaissance school project board of trustees** is not taking adequate action to remediate the fund(s) deficit.
- (e) A district board of education or charter school **or renaissance school project** board of trustees that fails to develop a corrective action plan or fails to take adequate action [in order] to avoid or remediate an overexpenditure or fund deficit may be subject to the following:
1. Comprehensive review pursuant to N.J.A.C. 6A:30-3, improvement activities pursuant to N.J.A.C. 6A:30-5, or intervention activities pursuant to N.J.A.C. 6A:30-6, as deemed warranted by the Commissioner.
  2. Beginning in the second year following the year in which the projected overexpenditure or fund deficit occurred, a reduction in a district board of education or charter school board of trustees cash payment of State aid by the percentage of the sum of the deficits or projected deficit in any fund to its adequacy budget calculated pursuant to [the provisions of] N.J.S.A. 18A:7F-51, or, in the case of a charter school, a reduction in the charter school aid.

Reductions **in State aid** shall be made in the following descending order:

- i. Equalization aid;
- ii. Adjustment aid;
- iii. Transportation aid;
- iv. Security categorical aid;
- v. Special education categorical aid;
- vi. Extraordinary special education cost aid; and
- vii. Preschool education aid.

3. A district board of education or charter school **or renaissance school project** board of trustees shall apply deficits incurred for State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds, and student activity funds, to the balance or deficit of the general fund when such overexpended projects and funds should have been balanced by expenditures from, or transfers to, that fund.

(f) [In those cases where] **If** the Commissioner determines that the failure to develop a corrective action plan or take adequate action [in order] to avoid or address an overexpenditure or fund deficit impacts upon the school district's ability to meet its goals and objectives, the Commissioner may recommend to the State Board of Education that action be taken pursuant to (b) above. [as deemed warranted by the Commissioner, or in] **In the case of a charter school, [that its charter be revoked] the Commissioner may revoke the charter**, pursuant to N.J.S.A. 18A:36A-17.

(g) **If the procedures at (b) above result in corrective action that is not sufficient to avoid a deficit on a budgetary basis or to correct an actual fund deficit on a budgetary basis, the following shall apply:**

1. A district board of education with an appointed State monitor may apply for an advance of State aid pursuant to N.J.S.A. 18A:7A-56 on a Commissioner-prescribed application; or
2. A district board of education that does not have an appointed State monitor may apply for Emergency Aid pursuant to the annual Appropriations Act on a Commissioner-prescribed application.

#### 6A:23A-16.11 Internal service funds

- (a) Internal service funds are used to account for and report any activity that provides goods and services from one department or office to other departments or offices of the district board of education **or charter school or renaissance school project board of trustees**, or to other district boards of education, **boards of trustees**, and governmental units, on a cost-reimbursement basis. Internal service funds are cost accounting and distribution entities and are intended to recover their costs annually or over a reasonable time period.
- (b) A district board of education or charter school **or renaissance school project** board of trustees providing a shared service under a shared service agreement with another **district** board of education, **board of trustees**, or external entity shall account for the shared service costs in an internal service fund in accordance with GAAP.
  1. The district board of education or charter school **or renaissance school project** board of trustees providing the shared service shall allocate the costs on a user-charge basis to all participating entities on an annual basis at a minimum.
    - i. A district board of education or charter school **or renaissance school project** board of trustees that is receiving the services shall report user charges in the applicable line item account for the goods or services received.
    - ii. A district board of education or charter school **or renaissance school**



**project** board of trustees shall report as revenues the sales and purchases of goods and services for a price approximating their external exchange value ("Services Provided to Other Funds") in provider/seller funds.

2. The district board of education or charter school **or renaissance school project** board of trustees shall ensure that the shared service agreement includes an agreed-upon mechanism for the use and/or distribution of any unexpended balance(s).
  3. The district board of education or charter school **or renaissance school project** board of trustees shall evaluate annually any unexpended balance(s) to determine the amount of monies, if any, due back to the shared service entities.
- (c) A district board of education or charter school **or renaissance school project** board of trustees providing a shared service within the **school** district may allocate costs on a user charge or other basis.

#### **6A:23A-16.12 Student activity funds**

- (a) Student activity funds, **as defined by GAAP**, are [used to account for funds derived from athletic events or other activities of pupil organizations and to account for the accumulation of money to pay for student group activities] **maintained and reported in the ACFR as agency funds. Revenue and expenditures generated by student groups for specific uses, such as academic clubs and senior class trips, are reported as student activity funds.** A district board of education or charter school **or renaissance school project** board of trustees shall establish student activity funds by resolution. Such funds shall be maintained under the jurisdiction of the board [of education or charter school board of trustees] and supervision of the school business administrator/board secretary, who may appoint a designee for purposes of administering the funds. **The district board of education or charter school or renaissance school project board of**

**trustees shall establish a policy that includes the following:**

- 1. Purpose of the student activity fund and a timeline for the use of the funds generated; and**
  - 2. Methodology for distribution of funds remaining subsequent to completion of the purpose for which the funds were generated.**
- (b) Each district board of education [and] **or charter school or renaissance school project** board of trustees shall maintain student activity funds in an interest-bearing account separate from all other funds, [of the district board of education or charter school board of trustees. The district board of education or charter school board of trustees] **and** shall disburse interest on this account(s) to each student activity fund in proportion to the balances on deposit for each activity.
- (c) Each district board of education [and] **or charter school or renaissance school project** board of trustees shall ensure, through adoption of a formal board policy, that all financial and bookkeeping controls are adequate to ensure appropriate fiscal accountability and sound business practices. [The district board of education or charter school board of trustees] **This policy** shall include [in its policy] the following minimum requirements:
1. Receipts [are detailed showing] **shall include the** date, sources, purpose, and amount. The district board of education or charter school **or renaissance school project** board of trustees shall promptly deposit all receipts in the bank[. The district board of education or charter school board of trustees], **and** shall ensure that all deposits agree with the entries in the cash receipt book and are traceable to the actual receipts or groups of receipts.
  2. Disbursements shall be recorded chronologically showing date, vendor, check number, purpose, and amount. The district board of education or charter school **or renaissance school project** board of trustees shall make all disbursements by check bearing a minimum of two authorized signatures, and shall support all

disbursements by a claim, bill, or written order to persons supervising the fund.

3. Book balances shall be reconciled with bank balances. The district board of education or charter school **or renaissance school project** board of trustees shall retain canceled checks and bank statements for examination by the licensed public school accountant as part of the annual audit required [under] **pursuant to** N.J.S.A. 18A:23-1 et seq. and [stated in] N.J.A.C. 6A:23A-16.2(i).
  4. Student activity funds shall be classified by school.
  5. Borrowing from the student activity accounts shall be prohibited.
- (d) The district board of education or charter school **or renaissance school project** board of trustees shall not be responsible for the protection of and the accounting for funds collected by any teacher or pupil for an outside organization, and shall not approve such funds for deposit in a school activity account.

#### **6A:23A-16.13 School store business practices**

A district board of education **or charter school or renaissance school project board of trustees**, or any organization under its auspices, shall comply with sales tax rules established by the New Jersey Department of the Treasury's Division of Taxation when operating a school store or offering goods for sale.

#### **6A:23A-16.14 Dismissal or reassignment of a school business administrator**

- (a) [In order to] **To** protect the integrity of the school business administrator office, a district board of education **or charter school or renaissance school project board of trustees** shall submit to the executive county superintendent, a written justification for the non-renewal, dismissal for cause, reassignment, or elimination of the position of a school business administrator, or the individual duly certified and performing the duties of a school business administrator, within 48 hours of [said] **the notification to the affected**

**employee** by the district board of education [to the affected employee] **or charter school or renaissance school project board of trustees.**

- (b) The affected employee may request a meeting with the executive county superintendent to discuss the justification submitted by the district board of education **or charter school or renaissance school project board of trustees.** The executive county superintendent shall initiate any follow-up action as warranted on issues [under] **pursuant to** the Department's jurisdiction.

### **6A:23A-16.15 Appeals**

- (a) Decisions of the Commissioner issued pursuant to this chapter may be appealed to the Appellate Division of the Superior Court.
- (b) Decisions of the Assistant Commissioner and executive county superintendent issued pursuant to this chapter may be appealed pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

## **Subchapter 17. Tuition Public Schools**

### **6A:23A-17.1 Method of determining tuition rates for regular public schools**

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) The term "actual cost per [student] **pupil**" for determining the tuition rate(s) [or rates] for a given year [referred in] **pursuant to** N.J.S.A. 18A:38-19 and 18A:46-21 means the local cost per student in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined and consistent with the grade/program categories [in] **at** N.J.S.A. 18A:7F-50 and 18A:7F-55, that is, regular education classes: preschool and kindergarten, grades one through five, grades six through eight, and grades nine through 12; and special class programs as [defined in] **set forth at** N.J.A.C. 6A:14-4.7. [Districts] **School districts** that receive preschool education

aid shall determine an actual cost per student only for kindergarten students. Pursuant to N.J.A.C. 6A:13A-2.1, **school** districts that receive preschool education aid and charge tuition to another **school** district and/or parent or guardian, as permitted [under] **pursuant to** N.J.A.C. 6A:13A, may charge any amount, not to exceed the per pupil amount established pursuant to N.J.S.A. 18A:7F-54.

1. The receiving district board of education shall include in its calculation all expenditures for each purpose except Federal and State special revenue fund expenditures and [those] **expenditures** specifically excluded [in] **pursuant to** (e)5 below.

[2. "Average daily enrollment," for the purpose of determining the "actual cost per student," means the sum of the days present and absent of all students enrolled in the register or registers of the program for which the rate is being determined during the year divided by the number of days school was actually in session, but in no event shall the divisor be less than 180 days.]

(c) The receiving district board of education shall obtain certification of its "actual cost per [student] **pupil**" for each tuition category for a given year from the Commissioner based upon either:

1. A report prepared and submitted annually by the receiving district board of education indicating the actual amounts of expenditures and adjustments, whenever practicable, or amounts equitably allocated and supported by documentation for each applicable item in the grade/program category for which the tuition rate is required, according to the prescribed bookkeeping and accounting system; or

2. A report prepared annually by the Commissioner for each receiving district board of education. This report establishes the "actual cost per [student] **pupil**" for each tuition category using the following:

- i. Expenditures reflected in the receiving district board of education's annual independent audit;
  - ii. Supplemental data for average daily enrollment and items of expenditure [detailed in] **at (e)2** below submitted by category by the receiving district board of education on a form prescribed by the Commissioner; and
  - iii. Criteria [contained in] **at (e)** below.
- (d) [Once having determined to annually submit the] **A receiving district board of education that submits tuition reports to the Commissioner** pursuant to (c)1 above [to the Commissioner, a receiving district board of education] **and seeks to change the certification method to the method at (c)2 above** shall submit a written request to the Commissioner for review and approval [in order to change to the certification method in (c)2 above. The receiving district board of education shall indicate] **and shall indicate the reason(s) for the change. A district board of education that determines to change the certification method shall notify the executive county superintendent and the Office of School Finance prior to March 1 preceding the September of the school year for which the tentative tuition rate is being determined.**
- (e) [The] **A receiving district board of education approved to use the method at (c)1 above** shall determine the share of each item of expenditure for each grade/program category on the report [in] **at (c)1** above on a pro rata or actual basis as follows:
  - 1. The actual expenditures for each category as reflected in the receiving district board of education's annual independent audit for the following items:
    - i. Teachers' salaries and equipment for regular education classes; and
    - ii. Direct instructional expenditures for salaries, equipment, and other expenses for special education classes.
  - 2. Expenditures submitted by category on the supplemental data report and determined on either an actual basis or an equitable basis of allocation, such as

square footage or average daily enrollment selected by the receiving district board of education and supported by documentation for the following items:

- i. Rental of land and buildings;
  - ii. Interest on lease-purchase agreements;
  - iii. School-sponsored co-curricular activities, athletics, and other instructional programs of the general fund;
  - iv. [Local vocational] **Career and technical education** programs;
  - v. Facilities acquisition and construction services included in the budget approved by the executive county superintendent and certified for taxes;
  - vi. Building use charges as defined [in] **at** (e)6 and 7 below;
  - vii. Other support services, special education [students];
  - viii. Related services; and
  - ix. Benefits for special programs.
3. Unallocated expenditures for general education class categories as reflected in the receiving district board of education's annual independent audit and allocated in proportion to the average daily enrollment in the grade categories for general education classes for the following items:
- i. Other salaries for instruction such as teaching assistants and aides, as well as [others] **other staff** providing, or assisting directly in, the instructional program;
  - ii. Textbooks;
  - iii. Equipment;
  - iv. Teaching supplies;
  - v. Purchased professional educational services;
  - vi. Purchased technical educational services;
  - vii. Other support services, [regular students] **general education**;

- viii. Other direct expenses of general education classes;
  - ix. Direct instructional expenditures for salaries, other expenses, and equipment for basic skills remedial programs; and
  - x. Employee benefits.
4. Expenditures, including related employee benefits and equipment, as reflected in the receiving district board of education's annual independent audit and allocated in proportion to the average daily enrollment in each category for all categories [listed in] at (b) above for the following items:
- i. General administration, central services, administrative information technology, and business and other support services;
  - ii. Improvement of instructional services;
  - iii. Staff training services;
  - iv. Educational media services, school library;
  - v. School administration;
  - vi. Attendance, social work, and health;
  - vii. Contracted transportation or transportation provided by district board of education owned vehicles for curricular activities such as field trips, athletic trips, and other trips that are part of the instructional program;
  - viii. Operation and maintenance of plant expenditures;
  - ix. Fixed charges, including unallocated employee benefit costs for retirement and Social Security contributions except Teacher's Pension and Annuity Fund (TPAF) contributions, insurance and judgments, including unemployment compensation (UCC), interest on current loans, and other fixed charges except rental of land and buildings and interest on lease-purchase agreements determined pursuant to (e)2 above, and principal on lease-purchase agreements and tuition that are excluded pursuant to (e)5 below;



- x. Food service expenditures of the general fund; [and]
  - xi. Direct instructional expenditures for salaries, equipment, and other expenses for bilingual education programs and **for** home instruction[.];
  - xii. Programs for before/after school, summer school, alternative education, and other supplemental at-risk programs;**
  - xiii. Energy, including natural gas, gasoline, and oil; and**
  - xiv. Security, care and upkeep of grounds, custodial services, and required maintenance of school facilities.**
5. Expenditures that are excluded from the actual cost per [student] **pupil** for tuition purposes for the following items:
- i. Transportation to and from school that is paid by the resident district board of education;
  - ii. Employee retirement and [social security] **Social Security** contributions for TPAF members that are fully funded by the State;
  - iii. Principal on lease-purchase agreements;
  - iv. Tuition;
  - v. Community services;
  - vi. Resource rooms, which are determined pursuant to (e)9 below and permitted as a separate charge over and above tuition for general education classes;
  - vii. Accredited adult education programs and nonaccredited adult and evening programs; [and]
  - viii. Extraordinary services provided to [special education] students **with disabilities** for which a district board of education may bill directly.
6. Building use charge determined as follows:
- i. Divide the amount of debt service State support received by the debt

- service paid for the school year to determine the ratio of State support;
- ii. Multiply the debt service interest charges paid on debt for the buildings in which the program is located by the ratio of State support obtained [in] **at** (e)6i above;
  - iii. Subtract the amount obtained [in] **at** (e)6ii above from the debt service interest charge paid on debt for the buildings in which the program is located; and
  - iv. Distribute the amount obtained [in] **at** (e)6iii above in accordance with (e)2 above.
7. Special building use charge determined as follows:
- i. Whenever a receiving district board of education receives more than 50 percent of the average daily enrollment in a program for which a tuition rate is being determined, the receiving district board of education may include, in accordance with (e)2 above, the amount expended for principal and interest on major repairs and major renewals of furniture, equipment, and apparatus for the building in which the program is located, provided:
    - (1) Such major repairs or major renewals were funded by the issuance of bonds, [as provided in] **pursuant to** N.J.S.A. 18A:21-1;
    - (2) The receiving district board of education consulted with each sending district board of education having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to taking any action in accordance with N.J.S.A. 18A:24-10 to authorize the issuance of bonds; and
    - (3) The majority of district boards of education with more than 10 percent of the enrollment in the program passed a resolution in support of the receiving district board of education's determination to issue such bonds or the Commissioner, after a conference,

approved the proposal for the issuance of such bonds.

ii. A receiving district board of education for which this section is applicable may include, in accordance with (e)2 above, the entire rental on a site or school building acquired by a lease-purchase agreement, pursuant to N.J.S.A. 18A:20-4.2, provided:

- (1) The receiving district board of education consulted with each sending district board of education having more than 10 percent of the average daily enrollment in the program for which the tuition rate is being determined prior to entering into the lease-purchase agreement; and
- (2) Each sending district board of education with more than 10 percent of the enrollment in the program passed a resolution in support of the receiving district board of education's determination to enter into a lease-purchase agreement or the Commissioner, after a conference, approved the proposal to enter into a lease-purchase agreement.

iii. A receiving district board of education for which this section is applicable may include, in accordance with (e)2 above, a facilities acquisition and construction service charge, which is determined by the straight line amortization over three years of that part of the total expenditure for facilities acquisition and construction services that is over and above the amount stated in the budget certified for taxes and used [in] **at** (e)2v above.

8. In addition to the tuition charged for each grade category, a receiving district board of education may charge, for students receiving services in a resource room, an additional amount up to the actual direct instructional cost per [student] **pupil** for such services calculated on an hourly basis (an example of the calculation is contained in Policy Bulletin: 100-1 issued by and available from the [Office of

School Facilities and] **Division of Finance and Business Services**, Department of Education, PO Box 500, Trenton, New Jersey 08625-0500).

(f) The receiving district board of education and the sending district board of education shall establish, by written contractual agreement, a tentative tuition charge for budgetary purposes. [Such] **The** tentative **tuition** charge shall equal an amount not in excess of the receiving district board of education's "estimated cost per [student] **pupil**" for the ensuing school year for the purpose or purposes for which tuition is being charged, multiplied by the "estimated average daily enrollment of students" expected to be received during the ensuing school year. [Such] **The** written [contract] **contractual agreement** shall be on a **Commissioner-prepared** form [prepared by the Commissioner].

1. "Estimated cost per [student] **pupil**" shall be determined by the receiving district board of education using the appropriate supporting schedule in its annual budget for the ensuing year. In lieu of completing the form [specified in] **at** (c)1 above, a receiving district board of education that has elected to use (c)1 above to certify actual cost per [student shall have the option of setting] **student may set** an estimated cost per [student] **pupil** up to an amount that shall be determined by multiplying the most recent year's certified cost per [student] **pupil** by one plus the Consumer Price Index (CPI) as defined [in] **at** N.J.S.A. 18A:7F-45 for the budget year or 2.5 percent, whichever is greater. If this option is selected and more than one fiscal year has elapsed since the most recent cost per [student] **pupil** certification, the receiving district board of education shall further increase the estimated cost per [student] **pupil** by multiplying the above by the sum of one plus the CPI for each additional year.

i. **For any given fiscal year, the method used to certify the final certified tuition rate shall be consistent with the method used to establish the tentative tuition rate at (f) above.**

2. “Estimated average daily enrollment” for the purpose of calculating a tentative tuition charge shall be determined as follows:
  - i. A receiving district board of education shall project the number of students in each tuition category expected to be received consistent with the growth in average daily enrollment (ADE) taken from the three most recent school register summary reports prior to the year for which the budget is being prepared.
  - ii. Estimated average daily enrollment (EADE) equals  $Y1 \times (1+G)^2$  where the growth rate  $G = 0.5 \times (Y1 - Y3) / Y3$ , where G shall not exceed +/-10 percent, Y1 is the ADE two years prior to the year for which the tuition is being estimated, and Y3 is the ADE four years prior to the year for which the tuition is being estimated. For the purposes of the tentative tuition contract, a receiving district board of education shall apply the same growth rate calculation (as noted above) to project the number of students to be received from each sending district board of education.
3. The sending district board of education and the receiving district board of education shall enter into a written contractual agreement for tuition for the ensuing school year, except for a contractual agreement for a student enrolled in a special education class, no later than seven days prior to the date on which the proposed budget for the ensuing school year is required to be submitted to the executive county superintendent. The **contractual agreement shall require the** sending district board of education [shall be required in the contractual agreement] to pay 10 percent of the tentative tuition charge no later than the first of each month from September through June of the contract year. The contractual agreement, except for a contractual agreement for a student enrolled in a special education class, shall require all adjustments resulting from a difference in cost or

in the number of students sent to be made only during the second school year following the contract year. All contractual agreements shall contain a payment schedule for all adjustments that may be necessary.

4. The sending district board of education shall notify, in writing, the receiving district board of education of the estimated average daily enrollment of students in each tuition category expected to be sent during the ensuing school year no later than **the preceding** December 15 [preceding the beginning of the ensuing school year]. The receiving district board of education shall notify, in writing, the sending district board of education of the estimated cost per [student] **pupil** in each tuition category for the ensuing school year and the tentative tuition charge no later than **the preceding** February 4 [preceding the beginning of the ensuing school year]. The receiving district board of education shall submit to the sending district board of education, on a form prepared by the Commissioner, a copy of its calculations to determine the estimated cost per [student] **pupil** in each tuition category for the ensuing school year no later than **the preceding** February 4 [preceding the beginning of the ensuing school year].
5. The executive county superintendent in the county in which the receiving district board of education is located shall review any unique circumstances or variations in methodology and mediate all disputes that arise from the determination of tentative tuition charges, including challenges to the estimated average daily enrollment counts generated using the formula [in] **at** (f)2 above. [Such a] **The** review shall include examination of the following documents:
  - i. Annual budgets, including supporting documents;
  - ii. Application for State School Aid (ASSA) reports;
  - iii. School register summary reports;
  - iv. Tuition contracts; and

- v. Any other information deemed necessary.
6. If the Commissioner later determines that the tentative tuition charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was greater than the actual cost per student during the school year multiplied by the actual ADE received, the receiving district board of education shall return, to the sending district board of education in the second school year following the contract year, the amount by which the tentative charge exceeded the actual charge as determined above, or, at the option of the receiving district board of education, shall credit the sending district board of education with the excess amount. The receiving district board of education shall make such adjustment for a contractual agreement for a student enrolled in a special education class no later than the end of the second school year following the contract year.
  7. If the Commissioner later determines that the tentative charge established by written contractual agreement, except for a contractual agreement for a student enrolled in a special education class, was less than the actual cost per [student] **pupil** during the school year multiplied by the actual average daily enrollment received, the receiving district board of education may charge the sending district board of education all or part of the amount owed by the sending district board of education, to be paid during the second school year following the school year for which the tentative charge was paid. Such adjustment for a contractual agreement for a student enrolled in a special education class shall be made no later than the end of the second school year following the contract year. The executive county superintendent [of schools] of the county in which the sending district board of education is located may approve the payment of the additional charge over another period, if the sending district board of education can demonstrate that

payment during the second school year following the school year for which the tentative charge was paid would cause a hardship.

8. If, at the end of the contract year, a **sending or receiving** district board of education anticipates a tuition adjustment will be required in the second year following the contract year, the district board of education may restrict **general** fund balance of up to 10 percent of the estimated tuition cost **defined as estimated cost per pupil multiplied by the estimated average daily enrollment** in the contract year in a [legal] reserve for tuition adjustments. [established by] **The district board of education** resolution [at] **shall identify an exact dollar amount to be reserved and shall be adopted on or prior to** June 30. In such case, the district board of education shall:

i. Make full appropriation of the legal reserve for the tuition adjustment in the second year following the contract year; **and**

[ii. Exclude from the net budget cap calculation, if applicable, the budgeted fund balance and appropriation of the legal reserve in the second year following the contract year for such tuition adjustments; and]

[iii.] **ii.** Transfer to the general fund **at least annually**, by **district board of education** resolution, any interest earned on the investments in a tuition reserve account [on an annual basis]. [Such transfer] **The district board of education** may [be made] **make the transfer** on a more frequent basis [at the discretion of the district board of education].

- (g) The receiving district board of education shall use **Commissioner-prepared** forms [prepared by the Commissioner] for certification of the “actual cost per [student] **pupil**” for each tuition category according to the rules in this section, for contracts, and for establishing the estimated cost per [student] **pupil** for each tuition category for the ensuing school year.



- (h) In any year in which the receiving district board of education can prove, to the **Commissioner's** satisfaction [of the Commissioner], that the charge for the use of the school facilities pursuant to (e)6 above is not adequate, the Commissioner may approve an additional charge [for the use of such school facilities] **in accordance with (e)7 above.**

**6A:23A-17.2 Method of determining tuition rate in a new district board of education program**

- (a) During the first year of operation of a district board of education program that is to receive students, the receiving district board of education shall set the estimated cost per [student] **pupil** in each program for which the tuition rate is required and shall base the estimate on budgeted costs. The receiving district board of education shall submit the established estimated [cost or costs] **cost(s)** per [student] **pupil** to the Commissioner for approval or disapproval no later than January 1 preceding the beginning of the first year of operation.
- (b) If the Commissioner approves the estimated [cost or costs] **cost(s)** per [student] **pupil**, each sending district board of education shall pay tentative tuition charges based upon these estimated costs per student during the first year of operation.
- (c) If[, after the first year of operation,] the Commissioner determines, **after the first year of operation**, that the tentative tuition charge was greater than the actual cost, the receiving district board of education shall return[, except if the tentative tuition charge was for a student who was enrolled in a special education class,] **to each sending district board of education** in the second school year following the first year of operation, [to each sending district board of education] the amount by which the tentative charge exceeded the actual cost, or, at the option of the receiving district board of education, shall credit each sending district board of education with the amount by which the tentative tuition

charge exceeded the actual cost. [The receiving district board of education shall remit payment or credit for a student who was enrolled in a special education class no later than the end of the second school year following the first year of operation.]

- (d) If[, after the first year of operation,] the Commissioner determines, **after the first year of operation**, that the tentative tuition charge was less than the actual cost, the receiving district board of education may charge the sending district board of education all or part of the amount owed [by the sending district board of education,] to be paid[, except if the amount owed is for a student who was enrolled in a special education class,] during the second school year following the first year of operation. [The sending district board of education shall pay the amount owed for a student who was enrolled in a special education class no later than the end of the second school year following the first year of operation.]

**6A:23A-17.3 County vocational school districts funding; public school district tuition payments, post-secondary vocational-technical education fund sources**

- (a) The board of education of any county vocational school district (CVSD) may receive, but not be limited to, the following general fund revenue and fund sources for programs and services provided to students of [local public] school districts within or outside the county:
1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of unrestricted State aid;
  2. Funds as may be appropriated by the county pursuant to N.J.S.A. 18A:54-29.2 and designated for the programs and services provided to students of [local public] school districts within the county;
  3. Tuition from the sending **school** districts in which the pupils attending the CVSD reside for a sum not to exceed the actual cost per pupil as determined for the

applicable program as follows:

- i. Tuition rates shall be calculated separately for the following:
  - (1) One tuition rate for regular vocational-technical programs for students sent by [local public] school districts; **and**
  - (2) One tuition rate for all learning disability program categories for special education programs provided during the regular school year for students sent by [local public] school districts; [and
  - (3) One tuition rate for all learning disability program categories for special education programs provided for extended periods beyond the regular school year (extended school year programs) for students sent by local public school districts;]
4. A nonresident fee in addition to tuition for [any] pupils of sending school districts who are not residents of the county whenever funds have been appropriated by the county.
  - i. The fee shall not exceed the amount of the county's per pupil appropriation to the CVSD, pursuant to N.J.S.A. 18A:54-20.1.
  - ii. The maximum fee per nonresident student shall be calculated by dividing the total county appropriation to the CVSD, pursuant to N.J.S.A. 18A:54-29.2 and (a)2 above, by the average daily enrollment (ADE) of students who are residents of the county and are sent on a tuition basis to the CVSD by the [public] school districts of the county in which the CVSD is located; and
5. Reimbursement for any extraordinary special education services provided to an individual student from the student's resident **school** district. The cost of extraordinary special education services shall not be included in the actual cost per pupil for purposes of determining tuition rates for special education programs.

- (b) The board of education of any CVSD may receive, but not be limited to, the following revenue and fund sources for post-secondary vocational-technical programs provided to post-secondary students who reside within or outside the county:
1. Funds as may be appropriated by the county pursuant to N.J.S.A.18A:54-29.2 and designated for post-secondary vocational-technical programs for post-secondary students within the county; and
  2. Amounts charged pursuant to N.J.S.A. 18A:54-20.1 and 23.4 to each county of residence for post-secondary vocational-technical students who are not residents of the county as follows:
    - i. \$200.00 per each nonresident post-secondary vocational-technical student to be applied to the county's share of the CVSD's capital expenses; and
    - ii. The average county share of budgeted operating cost per full-time post-secondary vocational-technical student who is a county resident as certified by the Commissioner; provided, however, that the said CVSD board may, with the approval of the Commissioner, charge and collect a higher annual amount(s) when high-cost or high-priority programs are provided.
      - (1) The average county share of budgeted operating cost per full-time post-secondary vocational-technical student who is a county resident shall be calculated by dividing the county contribution, pursuant to N.J.S.A. 18A:54-29.2 and (b)1 above, by the average daily enrollment (ADE) of post-secondary vocational-technical students who are residents of the county.

**6A:23A-17.4 Method of determining tuition rates for county vocational school districts**

- (a) The term "actual cost per [student] **pupil**" for determining the tuition rate or rates for a given year referred to [in] **at** N.J.S.A. 18A:46-21 and 18A:54-20.1 means the adjusted net

cost per [student] **pupil** in average daily enrollment, based upon audited expenditures for that year for the purpose for which the tuition rate is being determined.

1. The CVSD board of education shall determine tuition rates for each applicable program category [consistent] **in accordance** with N.J.A.C. 6A:23A-17.3(a)3.

[2. "Average daily enrollment" for the purpose of determining the "actual cost per student" means the sum of the days present and absent of all students enrolled during the year in the register or registers of the program for which the rate is being determined, divided by the number of days school was actually in session, but in no event shall the divisor for the regular school year programs be less than 180 days.]

[3.] **2.** The CVSD board of education shall adjust the "actual cost per [student] **pupil**" for all tuition categories to reflect net costs plus a reasonable surplus **in accordance with (f) below.**

(b) Each CVSD board of education will receive from the Commissioner certification of the "actual cost per [student] **pupil**" for each tuition category for a given year utilizing the following:

1. Revenues, expenditures, and fund balances reflected in the CVSD's annual independent audit; and

2. Average daily enrollment data by category submitted by the CVSD on a **Commissioner-prescribed** form [prescribed by the Commissioner].

(c) The maximum tuition rate per pupil for each education program shall be sufficient to enable the CVSD to cover the net cost of said program.

(d) The maximum tuition rate per pupil for each education program for sending [public] school districts shall be based on the net cost calculated by reducing the amount of general fund expenditures by the following:

1. State aid received pursuant to N.J.S.A. 18A:7F-43 et seq. and other sources of State aid, except for restricted State grants;

2. All other revenue sources other than tuition (such as the county contribution, nonresident fees, Medicaid reimbursements, and miscellaneous revenue) available to fund the education program for sending school districts;
  3. All direct and indirect expenditures that are not associated with the education program for sending [public] school districts such as post-secondary vocational-technical programs;
  4. All expenditures associated with each education program for sending [public] school districts [but] that are funded through sources other than the tuition rate such as extraordinary special education costs, which are separately reimbursed for individual students;
  5. Expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and [social security] **Social Security**; and
  6. Refunds of prior-year tuition adjustments made to sending [public] school districts.
- (e) The Commissioner shall develop and disseminate workpapers for the purpose of allocating revenue, other fund sources, and expenditures amongst the various programs and services within the general fund.
1. With the exception of the regular vocational-technical education program, the actual programs and/or services will vary by individual CVSD.
  2. The purpose of this allocation shall be to isolate the revenue, other fund sources, and expenditures related to the tuition for each regular and special vocational-technical education programs by segregating programs and services that are not related to those programs, or are related but funded through sources other than tuition.
  3. Expenditures shall be allocated on a direct and indirect basis amongst the various general fund programs and services when funded through sources other than tuition, such as extraordinary special education services.

- i. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment, and other expenses for [each program or learning disability program category] **the regular and special education programs**, as applicable, shall be allocated on an actual basis.
  - ii. When allocating indirect expenditures amongst major programs, such as regular vocational-technical education, special vocational-technical education, post-secondary vocational-technical education, and other programs, indirect expenditures, except expenditures for [Teachers' Pension and Annuity Fund (JTPAF)] pension and [social security] **Social Security**, shall be allocated amongst the various programs based on the percent of direct expenditures in each program to the total of all direct expenditures since there is no common average daily enrollment (ADE) equivalent among all programs.
  - iii. Services provided as part of a program, such as extraordinary special education services, shall not bear part of the indirect expenditures but shall include only direct instruction and support services expenditures.
  - iv. When allocating indirect expenditures between the [learning disability] **regular and special education** program categories of the regular school year [and the extended school year], indirect expenditures, except expenditures for [Teachers' Pension and Annuity Fund (JTPAF)] pension and [social security] **Social Security**, shall be allocated in proportion to the average daily enrollment.
- (f) The CVSD board of education shall adjust, as appropriate, its net cost determined for each tuition category [in] **at** (d) above to include in the certified maximum tuition rate for each category an amount that will permit the CVSD board of education to maintain, at its

discretion for the year the tuition rate applies, an ending general fund unassigned balance not to exceed the amount permitted pursuant to N.J.S.A. 18A:7F-7.

1. If the CVSD board of education's general fund budget for the prebudget year is \$100 million or less and the ending general fund free balance is less than the greater of six percent of its general fund budget or \$250,000 for the year the tuition rate applies, the CVSD board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category. If the amount of the general fund budget for the prebudget year exceeds \$100 million, and the undesignated general fund balance is less than the sum of six percent of the first \$100 million and three percent of the amount which exceeds \$100 million, the CVSD board of education shall allocate the difference amongst the tuition categories in proportion to the average daily enrollment for each category.
  2. If the CVSD board of education's general fund budget for the prebudget year is \$100 million or less and the ending general fund free balance is equal to or greater than the greater of \$250,000 or six percent of its general fund budget for the year the tuition rate applies, the CVSD board of education shall not add an amount to the net cost of any tuition category. If the amount of the general fund budget for the prebudget year exceeds \$100 million, and the undesignated general fund balance is in excess of the sum of six percent of the first \$100 million and three percent of the amount that exceeds \$100 million, the CVSD board of education shall not add an amount to the net cost of any tuition category.
- (g) The CVSD board of education shall determine the tuition for each program category at the same rate per student for each sending district board of education whether within or outside the county pursuant to N.J.S.A. 18A:54-20.1.
- (h) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee), and adjustments to tentative tuition



charges upon **Commissioner** certification of actual tuition rates [by the Commissioner] shall be made by the CVSD board of education in accordance with N.J.A.C. 6A:23A-17.1[(e)](f), except that the CVSD board of education shall base the tentative tuition rates on its estimated adjusted net cost per [student] **pupil** consistent with the calculation [in] **at** (d) through (f) above.

- (i) The CVSD board of education shall use the "actual cost per [student] **pupil**" certification forms, contract forms, and tentative tuition rate forms as prepared and provided by the Commissioner.

### **6A:23A-17.5 County special services school districts funding; budget limitations; tuition payments**

- (a) The board of education of any county special services school district may receive, but not be limited to, the following revenue and fund sources:
  - 1. Funds appropriated by the county, pursuant to N.J.S.A. 18A:46-41;
  - 2. Tuition from the sending **school** districts in which the pupils attending the county special services school district reside for a sum not to exceed the actual cost per pupil as determined for each special education program as follows:
    - i. Tuition rates shall be calculated separately for the following:
      - (1) Special education programs provided during the regular school year; and
      - (2) Special education programs provided for extended periods beyond the regular school year (extended school year programs);
    - ii. Tuition may be determined and charged as follows:
      - (1) One [tuition rate for the regular school year program; or one] tuition rate for each learning disability program category within the regular school year program; and
      - (2) One tuition rate for the extended school year program, when applicable; or one tuition rate for each learning disability program

category within the extended school year program, when applicable;

3. A nonresident fee, in addition to tuition for [any] pupils who are not residents of the county, whenever funds have been appropriated by the county.
  - i. The fee shall not exceed the amount of the county's per pupil appropriation to the special services school district, pursuant to N.J.S.A. 18A:46-31.
  - ii. The maximum fee per nonresident student shall be calculated by dividing the total county appropriation to the county special services school district by the number of students who are residents of the county and are sent on a tuition basis to the county special services school district by the [public] school districts of the county in which the special services school district is located; and
4. Reimbursement for extraordinary special education services provided to an individual student from the student's resident **school** district. The cost of extraordinary special education services shall not be included in the actual cost per pupil for purposes of determining tuition rates for regular year or extended year programs.
  - (b) Tuition [rates] shall be [at] the same rate per pupil for each sending **school** district whether within or outside the county [and consistent with the methodology as chosen in (a)2 above].
  - (c) The annual aggregate amount of all estimated tuition may be anticipated by the **county special services school district** board of education [of the county special services school district] with respect to the **school district's** annual budget [of the county special services school district].
  - (d) Tuition charged to the resident **school** district shall be deducted from the resident **school** district's State aid and transferred directly to the county special services school district by the Department [of Education].

1. The transfers shall equal 1/20th of the tuition charged and shall occur on the same schedule of State aid payments for resident **school** districts.
  2. Beginning in May of the preceding year, the county special services school district shall report to the [department] **Department** and resident **school** districts the current enrollments and tuition rates by **school** district. Enrollment changes reported at least 30 days in advance of a scheduled transfer shall be honored.
- (e) Unless specifically designated, county special services school districts shall not receive State aid under the provisions of N.J.S.A. 18A:7F-43 et seq..

**6A:23A-17.6 Calculation of [the maximum general fund budget net of county contribution and maximum average] estimated tuition rate for county special services school districts**

- (a) Pursuant to N.J.S.A. 18A:46-31, the county special services school district general fund budget, exclusive of any county contribution received pursuant to N.J.S.A. 18A:46-41, shall not exceed the general fund budget, exclusive of any county contribution received pursuant to N.J.S.A. 18A:46-41, in the prebudget year adjusted by the CPI or three percent, whichever is greater, plus an enrollment factor.
1. The general fund budget, exclusive of any county contribution, in the prebudget year shall be the sum of all originally budgeted general fund revenue and other fund sources of the prebudget year, except the county contribution of the prebudget year received pursuant to N.J.S.A. 18A:46-41, and shall include, but not be limited to, the following:
    - i. Designated, unreserved general fund balance;
    - ii. Tuition from sending [public] school districts for the regular school year programs;
    - iii. Tuition from sending [public] school districts for any extended school year programs;

- iv. Prior-year tuition adjustments received from sending [public] school districts;
  - v. Tuition for programs other than programs for students of sending [public] school districts;
  - vi. Nonresident fees received pursuant to N.J.S.A. 18A:46-31;
  - vii. Reimbursements from sending [public] school districts for extraordinary special education costs;
  - viii. Medicaid reimbursements; and
  - ix. All other revenue sources of the general fund, with the exception of the county contribution received pursuant to N.J.S.A. 18A:46-41.
2. The enrollment growth factor shall equal the percentage growth in estimated average daily enrollment (ADE) between the prebudget year and the budget year.
- (b) The [maximum] general fund budget net of county contribution shall establish the [maximum] **estimated** amount of tuition revenue receivable and the associated tuition rates a county special services school district can charge to [local public] school districts for special education programs for the regular school year.
- 1. The [maximum] **estimated** tuition revenue for the regular school year special education programs shall be calculated by deducting from the [maximum] general fund budget net of county contribution calculated pursuant to this section, all budget year revenue sources and other funding sources of the general fund as delineated in this subsection, except for the county contribution and estimated tuition for the regular school year special education programs.
  - 2. The [maximum average] **estimated** tuition rate per pupil for the regular school year special education program shall be calculated by dividing the [maximum] **estimated** tuition revenue for the regular school year program calculated [in] **at** (b)1 above by the estimated ADE for the budget year.

- (c) Any undesignated general fund balance replenishment amount to be included in the tuition rates pursuant to [the provisions of] N.J.S.A. 18A:46-31 shall not exceed the lesser of the amount needed to maintain a 10 percent undesignated general fund balance or the amount that may be added to the tuition rate without exceeding the [maximum] general fund budget net of county contribution.

**6A:23A-17.7 Method of determining tuition rates for county special services schools**

- (a) The term "actual cost per [student] **pupil**" for determining the tuition [rate or rates] **rate(s)** for a given year [referred] **pursuant** to [in] N.J.S.A. 18A:46-31 means the adjusted net cost per student in average daily enrollment for special education classes, based upon audited expenditures for that year.

1. The county special services school district board of education shall include all expenditures for each purpose, except Federal and State grant project expenditures.

[2. "Average daily enrollment" for the purpose of determining the "actual cost per [student] **pupil**" is the sum of the days present and absent of all students enrolled during the year in the register or registers of the program for which the rate is being determined divided by the number of days school was actually in session, but in no event shall the divisor for the regular school year program be less than 180 days.]

- (b) Each county special services school district board of education shall obtain from the Commissioner certification of the "actual cost per [student] **pupil**" for a given year either for the county special services school district as a whole or for each special education program by learning disability category based on the following:

1. Revenues, expenditures, and fund balances reflected in the county special services school district's annual independent audit;

2. Average daily enrollment data by category submitted by the county special services school district on a **Commissioner-prescribed** form prescribed [by the

Commissioner].

- (c) The [maximum] **estimated** tuition rate per pupil for the regular school year special education program shall be sufficient to enable the county special services school district to cover the net cost of [said] **the** program subject to the statutory [maximum] general fund budget net of county contribution and statutory limitations on undesignated, unreserved general fund balance.
- (d) The tuition rate per pupil for the regular school year special education program for sending [public] school districts shall be based on the net cost calculated by reducing the amount of general fund expenditures by the following:
  - 1. All revenue sources other than tuition (such as the county contribution, nonresident fees, Medicaid reimbursements, and miscellaneous revenue) available to fund the regular school year special education program for sending [public] school districts;
  - 2. All direct and indirect expenditures that are not associated with the regular school year special education program for sending [public] school districts;
  - 3. All expenditures associated with the special education program for sending [public] school districts [but] that are funded through sources other than the regular school year tuition rate such as extraordinary special education costs, which are separately reimbursed for individual students, and the extended school year special education program for which an additional tuition fee is charged; and
  - 4. Refunds of prior-year tuition adjustments made to sending [public] school districts.
- (e) The Commissioner shall develop and disseminate workpapers for the purpose of allocating revenue, other fund sources, and expenditures amongst the various programs and services within the general fund.
  - 1. With the exception of the regular school year special education program, the actual

programs and/or services will vary by individual county special services school district.

2. The purpose of this allocation shall be to isolate the revenue, other fund sources, and expenditures related to the tuition for the regular school year special education program by segregating programs and services that are not related to the regular school year special education program, or are related but funded through sources other than regular school year special education tuition.
3. Expenditures shall be allocated on a direct and indirect basis amongst the various general fund programs and services when funded through sources other than tuition, such as extraordinary special education services.
  - i. Direct instructional expenditures for salaries and related benefits, textbooks, teaching supplies, purchased services, equipment, and other expenses for each program or learning disability program category shall be allocated on an actual basis.
  - ii. When allocating indirect expenditures amongst major programs, such as regular school year special education, extended school year special education and other programs, indirect expenditures, except expenditures for Teachers' Pension and Annuity Fund (TPAF) pension and [social security] **Social Security**, shall be allocated amongst the various programs based on the percent of direct expenditures in each program to the total of all direct expenditures since there is no common ADE equivalent among the programs.
  - iii. Services provided as part of a program, such as extraordinary special education services, shall not bear part of the indirect expenditures but shall include only direct instruction and support services expenditures.
  - iv. When allocating indirect expenditures amongst the learning disability program categories of the regular school year or amongst the learning

disability program categories of the extended school year, indirect expenditures, except expenditures for [Teachers' Pension and Annuity Fund (JTPAF)] pension and [social security] **Social Security**, shall be allocated amongst all learning disability program categories in proportion to the average daily enrollment.

- (f) Pursuant to N.J.S.A. 18A:46-31, an undesignated general fund balance of 10 percent of the general fund budget exclusive of tuition adjustments of prior years may be maintained.
1. When estimating the tuition rate for the budget year, the estimated ending undesignated general fund balance of the budget year for this purpose shall be the estimated beginning fund balance of the budget year less [any] prior-year tuition adjustment refunds to be made to sending [public] school districts during the budget year.
  2. When certifying actual final tuition rates, the actual audited ending undesignated general fund balance shall be used.
  3. Undesignated general fund balance in excess of 10 percent of the general fund budget exclusive of tuition adjustments of prior years shall be deducted from adjusted expenditures calculated pursuant to (d) above for purposes of calculating the regular school year special education program tuition rate.
  4. When undesignated general fund balance is under 10 percent of the general fund budget exclusive of tuition adjustments of prior years, an amount may be added to adjusted expenditures calculated pursuant to (d) above for purposes of calculating the regular school year special education program tuition rate subject to the maximum general fund budget net of county contribution calculated pursuant to [the provisions of] N.J.A.C. 6A:23A-17.6(a)2.
- (g) Calculation of tentative tuition rates, execution of written contractual agreements, payment of tuition (including the nonresident fee), and adjustments to tentative tuition charges upon **Commissioner** certification of actual tuition rates [by the Commissioner] shall be made by



the county special services school district board of education in accordance with N.J.A.C. 6A:23A-17.1(e), except that the county special services school district board of education shall base the tentative tuition rates on the county special services school district board of education's estimated adjusted net cost per student consistent with the calculation [in] **at** (c) through (f) above. The tentative tuition rate and actual cost per [student] **pupil** for a given fiscal year shall be calculated in the same manner chosen pursuant to (b) above.

- (h) The county special services district board of education shall use the "actual cost per [student] **pupil**" certification forms, contract forms, and tentative tuition rate forms as prepared and provided by the Commissioner.
- (i) A new county special services school district board of education shall use the method of determining tentative tuition rates [contained] in **accordance with** N.J.A.C. 6A:23A-17.2.

## **Subchapter 18. Tuition for Private Schools for Students with Disabilities**

### **6A:23A-18.1 Scope and purpose**

The rules in this subchapter establish requirements for accounting, financial reporting, and tuition rate setting by approved private schools for students with disabilities. The rules also set forth processes and procedures, including, but not limited to, new school applications, non-allowable costs, and audit requirements. [The rules in this subchapter shall become effective immediately, unless otherwise indicated.] **The rules in this subchapter shall become effective immediately, unless otherwise indicated.**

### **6A:23A-18.2 Definitions**

The following words and terms[, when used in this subchapter,], **when used in this subchapter,** have the following meanings, [[**when used in this subchapter,**]] unless the context clearly indicates otherwise:

[[“Academic year” means the time period an APSSD is in session September through June 30<sup>th</sup>.]]

[[“Academic year program” means providing special education and related services to a student with disabilities placed in an APSSD during the academic year.]]

"Administrative costs" means the costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.

"Advertising costs" means the costs associated with promoting, marketing, or public relations for the APSSD’s programs and/or services, as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.

“Approved private school for students with disabilities” or “APSSD” means an entity approved by the Department [according to] [[in accordance with]] **according to** N.J.A.C. 6A:14-7.1 through 7.3 to provide special education and related services to a student with disabilities placed in the APSSD by a parent/guardian, sending district board of education, or State agency responsible for providing the student’s education through implementation of [his or her] [[**the student’s**]] **his or her** individualized education program (IEP).

“APSSD official” means a member of the board of directors or board of trustees of an APSSD; anyone holding an ownership interest in the APSSD; an officer, employee, administrator, or supervisor of an APSSD; or anyone responsible for making recommendations regarding hiring or the purchase or acquisition of any property or service(s) by the APSSD.

“Assistant director” [shall] **shall** mean[[s]] the same as “director.”

["Average daily enrollment (ADE)" means the sum of the days present and absent of all school students enrolled in the APSSD register(s) divided by the number of days the APSSD was actually in session for the entire school year rounded to the nearest four decimal places, except in

no event shall the divisor be less than 180 days.] **"Average daily enrollment (ADE)" means the sum of the days present and absent of all school students enrolled in the APSSD register(s) divided by the number of days the APSSD was actually in session for the entire school year rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days.**

"Bonus" means payment to an employee that meets any of the following:

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

"Business manager" means an individual whose job function includes a majority of the following: financial budget planning and administration, insurance/risk administration, purchasing, financial accounting and reporting, facility planning, construction and maintenance; personnel administration; administration of transportation and food services; and data processing. Prior to June 30, 2017, the holder of this job title shall hold a bachelor's degree in business, accounting, finance, or economics from an accredited institution or a standard school business administrator's certificate but shall not be required to hold a school certification. Effective July 1, 2017, all business managers, except those employed by the APSSD as a business manager or otherwise serving as business manager with the APSSD prior to July 1, 2017, shall hold a master's degree in business, accounting, finance, economics, or a related field from an accredited institution; a standard [school business administrator's] **[[administrative]] school business administrator's** certificate **[[with a school business administrator endorsement]]** issued pursuant to N.J.A.C. 6A:9B-12.7, as amended or supplemented; or a certified public accountant certificate.

“Certified actual cost per student” means the actual allowable cost for the entire school year plus the applicable maximum surcharge/public school placement restricted working capital fund divided by ADE for the school year as determined by an independent school auditor.

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

“Conditional approval status” means the APSSD is precluded from accepting and/or enrolling new students from the date the Department placed the APSSD on conditional approval status.

**[[“Consultant” means any non-employee consultant, independent contractor, or non-salaried individual as defined by Internal Revenue Service Publication 15 who performs contractual purchased professional services for the APSSD for compensation.]]**

"Contingent pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is paid to all staff if the APSSD attains the predetermined ADE for the school year that was filed with[[,]] and approved by[[,]] the Commissioner, or [his or her] **[[the Commissioner’s]] his or her** designee.

“Director” means an individual whose job function includes a majority of the following: formulation of school goals, plans, policies, and budgets and recommendation of their approval to the school's board of directors; recommendations to the school's board of directors for all staff appointments and other personnel actions, such as terminations, suspensions, and compensation, including the appointment of the business manager; responsibility for school operations and programs, including administration, supervision, and evaluation of administrators, supervisors, and all other school staff. Prior to June 30, 2017, all individuals employed by the APSSD as director, or serving as director of an APSSD, shall hold a bachelor’s degree from an accredited institution, but shall not be required to hold a professional school license/[certification] **[[certificate]]**

**certification** pursuant to N.J.A.C. 6A:9B. After July 1, 2017, all directors, except those employed as, or otherwise serving as director for the APSSD prior to July 1, 2017, shall hold a master's degree from an accredited institution, but shall not be required to hold a [certification] **[[certificate]] certification** pursuant to N.J.A.C. 6A:9B.

"Entertainment expenses" means the cost of providing any type of food/beverage to APSSD officers, [APSSD directors/trustees] **[[directors, trustees,]] APSSD directors/trustees** consultants, and/or individuals providing services to the APSSD at any time or to APSSD employees after school hours.

"Executive director" means the same as [the] **the** "[Director] **[[director]] Director.**"

**[[“Extended school year program” means special education and related services that are provided to a student with disabilities after the end of one academic year and before the start of the next academic year.]]**

"Extraordinary service" means the services of a one-to-one aide, or one-to-one nurse, for a student as required by the student's individualized education program (IEP).

"Final tuition rate" means an amount equal to or less than the certified actual cost per student calculated in accordance with N.J.A.C. 6A:23A-18.3(a).

“Full time” for the purposes of the maximum salaries [in] **[[at]] in** N.J.A.C. 6A:23A-18.3(o), (p), and (q)[,], and full-time equivalent means 35 hours or more per week over the term outlined in the employment contract, pursuant to N.J.A.C. 6A:23A-18.5(c).

“Full-time equivalent” or “FTE” means the ratio of the total number of paid hours during a period divided by the number of full-time working hours in that period; one FTE is equivalent to one employee working full time.

“Independent school auditor” means an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who holds a valid registration license as a public school accountant of New Jersey and conducts an APSSD’s annual audit in accordance with N.J.A.C. 6A:23A-18.10.

"Instructional costs" means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts[[,]] [required in accordance with] [[**pursuant to**]] **required in accordance with** N.J.A.C. 6A:23A-18.5(a)7.

"Internal Revenue Code" or “IRC” means any Federal tax code section indicated in this subchapter and as amended and supplemented.

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

“Meals” means the provision of breakfast and/or lunch to students.

"Merit pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is based on specific performance criteria previously submitted to, and approved by[[,]] the Commissioner[[,]] or [his or her] [[**Commissioner’s**]] **his or her** designee.

"New approved private school for students with disabilities" or “new APSSD” means an APSSD during the initial two fiscal years of operation.

“Passenger vehicle” means a vehicle originally designed by the manufacturer with a seating capacity of 10 or fewer persons, including the driver.

"Private placement student" means a student placed in an APSSD by an entity or parent/guardian other than a New Jersey sending district board of education, charter school or renaissance school [[**project**]] board of trustees, or a New Jersey State agency.

"Public school placement restricted working capital fund" means a nonprofit APSSD's total public school restricted assets less the total public school restricted liabilities.

"Public school placement student" means a student placed in an APSSD by a New Jersey sending district board of education, **[[charter school or renaissance school project]]** board of trustees [of a charter or renaissance school] **of a charter or renaissance school**, or a New Jersey State agency.

**[[“Purchased professional services” means any service provided to an APSSD, pursuant to a contract by a consultant for compensation.]]**

"Related services" means the type of services defined [in] **[[at]] in** N.J.A.C. 6A:14-1.3.

"School year" means the time period an APSSD is in session [either] **either** from July **[[1]]** through June **[[30]]**, August through June, or September through June], **August through June, or September through June.**

“Sending district board of education” or “sending school district” means the New Jersey [public] **public** school district, charter school, renaissance school **[[project]]**, or State agency sending a student to an APSSD.

"Severance pay" means compensation in addition to regular salaries and wages that is paid by an APSSD to an employee whose employment is being terminated by separation agreement or otherwise.

"Start-up costs" means costs such as, but not limited to, legal fees, filing fees, furniture, fixtures, equipment, and facility costs incurred by an APSSD for the nine-month period prior to receiving Department approval to operate as an APSSD. A salary is not an allowable start-up cost.

"Surcharge" means the amount of profit that for-profit APSSDs may include in the certified actual cost per student.

"Tentative tuition rate" means the original budgeted tuition rate charged to a sending district board of education or board of trustees for a charter or renaissance school for the school year.

### **6A:23A-18.3 Tuition rate procedures**

(a) The board of directors of an APSSD located in New Jersey shall determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student as determined by an independent school auditor. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department, pursuant to N.J.A.C. 6A:23A-18.10.

1. When determining the actual allowable costs for the program, the board of directors shall ensure the costs are:

- i. Based on all costs required for student instruction [from July 1 through June 30] ~~[[for the school year]]~~ **from July 1 through June 30**;
- ii. Consistent with the students' individualized education programs (IEP);
- iii. Inclusive of all costs required to implement all students' IEPs and all related services, except as set forth [in] ~~[[at]]~~ **in** (a)5 below;
- iv. Reasonable, that is, ordinary and necessary and not in excess of the cost that would be incurred by an ordinarily prudent person in the administration of public funds; and
- v. Based on goods actually received and placed in service and/or services rendered in the fiscal year expensed.

2. If any of the APSSD's quarterly financial reports, completed pursuant to N.J.A.C. 6A:23A-18.5(a)11, demonstrates the year-to-date per diem rate exceeds the tentative tuition rate for the year by more than 10 percent, the APSSD shall notify each sending district board of education and the Commissioner, or [his or her] ~~[[the Commissioner's]]~~ **his or her** designee, that such an increase will be



charged and the reason for the increase on or before the following dates:

December 15 for the first quarter, March 15 for the second quarter, June 15 for the third quarter, and September 15 for the fourth quarter, or the next business day when applicable. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23A-18.5(a)11.

- i. If the sending district board of education and the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, are not notified on or before the dates [noted in] [[set forth at]] **noted in** (a)2 above, the APSSD may charge an increase that shall not exceed 10 percent of the tentative tuition rate charged.
  - ii. The notification required [in] [[at]] **in** (a)2i above shall contain a detailed statement outlining changing costs and/or enrollment, the reasons for the changes, including management's response to same, and the reason(s) the changes are not offset by decreases in costs. If the notification does not include this statement, the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, may prohibit an APSSD from charging an increase above 10 percent.
3. Costs for the program shall include instructional costs and administrative costs, as defined in the chart of accounts, as follows:
- i. For the [2016-2017] [[2023-2024]] **2016-2017** school year, minimum instructional costs of [55] [[57.5]] **55** percent and maximum administrative costs of [25] [[22.5]] **25** percent;

- ii. For the [2017-2018] [[2024-2025]] **2017-2018** school year, minimum instructional costs of [55.5] [58] **55.5** percent and maximum administrative costs of [24.5] [[22.5]] **24.5** percent;
  - iii. For the [2018-2019] [[2025-2026]] **2018-2019** school year, minimum instructional costs of [56] [[58.5]] **56** percent and maximum administrative costs of [24] [[22.5]] **24** percent;
  - iv. For the [2019-2020] [[2026-2027]] **2019-2020** school year, minimum instructional costs of [56.5] [[59]] **56.5** percent and maximum administrative costs of [23.5] [[22.5]] **23.5** percent;
  - v. For the [2020-2021] [[2027-2028]] **2020-2021** school year, minimum instructional costs of [57] [[59.5]] **57** percent and maximum administrative costs of [23] [[22.5]] **23** percent; and
  - vi. For the [2021-2022] [[2028-2029]] **2021-2022** school year and thereafter, minimum instructional costs of [57.5] [[60]] **57.5** percent and maximum administrative costs of 22.5 percent.
4. Unless otherwise determined pursuant to (b) below, the APSSD shall charge one tentative tuition rate as published by the Department, charge one final tuition rate determined by the APSSD, and calculate one certified actual cost per student for the school year that must be approved by the Commissioner, or [his or her] [[**the Commissioner's**]] **his or her** designee.
- i. An APSSD shall report all tuition rates on a per diem and school-year basis, calculated as the number of enrolled days in the school year multiplied by the per diem rate.
  - ii. An APSSD that operates both [a 10-month] [[**an academic year program**]] **a 10-month** and an extended school year [[**program**]] shall report [[**a single**]] tuition [rates for] [[**rate that applies to**]] [both the

July/August through June and September through June school years] **[[the entire school year]] rates for both the July/August through June and September through June school years.**

5. Except for extraordinary services, an APSSD shall provide required related services in the scope of services rendered pursuant to the tuition contract and may not bill the sending district board of education separately for related services that are required by a student's initial or any subsequent IEP with limited exception. If the related services required by an IEP **[[is]]** **[[are]]** **is** beyond what is typically provided during the school day, or the nature of the related services requires that **[[it]]** **[[they]]** **it** be provided beyond the school day/operating hours, the APSSD may address the costs and provision of **[[such]]** **[[the]]** **such** related services through a separate agreement with the sending district. However, if **[[such]]** **[[the]]** **such** related services beyond that typically provided during the school day or beyond the school day/operating hours are not in the scope of services rendered under the tuition contract, nothing in this section shall prevent a sending district board of education from providing those **[[related]]** services itself or separately contracting for **[[those services]]** **[[them]]** **those services** with an approved service provider other than the APSSD.
6. For programs in operation less than the minimum of 180 days of instruction (September 1 through June 30), the APSSD shall calculate total costs minus 1/180 for each day less than the 180-day requirement to determine actual allowable costs.
7. The ADE for students enrolled in an APSSD for a time period other than a full or half day shall be based on the total number of hours actually enrolled during the school year divided by the total possible number of hours in the school year.
8. For fiscal reporting purposes, an extended school year program means a program in which activities commence on or after July 1 and end on or before August 31 of

the same year. For program activities that begin prior to July 1, an APSSD shall report all costs and revenues in the prior fiscal year.

- (b) An APSSD may charge one tuition rate per school location for the school year. [Prior to June 30, 2017, the Commissioner, or his or her designee, may approve APSSDs to charge separate tuition rates by class type and by school location for the school year.] **Prior to June 30, 2017, the Commissioner, or his or her designee, may approve APSSDs to charge separate tuition rates by class type and by school location for the school year.**

APSSDs that [have] **[[did]] have** not receive[d] **d** written approval **[[from the Commissioner, or the Commissioner's designee,]]** to charge separate tuition rates by class type and by school location prior to July 1, 2017, shall not be permitted to do so for the school year beginning July 1, 2017, and thereafter. APSSDs that [are] **[[were]] are** approved prior to June 30, 2017, to charge by class type shall:

1. Maintain bookkeeping and accounting records by class type and school location for the school year;
2. Charge a separate tuition rate for each class type served;
3. Prepare, in the Department-prescribed format, the audited costs by class type for the first two years that tuition is charged by class type, which will allow the Commissioner to determine the tentative tuition rates in accordance with (i) below; and
4. Determine, on a pro rata basis and when it is not possible to charge the actual amount expended, the individual share of a particular allowable cost item for a class type, in accordance with the following ratios or an alternative method approved by the Commissioner:
  - i. Ratio of ADE in each class type to the total ADE;
  - ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; or
  - iii. Direct costs.

- (c) An APSSD shall record, in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23A-18.5(a)8, all direct costs that can be specifically attributed to a program and/or revenue source.
- (d) For indirect costs that are incurred for a common or joint purpose, but are not readily assignable to an APSSD and/or its program and/or a revenue source, an APSSD may establish indirect cost pools as appropriate for allocation to the APSSD at the end of the fiscal year as follows:
1. The expenditures included in the indirect cost pool shall be related to the APSSD's function(s), operation(s), and/or program(s); and
  2. Salary expenditures and associated fringe benefits included in an indirect cost pool shall be for individuals who are assigned, pursuant to a contract and/or job description, to perform work related to the APSSD's function(s), operation(s), and program(s).
- (e) An entity that operates only as an APSSD and operates one or more tuition programs at one or more locations shall charge costs as follows:
1. Direct costs for each program as determined pursuant to (c) above; and
  2. Indirect costs, as [defined in] [[set forth at]] **defined in** (d) above, are calculated in accordance with any of the following:
    - i. An equitable allocation plan approved in writing by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee;
    - ii. Ratio of direct costs for each program determined pursuant to (c) above to total direct costs; or
    - iii. Ratio of ADE for each program to total ADE.
- (f) An entity that operates other programs in addition to an APSSD program(s) at one or more locations shall charge [their] **their** costs as follows:
1. Direct costs for each program as determined pursuant to (c) above;
  2. Indirect cost centers established as follows:

- i. A cost center that shall include indirect costs that are allowable costs in accordance with this subchapter; and
    - ii. A cost center that shall include indirect non-allowable costs in accordance with this subchapter.
  3. Allowable indirect costs, charged pursuant to (f)2i above, may be included on a consistent basis in the respective actual cost per student in accordance with:
    - i. An equitable allocation plan approved by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee;
    - ii. Ratio of direct costs for each program determined pursuant to (c) above to total direct costs; or
    - iii. Ratio of ADE for each APSSD to total ADE.
- (g) Whenever a facility used by an APSSD is also used for unrelated activities and/or enterprises by related or unrelated parties, all direct and indirect costs associated with the facility and operations shall be charged according to the ratio of the square footage of the portion of the facility used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the square footage of the total facility. Indirect costs for using the APSSD's facilities in any other manner shall not be included in the certified actual cost per student.
1. If any facility, or portion thereof as set forth [in] [[at]] **in** (g) above[,], [are] [[is]] **are** jointly used by the APSSD for the APSSD program(s), operation(s), and/or function(s), and for unrelated activities and/or enterprises by related or unrelated parties, the direct and indirect costs associated with the facility and operations shall be charged according to the ratio of the time used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the total time the facility is used for any purpose.

(h) A tentative tuition rate, calculated in accordance with (i) and (j) below, shall be established by written contractual agreement between the APSSD and the sending district board of education. The tentative tuition rate charged shall not exceed the maximum tentative tuition rate, calculated in accordance with (i) and (j) below, for the ensuing school year, and shall not be changed during the school year regardless of the APSSD's financial or other circumstances. The written contract shall be on the mandated tuition contract form prescribed by the Commissioner and shall be executed prior to a student's enrollment.

1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the student is enrolled during the month, for each month the student is enrolled. The per diem rate is determined by dividing the tentative tuition rate for the school year by the estimated number of days school will be in session, but not less than 180 days, and rounding to the nearest two decimal places.

2. If applicable, the contractual agreement shall require the sending district board of education to pay the APSSD the tentative tuition charge for extraordinary services.

3. The contractual agreement shall require the sending district board of education to pay the APSSD the tentative tuition charge based on one of the following options as determined by the APSSD. The APSSD shall use the same option for all students enrolled in the APSSD:

i. Option 1: A sending district board of education shall pay the APSSD no later than the first day of each month prior to the services being rendered.

(1) For a student already enrolled in the APSSD, the sending district board of education shall pay the tentative tuition charge by the first day of the second month after services begin. A sending district board of education that fails to pay tuition by the 30th day after

services begin may be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.

(2) For a student enrolled after the first day of the month, the sending district board of education shall pay the tentative tuition charge for the first two months of enrollment no later than 60 days after the first day services begin. Payment in subsequent months is due by the first of each month prior to the services being rendered. A sending district board of education that fails to pay tuition by the 30th day after services begin may be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.

ii. Option 2: A sending district board of education shall pay the APSSD no later than 60 days after the last day of each month in which services were rendered. A sending district board of education that fails to pay tuition by the 60th day after the last day of a month in which services were rendered may be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.

(i) The Commissioner, or [his or her] [[**the Commissioner's**]] **his or her** designee, [will] **[shall] will** issue notification of the maximum tentative tuition rate for each APSSD no later than January 1 for the ensuing school year, calculated as follows:

1. The maximum tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year inflated by [twice the tax levy growth limitation of] **twice the tax levy growth limitation of** two percent [and any applicable change to this percentage identified in N.J.S.A. 18A:7F-38, or the consumer price index (CPI) as defined in N.J.S.A. 18A:7F-45, whichever is greater] **and any applicable change to this percentage**



**identified in N.J.S.A. 18A:7F-38, or the consumer price index (CPI) as**

**defined in N.J.S.A. 18A:7F-45, whichever is greater.**

2. The maximum tentative tuition rate shall include:
    - i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23A-18.7; and
    - ii. For nonprofit schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23A-18.8.
- (j) The Commissioner, or [his or her] [[**the Commissioner's**]] **his or her** designee, may approve a higher tentative tuition rate for any year in which the APSSD can demonstrate, to the Commissioner's or [[**the**]] designee's satisfaction, that the maximum tentative tuition rate for the ensuing fiscal year is inadequate and would cause an undue financial hardship on the APSSD.
1. In the event of such hardship claim, the APSSD shall submit its request for a higher tentative tuition rate for the entire school year to the Commissioner, or [his or her] [[**the Commissioner's**]] **his or her** designee, no later than January 31 preceding the beginning of the ensuing school year. The APSSD shall submit the request with appropriate documentation, which shall include, but may not be limited to, the following information:
    - i. A budget reflecting projected costs, working capital fund or surcharge, estimated enrollment[[[,]] and the requested [[**tentative**]] tuition rate based on this information;
    - ii. A detailed narrative prepared by the APSSD's administration and/or management demonstrating the need for increases in excess of increases already provided in the tentative tuition rate calculation; and
    - iii. A properly completed interim financial report in the format prescribed by the Commissioner, or [his or her] [[**the Commissioner's**]] **his or her**

designee, for the six months of operations ending December 31

immediately preceding the school year.

- (k) Following a satisfactory compliance review of an independent auditor's certified actual cost per student, the Commissioner [will] **[[shall]] will** issue an approval that the final tuition rates charged are based on the certified actual cost per student pursuant to (a) above.
- (l) If the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, determines the tentative tuition rate for the school year established pursuant to (i) and (j) above is greater than the final tuition rate charged for the school year, the APSSD shall pay or credit the difference to subsequent tuition bills for each sending district board of education no later than June 30 of the school year in which the final tuition rate charged is approved by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, or not more than 30 days after an appeal on a certified amount is resolved. The same final tuition rate [charged] **charged** shall be charged to each sending district board of education.
- (m) If the tentative tuition rate for the school year established by written contractual agreement pursuant to (h) above is less than the final tuition rate charged for the school year, the APSSD may charge each sending district board of education all or part of the difference owed, but the same final tuition rate shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date during the second school year following the year for which the actual certified cost per student is approved by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee.
- (n) The APSSD shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year[,]. And[[,]] if applicable, the tentative tuition rate for extraordinary services on Commissioner-prepared forms.

(o) An APSSD shall reference as guidance the Commissioner-published list of maximum allowable salaries **[[and fees]]** by job title and county, according to the job titles [contained in] **[[set forth at]] contained in** N.J.A.C. 6A:9B **[[that are]]** relevant to APSSDs. Except for administrative job titles referenced [in] **[[at]] in** (p) below, maximum allowable salaries **[[and fees]]** are based on **[[the greater of]]** the highest contracted salaries (not including payment [of] **[[related to longevity pay, stipends, bonuses, dual position compensation,]] of** unused sick and vacation days, and severance pay) of certified staff by job title in a district board of education for any prior year[, indexed by the average increase in salary between the two preceding school years for each job title] **[[or an increase of two percent of the previous year's published salary]]**, **indexed by the average increase in salary between the two preceding school years for each job title**. The salaries **[[and fees]]** are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary **[[and fee]]** of an APSSD staff member **[[or consultant]]** shall be prorated for **[[purchased services rendered or]]** staff employed for less than 12 months. Under no circumstances shall the maximum allowable salary **[[or fee]]** calculated be less than the corresponding salary **[[or fee]]** in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities. The maximum allowable salary [of] **[[or fee for]] of** a staff member **[[or consultant]]** holding a part-time or split-time position shall be prorated including the salary [of] **[[or fee for]] of** staff **[[or consultants]]** employed in entities [defined in] **[[referenced at]] defined in** (e) and (f) above.

[1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries pursuant to (o) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year, with the following exceptions:

- i. Beginning July 1, 2017, the maximum published salaries for the job titles of occupational therapist, physical therapist, and speech and language specialist shall increase annually from the 2016-2017 published list of maximum allowable salaries by CPI determined consistent with N.J.S.A. 18A:7F-45;
- ii. Beginning July 1, 2017, the Commissioner, or his or her designee, shall publish a maximum allowable salaries list that contains the total maximum hourly rate for occupational therapists, physical therapists, and speech and language specialists contracted by APSSDs as purchased service providers or independent contractors. The published total hourly rates shall include an allowance of 35 percent more than the maximum allowable salary rate calculated and published pursuant to (o)1i above for the same job titles. The total maximum hourly rates shall be applicable only to contracted service providers.]

**1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries pursuant to (o) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year, with the following exceptions:**

- i. Beginning July 1, 2017, the maximum published salaries for the job titles of occupational therapist, physical therapist, and speech and language specialist shall increase annually from the 2016-2017 published list of maximum allowable salaries by CPI determined consistent with N.J.S.A. 18A:7F-45;
- ii. Beginning July 1, 2017, the Commissioner, or his or her designee, shall publish a maximum allowable salaries list that contains the total maximum hourly rate for occupational therapists, physical therapists, and speech and language specialists contracted by APSSDs as

**purchased service providers or independent contractors. The published total hourly rates shall include an allowance of 35 percent more than the maximum allowable salary rate calculated and published pursuant to (o)1i above for the same job titles. The total maximum hourly rates shall be applicable only to contracted service providers.**

[iii.] [1.] **iii.** [Beginning July 1, 2017] **[[Effective through June 30, 2031]]**

**Beginning July 1, 2017**, an APSSD may contract with an approved clinic and agency, pursuant to N.J.A.C. 6A:14-5.1(c) and 5.2, and may pay the approved clinic or agency for the contracted services at a rate above the maximum allowable salary published rate detailed [in] **[[at]] in** (o) above, [so] **[[as]] so** long as the APSSD:

[(1)] **[[i.]] (1)** Acquires quotes for the contracted services from at least three approved clinics or agencies prior to contracting with an approved clinic or agency. If any of the three approved clinics or agencies are a related party, the APSSD shall contract with the lowest of the three quotes; and

[(2)] **[[ii.]] (2)** Provides documentation of the three quotes [required by (o)1iii(1)] **[[pursuant to (o)1i]] required by (o)1iii(1)** above to the Department upon request.

2. Subparagraphs (o)1i and ii above shall sunset on June 30, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (o) above.
3. Beginning with the 2021-2022 fiscal year, the Department shall initiate a study examining the maximum allowable salary structure. In conducting the study, the Department may seek and/or include input from an APSSD representative(s). The study shall include a data-driven review of maximum salaries and

recommendations, if any, for changes to the maximum allowable salary calculation formula contained in (o) above and (p) below.]

**2. Subparagraphs (o)1i and ii above shall sunset on June 30, 2024, and the**

**Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (o) above.**

**3. Beginning with the 2021-2022 fiscal year, the Department shall initiate a**

**study examining the maximum allowable salary structure. In conducting the study, the Department may seek and/or include input from an APSSD representative(s). The study shall include a data-driven review of maximum salaries and recommendations, if any, for changes to the maximum allowable salary calculation formula contained in (o) above and (p) below.**

(p) An APSSD shall reference as guidance the Commissioner-published list of maximum allowable salaries **[[and fees]]** by administrative and job titles and county according to the job titles [contained in] **[[set forth at]] contained in** N.J.A.C. 6A:9B and 6A:23A-18.2 **[[that are]]** relevant to APSSDs. Maximum allowable salaries are based on the **[[greater of the]]** highest contracted salary **[[or fee]]** (not including payment [of] **[[related to longevity pay, stipends, bonuses, dual position compensation,]] of** unused sick and vacation days~~[[,]]~~ and severance pay~~[[,]]~~) by administrative job title [for the entire State] **for the entire State** in a district board of education[, special services district board of education, and educational services commission] **[[Statewide]], special services district board of education, and educational services commission** with comparable average daily enrollments for any prior year[, indexed by the average increase in salary between the two preceding school years], **indexed by the average increase in salary between the two preceding school years** for each job title **[[or an increase of two percent of the previous year's published salary]]**. The salaries **[[and fees]]** are based on a 12-month contract period from July 1 through June 30 and the maximum allowable

salary **[[or fee]]** of the APSSD staff member shall be prorated for staff employed **[[or consultant]]** for less than 12 months. Each district board of education[, special services district board of education, and educational services commission], **special services district board of education, and educational services commission** with an ADE equal to or less than the highest APSSD ADE [will] **[[shall will]]** be considered comparable. Under no circumstances shall the **[[calculated]]** maximum allowable salary [calculated] **[[or fee]]** **calculated** be less than the corresponding salary **[[or fee]]** in the prior year for the same job title. The maximum allowable salary [of] **[[or fee for]]** **of** a staff member **[[or consultant]]** holding a part-time or split-time position shall be prorated including the salary [of] **[[or fee for]]** **of** staff **[[or consultants]]** employed in entities [defined in] **[[referenced at]]** **defined in** (e) and (f) above.

1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries established pursuant to (p) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year;
2. Paragraph (p)1 above shall sunset on July 1, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (p) above.]

- 1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries established pursuant to (p) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year;**
- 2. Paragraph (p)1 above shall sunset on July 1, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (p) above.**

- (q) An APSSD shall use the recognized position title list published annually by the Commissioner, or [his or her] **[[the Commissioner's]]** **his or her** designee, to employ staff whose position requires [certification] **[[a certificate or credential]]** **certification**

in accordance with N.J.A.C. 6A:9B or a bachelor's or master's degree, pursuant to N.J.A.C. 6A:23A-18.2. An APSSD shall hire only staff, or consultants[[, or purchased professional service providers]] in job titles that require [certification] [[a certificate or credential,]] **certification** or a bachelor's or master's degree[[,]] if the titles are included on the recognized job titles list, or if [such titles] [[they]] **such titles** are unrecognized job titles that are approved annually by an executive county superintendent in accordance with N.J.A.C. 6A:9B-5.5. The APSSD may use unrecognized administrative job titles, but maximum salaries for the titles are restricted in accordance with N.J.A.C. 6A:23A-18.6(a)9. The maximum salaries [[or fees]] of APSSD-hired staff[[, consultants or purchased professional service providers]] in administrative or support job titles, such as, but not limited to, chief executive officer or chief financial officer, shall be limited to the maximum salary [[or fee]] of a director in accordance with (p) above.

- (r) For non-administrative individual employees, the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, may approve a salary higher than the maximum allowable salary identified [in] [[at]] **in** (o), (p), or (q) above. Approval may be given for no more than two APSSD employees in any fiscal year in which the APSSD demonstrates, to the Commissioner's or [his or her] [[the Commissioner's]] **his or her** designee's satisfaction, the maximum allowable salary is inadequate and would cause a hardship to the APSSD. The hardship exception [will] [[may]] **will** be granted in limited circumstances and only if the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, determines the APSSD has demonstrated an exception is warranted based upon the following:

1. The APSSD shall submit an application to the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, postmarked or electronically transmitted no later than the May 1 preceding the applicable school year. The APSSD shall submit



the application with appropriate documentation that shall include, but not be limited to, the following:

- i. Detailed information on the staff member for whom the increase is sought, including, but not limited to, job title and related description, experience and credentials, hire date, previous salary information and new salary sought, accomplishments/achievements of note, and publications or the like. If applicable, the APSSD shall include the same detailed information for all staff employed under the same job title;
  - ii. A detailed budget demonstrating the impact the increased salary would have on the projected total expenditures, ADE, and budgeted tuition rate, if any;
  - iii. Detailed explanation of the need for a salary above the maximum allowable rate; and
  - iv. An outline of the educational impact of the employee.
2. The Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, shall review the application and respond, in writing, to the APSSD by June 30 of the school year preceding the applicable school year; [and] **and**
  3. Applications solely based on the length of service of the employee or familiarity with the school [will] **[[shall]] will** not be granted[.][[; and]]
  - [[4. Applications submitted after May 1 preceding the applicable school year shall not be granted.]]**

(s) For students who are transitioning back to a program of the sending district board of education, or to a third-party location, for a portion of the enrolled school day and who require the services of an APSSD staff person, the ADE for tuition-rate purposes shall be computed as follows:

1. Regardless of the time period the student is enrolled in a program outside the APSSD, the student shall be considered a full-time APSSD student, the student's

ADE shall be considered as 1.0, and the sending district board of education shall pay the full-time tuition rate.

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

(t) For students who are transitioning back to a program of the sending district board of education, or to a third-party location, for a portion of the enrolled school day, the APSSD shall compute the tuition rate as follows:

1. The APSSD shall calculate the student's ADE based on the number of hours enrolled in the APSSD's program relative to the total number of possible hours of the APSSD's program.

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

(u) For tuition-rate purposes for a private placement student, the APSSD shall charge not less than the audited cost per student or shall finance[[,]] by [other] **other** means [[**other than public school placement funds,**]] the costs that exceed the tuition rate charged.

[[**(v) The Commissioner's tuition rate determination shall be final after 35 business days if the APSSD does not submit all requested supporting documentation.**

**1. If the Department's compliance review of an independent auditor's certified actual cost per student, as referenced at (k) above, discovers a non-compliance finding that may alter the tuition rate paid by sending school districts, the APSSD shall have no more than 35 business days from the date of the Department's letter requesting correction or supporting documentation to respond and provide corrections or to request a reasonable extension of time to become compliant.]]**

#### **6A:23A-18.4 New approved private schools for students with disabilities**

- (a) A prospective applicant shall file with the Office of Special Education [Programs (OSEP)] **Programs (OSEP)** an application to establish an APSSD and shall obtain the Commissioner's, or [his or her] [[**the Commissioner's**]] **his or her** designee's, approval of the application prior to operating an APSSD.
1. A current APSSD that is adding [additional] **additional** classrooms to an existing approved educational program at a new location, or opening a new program, is considered a new APSSD subject to (a) above. For the purpose of this paragraph, a new location may include, but shall not be limited to, a new building.
  2. A current APSSD that is adding [additional] **additional** classrooms to an existing approved educational program, or adding a new class type(s), either of which will be housed in another building at the current location, shall not be considered a new APSSD and shall charge, as a tentative tuition rate, the tuition currently charged.
- (b) An applicant applying for approval as a new APSSD shall provide to the Department evidence of sufficient need for the new private school as follows:
1. The applicant shall file with the [OSEP] [[**Office of Special Education**]] **OSEP** an application to establish an APSSD and shall document there is a need and the new APSSD would likely serve a minimum of 24 public school placement students.
- (c) Applicants that meet the criteria [in] [[**at**]] **in** (b) above shall be approved as follows:
1. The applicant school shall receive preliminary approval to operate for a two-year period, after which the applicant school shall provide documentation that it has a minimum ADE of 24 public school placement students by the end of the second school year;
    - i. An applicant school meeting the minimum ADE of 24 public school placement students by the end of the second school year shall receive new APSSD approval if it meets all other Department requirements;

- ii. An applicant school not meeting the minimum ADE of 24 public school placement students by the end of the second school year shall have its preliminary approval status revoked and shall no longer be considered an APSSD;
- iii. Any APSSD approved prior to the 2004-2005 fiscal year that falls below [the previous minimum] [[an]] **the previous minimum** ADE of 16 public school placement students in a school year shall have its status as an APSSD rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an APSSD;
- iv. Any APSSD approved to operate during the 2004-2005 fiscal year, or thereafter that falls below an ADE of 24 public school placement students in a subsequent school year shall be considered preliminarily approved. The school shall attain a minimum ADE of 24 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an APSSD;
- v. APSSDs operating in, and affiliated with, a public school district are exempt from (b)1 and (c)1i, ii, iii, and iv above; and
- vi. An APSSD operating in, and affiliated with, a public school district shall be restricted to operate only in the public school district location. An APSSD operating in and affiliated with a public school district that chooses to move to a location other than the public school district location shall comply with this section.

(d) An APSSD shall straight line amortize start-up costs, if any, over a 60-month period.

- (e) For the first two years of operation of an APSSD, the tentative tuition rate charged at each site shall be established annually and be based on budgeted allowable costs. An APSSD shall submit [such] [[the]] **such** estimated cost(s) to the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form and/or electronic system [[that is]] prepared by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, [[and]] that provides for, but is not limited to, the following:
1. Fiscal and programmatic data;
  2. Projected allowable cost items and projected enrollments;
  3. A projected budget that reflects administrative costs not in excess of, and instructional costs not less than, the percentages identified [in] [[at]] **in** N.J.A.C. 6A:23A-18.3(a)3 and as defined in the chart of accounts;
  4. A report of all funding resources;
  5. An affidavit of compliance; and
  6. A statement of assurance as required by the Office of Special Education [Programs] **Programs**.
- (f) If the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, approves the tentative tuition rate calculated pursuant to (e) above, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per student for the first two years of operation.
- (g) If the tentative tuition rate charged differs from the final tuition rate charged after each year of operation, the tentative tuition charges [will] [[shall]] **will** be adjusted in accordance with N.J.A.C. 6A:23A-18.3.
- (h) An APSSD approved as a new school shall not begin operations before July 1 of the school year immediately following the school year in which the APSSD received approval to operate, except for an APSSD operating in, and affiliated with, a public school district.

## 6A:23A-18.5 Bookkeeping and accounting

(a) An APSSD shall maintain accounting and bookkeeping systems as prescribed in the Department's Financial Accounting for New Jersey Private Schools for Students with Disabilities in accordance with the following standards:

1. An APSSD shall maintain accounts in accordance with generally accepted accounting principles (GAAP) as established by the Financial Accounting Standards Board (FASB) and recognized as authoritative by the American Institute of Certified Public Accountants, except as already modified in this subchapter.
2. At a minimum, an APSSD shall use accrual accounting on a quarterly basis.
3. An APSSD shall capitalize fixed asset expenditures of [\$2,000] ~~[[**\$5,000**]]~~ **\$2,000** or more and depreciate such expenditures using the straight-line depreciation method and using a useful life consistent with current Federal tax law as defined in Internal Revenue Code Section 168 and class lives as defined in that section (also see IRS Publication 946), except for real property that may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.
4. An APSSD shall:
  - i. Capitalize leasehold improvements made to an existing structure leased by the APSSD and depreciate the improvements using the straight-line method and a useful life equal to the lease's remaining term and any extension(s), but not less than five years;
  - ii. Depreciate any leasehold improvement(s) to which a related party(ies) is the lessor using the straight-line method and a useful life equal to the lease's remaining term and any extension(s), but not less than 10 years;

- iii. Not depreciate a leasehold improvement(s) made to a structure for any month(s) the structure is not in service as an APSSD, or in excess of amounts determined under (a)4i or ii above for any fiscal year; and
  - iv. Not depreciate a leasehold improvement(s) made to a structure that does not directly benefit public school placement students being educated or that is in excess of amounts determined pursuant to (a)4i, ii, or iii above.
5. An APSSD shall maintain asset, liability, and net asset accounts, as well as expenditure and revenue accounts.
6. Nonprofit organizations shall maintain financial records on a fund basis, which requires restricted or unrestricted donations to be maintained in funds separate from the public school restricted fund. Costs incurred as a result of restricted or unrestricted donations shall be charged to the appropriate fund and not through the public school restricted fund. Profit-making organizations shall maintain financial records on a modified fund basis.
7. A chart of accounts issued by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, shall be maintained by each APSSD. A Uniform Minimum Chart of Accounts consistent with **[[the most recent edition of the]]** Financial Accounting for Local and State School Systems [2014], developed by the [National Center for Education Statistics] **[[NCES]] National Center for Education Statistics**, incorporated herein by reference, as amended and supplemented as prepared, published, and distributed by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, for use in the accounting systems of all APSSDs shall be used for financial reporting to the Department. [Effective July 1, 2017, the] **[[The]] Effective July 1, 2017, the** Department will not consider requests for approval to use an alternative chart of

accounts. APSSDs that received **[[written]]** approval prior to July 1, 2017, to use an alternative chart of accounts may continue to do so.

- i. [Effective July 1, 2018, the] **[[The]] Effective July 1, 2018, the** first \$15,000 of attorney's fees or other costs per litigation and per fiscal year of costs incurred by an APSSD shall be included within the administrative cost category limits [identified in] **[[at]] identified in** N.J.A.C. 6A:23A-18.3(a)3. Costs for litigation above the first \$15,000 per litigation and per fiscal year shall be outside the total cost category assignment as indicated in the Department's chart of accounts pursuant to (a)7 above.
  - ii. For purposes of (a)7i above, litigation means **[[any allowable costs associated with]]** a suit brought by or against an APSSD for which a court of law or agency of the State or Federal government assigns a docket or other form of tracking number.
8. If multiple facilities for an APSSD have been approved, financial information in the bookkeeping records shall be segregated by facility. If the APSSD chooses to charge tuition rates by class type, financial information in the bookkeeping records shall be segregated by class type. Bookkeeping records shall include, but not be limited to:
- i. Cash receipts journal;
  - ii. Cash disbursement journal;
  - iii. General ledger;
  - iv. Tuition ledger;
  - v. Payroll journal; and
  - vi. Fixed asset inventory.
9. An APSSD shall maintain documentation to verify all amounts recorded in the general ledger. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be



attached to their related purchase orders to support all purchases of goods and services. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements, or any payment for which invoices or cash register receipts are not used. All documentation shall be subject to audit by the Department and shall support expenses charged by the APSSD in its audited financial statements.

10. An APSSD shall prepare a payroll that is supported by an accurate employee time record in a format prescribed or approved by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, signed by the employee and supervisor, prepared in the time period in which the work was done, and completed semi-monthly, at a minimum. An employee time record shall be prepared for all **[[APSSD]]** employees [of the APSSD] **of the APSSD**, including all administrative employees. Upon receipt of written approval from the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, APSSDs may use an electronic time record system in lieu of the Commissioner-prescribed format. Approval shall continue unless and until an APSSD alters the system or engages the services of a new provider for the electronic time record system.
11. At least quarterly, an APSSD shall prepare a financial report in a format prescribed or approved by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, for the school-year program. The financial report shall be submitted to the school's governing body and its acceptance shall be documented in the governing body's meeting minutes.
12. An APSSD shall maintain effective internal control practices, including, but not limited to, the separation of duties such as the recording and authorizing of checks and purchase approvals.

13. An APSSD shall use the Commissioner-prescribed mandated tuition contract for each student received from a sending district board of education. The mandated tuition contract may be revised only by the APSSD or the sending district board of education with the Commissioner's prior written approval.
14. An APSSD that incurs contingent pay increases shall have an employee contract that contains the criteria by which the increase will be paid. Under no circumstances shall the APSSD employee's salary plus the contingent pay increase exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q). The criteria shall be submitted to the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, for approval prior to implementation. The APSSD shall make payment of the contingent pay increase upon achievement of the contractual contingencies as set forth in the approved plan. The payment shall be based upon measurable criteria and shall not be at the management's discretion. The employee contract shall contain the following:
  - i. The date and signature of both the staff member and authorized APSSD representative;
  - ii. The ADE contingency the APSSD must achieve to generate the increase; and
  - iii. The specific dollar amount or percentage of original contracted salary to be paid pursuant to (a)14ii above.
15. An APSSD that incurs merit pay increases shall have adopted a formal policy that outlines the criteria of the merit pay plan(s). The APSSD employee's salary plus the merit pay shall not exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q). The plan(s) shall be submitted for approval to the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, prior to implementation. The APSSD shall accrue the merit pay and any resultant employer payroll tax expense in the fiscal year in which the merit pay is

awarded. Payment of such merit pay increase upon achievement of the criteria set forth in the approved plan shall occur no later than the following January 31. The payment shall not be at the management's discretion. The plan(s) shall include the following:

- i. Eligibility for all employees;
  - ii. Basis by which the pay is earned;
  - iii. The amount of the awards by plan(s);
  - iv. The maximum number of awards to be given by plan(s) for each year; and
  - v. The date of board approval and date of initiation of the plan(s).
16. An imprest balance petty cash fund shall be maintained upon annual approval in the minutes by the APSSD's governing body. Replenishments and reimbursements shall be supported by documentation. Undocumented outflows from petty cash shall be classified as a non-allowable cost. The imprest fund balance shall not exceed \$1,500 and individual disbursements made shall not exceed \$150.00, except in the case of an emergent condition.
17. A student activity fund shall be approved by the APSSD's governing body and supported by documentation. Revenues derived from public school placement tuition shall be used to supplement, not supplant, student contributions.
18. Mileage records shall be maintained for each school-owned vehicle, leased vehicle, or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee. The mileage records shall be maintained on a trip-by-trip basis and shall include any personal use including to/from work commutation. At the end of the fiscal year, the percentage determined by the total personal miles to total miles shall be applied to all costs associated with the vehicle(s) and the personal costs shall be excluded from the

actual allowable costs. Vehicle costs may include, but not be limited to, the following: depreciation, lease costs, gas, oil, repairs and maintenance, and insurance.

19. Upon request from the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee:
  - i. A profit-making APSSD shall submit a copy of its Internal Revenue Service (IRS) tax return for any fiscal year requested; and
  - ii. A nonprofit APSSD shall submit a copy of IRS form 990 for any fiscal year requested.
20. An APSSD shall maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the annual audited financial statement, **[[or until finalization of all appeals including litigation,]]** or until the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, issues approval or adjustment to an independent-auditor-certified tuition rate.
21. A nonprofit entity that has chosen to cease operations as a nonprofit APSSD shall distribute its accumulated public school placement restricted working capital fund to each sending district board of education that had enrolled students during the APSSD's last five years of operation. Public school placement restricted working capital may be retained if an APSSD reconfigures its operations and continues to serve a majority of the same sending district boards of education from the last five years of operation.
  - i. The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD for the last five years of operation to the APSSD's total ADE for the same period.
  - ii. Within 90 days of filing with the Department the required year-end audited financial statements in accordance with N.J.A.C. 6A:23A-18.10,

the APSSD shall submit to the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, a listing of the total distribution of the public school placement restricted working capital fund, by sending district board of education.

22. An APSSD shall ensure school staff; consultants; subcontractors, including members of a management company; and anyone working with students hold the proper school certification, license, or bachelor's degree required pursuant to N.J.A.C. 6A:23A-18.2 to provide the services being rendered.
- (b) An APSSD that receives a refund(s) from a current or prior-year expenditure, or that cancels an accounts payable, shall apply the refund or accounts payable as a reduction to the original general expenditure account charged to reduce the current-year expenditure account even if the original expenditure was not made in the current fiscal year.
- (c) An APSSD annually shall execute an employment contract with each school employee. The contract shall contain the following information:
1. The employee's name;
  2. Dates of employment;
  3. Work hours/durational term of employment;
  4. Certification(s) and/or degree(s) held;
  5. Certification(s) required for the job title;
  6. A job description;
  7. The job title;
  8. All fringe benefits; and
  9. The salary.
- (d) An APSSD that operates its educational program outside of a public school district shall request Departmental approval to purchase or rent an administrative or business office at a location outside of the APSSD's educational facility[, **provided that the existing**

**educational facility does not have adequate space to house the administrative or business office]].** Once received, an approval shall not require renewal, [unless and until] [[except when]] **unless and until** the APSSD changes the location of its educational or administrative facility [[or negotiates a renewal or extension of the lease]]. At the Department's request:

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

(e) An APSSD shall ensure its employees provide:

1. To the students, an instructional program for which the employees are compensated during the hours the school is in session; and
2. All administrative and business functions on the APSSD's premises whether the premises are owned or leased by the APSSD, and during the APSSD's normal hours of operation, except for meetings and/or conferences held offsite related to the job function. If the APSSD's facilities are not deemed feasible for any administrative or business function, the APSSD shall provide written justification to the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, and request approval of a reasonable alternative work location.

(f) An APSSD shall establish and maintain an employee handbook that shall be distributed to all staff each school year and made available to the Department upon request. The APSSD's employee handbook shall include an outline of all employee fringe benefits. All employee fringe benefits shall be adopted at a board of directors meeting and documented in board minutes prior to implementing the fringe benefit. Employee fringe

benefits that are consistent with N.J.A.C. 6A:23A-18.6(a)23 for which costs are deemed allowable are as follows:

1. Health insurance coverage (including dental and vision) that complies with Federal and State laws, rules, and regulations, including payments to employees for a complete waiver of health insurance coverage that comply with the following:
  - i. The payment for waiver of health insurance coverage shall not exceed \$5,000 per fiscal year; and
  - ii. The employee shall provide, and the APSSD shall keep on file, documented evidence the employee had other valid health insurance coverage during the fiscal year;
2. Life insurance;
3. Type(s) and qualification for retirement plan(s);
4. Severance pay;
5. Vacation;
6. Long-term disability;
7. Sick day and personal day benefits;
8. Premium-only plans;
9. Cafeteria plans;
10. Section 125 plans;
11. Tuition reimbursement;
12. Health savings accounts (HSAs), medical savings accounts (MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs) established and maintained within applicable laws and regulations; and
13. Other benefits for which an APSSD has applied and received written approval from the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee.

- (g) An APSSD that loans funds to any party shall charge interest at a rate equal to the prime rate. An independent auditor shall compute imputed interest on funds that are loaned at less than the prime interest rate or interest free. Imputed interest revenue shall be netted first against short-term interest costs and then against long-term interest costs incurred by an APSSD. If the APSSD has not incurred interest costs, the imputed interest revenue shall be netted against costs incurred in account numbers classified as undistributed expenditures—central services.
- (h) A nonprofit APSSD that [has a positive public school placement restricted working capital fund balance but] **has a positive public school placement restricted working capital fund balance but** reports a net deficit unrestricted fund balance for more than three consecutive fiscal year-ends, shall submit to the Commissioner, or [his or her] **[[the Commissioner’s]]** designee, within 60 days after the third fiscal year’s end, a corrective action plan to reduce the net [overall] **overall** deficit fund balance. The nonprofit APSSD shall be subject to Department monitoring to ensure implementation of, and adherence to, the corrective action plan. If the APSSD fails to eliminate the deficit by the end of year three, the APSSD shall be placed on conditional approval status until the deficit [unrestricted] **unrestricted** fund balance is eliminated.
- (i) An APSSD that allows employees to accumulate and carry over from year to year unused sick and/or vacation leave shall do so in accordance with Financial Accounting Standards Board Statement No. 43 Accounting for Compensated Absences (FASB; 801 Main Avenue, PO Box 5116, Norwalk, CT 06856-5116), incorporated herein by reference, as amended and supplemented, and shall include the costs in program expenses in the appropriate cost category only in the year of payment.
- (j) An APSSD shall use job titles in use in public schools districts in accordance with N.J.A.C. 6A:9B and the list published each year by the Commissioner, or job titles approved in accordance with N.J.A.C. 6A:9B-5.5.



- (k) An APSSD shall limit compensation increases after the start of the fiscal year to specific instances in accordance with N.J.A.C. 6A:23A-18.3(q), and when the increase:
1. Is due to a staff member's promotion that results in additional job responsibilities;
  2. Is due to a staff member's attaining a higher degree or [certification] **[[certificate]] certification;**
  3. Is due to a staff member's additional job responsibilities such as a coach, advisor, or mentor;
  4. Is in accordance with (a)14 or 15 above; or
  5. Has been approved by the Department after review of a formal written request to the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, documenting the facts supporting the increase.

- (l) An APSSD shall ensure individuals who are newly employed by the APSSD or new to the positions listed below on or after July 1, 2017, possess the appropriate master's degree or other required degree or [certification] **[[certificate]] certification** as [defined in] **[[set forth at]] defined in** N.J.A.C. 6A:23A-18.2. [The APSSD also shall ensure individuals] **[[Individuals]] The APSSD also shall ensure individuals** employed or serving in the following positions on or before June 30, 2017, [currently] **[[shall]] currently** possess the appropriate bachelor's degree or other required degree or [certification] **[[certificate]] certification** as [defined in] **[[set forth at]] defined in** N.J.A.C. 6A:23A-18.2[, or will be removed from the position], **or will be removed from the position:**

1. Director;
2. Assistant director;
3. Executive director; and
4. Business manager.

- (m) An APSSD that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-18.6(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-18.6(a)54 shall include the costs in the certified actual cost per student only on the cash basis of accounting.
- (n) An APSSD shall have its paraprofessional staff approved in accordance with N.J.A.C. 6A:32-4.2 and any change(s) to an approved job description shall be resubmitted for approval.
- (o) An APSSD shall comply with the maximum salaries determined pursuant to N.J.A.C. 6A:23A-18.3(o) and (p) and restricted pursuant to N.J.A.C. 6A:23A-18.6(a)6, 8, and 9 regardless of the job titles used and whether they comply with the list of job titles published by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee.
- (p) Under no circumstances other than in accordance with (k) above shall an APSSD provide compensation increases after the start of the fiscal year.
- [[q) An APSSD shall maintain for a period of seven (7) years copies of the following documents from all consultants who provided contractual services for the APSSD:**
- 1. The credentials of the consultant and the consultant's staff;**
  - 2. A schedule of the consultant's hourly rates;**
  - 3. Certified payroll records documenting:**
    - i. Dates services were provided to the APSSD;**
    - ii. Start and end time for each date;**
    - iii. Number of hours worked on each date; and**
    - iv. A Description of the work performed on each date; and**
  - 4. The monthly invoices submitted to the APSSD for payment.]]**

**6A:23A-18.6 Non-allowable costs**

- (a) Costs that are not allowable in the calculation of the certified actual cost per student shall include the following:
1. Administrative costs in excess of, and/or instructional cost less than, the percentages [indicated in] **[[set forth at]] indicated in** N.J.A.C. 6A:23A-18.3(a)3;
  2. Costs for maintaining an administrative office in a private home or other residence;
  3. Advertising costs in excess of 0.5 percent of the APSSD's actual allowable costs, not including advertising;
  4. Costs associated with lobbying, including salaries and fringe benefits;
  5. Costs other than those governed by (a)50 below associated with lobbying in an attempt to influence:
    - i. The outcome(s) of any Federal, State, or local referendum, initiative, or similar activity; or
    - ii. The introduction, enactment, or modification of Federal or State legislation or a State rulemaking.
  6. The salary of a professional staff member, consultant, or subcontractor, including a member of a management company, who is not certified but is functioning in, or contracted to perform the duties of, a position requiring [certification] **[[a certificate]] certification** in accordance with N.J.A.C. 6A:9B or bachelor's or master's degree under this subchapter;
  7. The salary and fringe benefits of a staff member, or any payment(s) to a purchased service provider, for time not expended and/or services not performed, except in accordance with [(a)56] **[(a)55] (a)56** and [57] **[[56]] 57** below;
  8. A salary in excess of the associated maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), and (q) for a staff member or consultant whose position requires [certification] **[[a certificate]] certification**, license, or a

bachelor's or master's degree, including[[, **but not limited to,**]] a director, assistant director, executive director, and business manager.

- i. An APSSD shall prorate salaries for [such] **such** part-time or split-time positions, including salaries in entities [described in] **referenced at** **described in** N.J.A.C. 6A:23A-18.3(e) and (f);
- ii. The part-time and split-time maximum allowable salary shall be calculated as follows:
  - (1) Multiply the staff member's total salary by the percentage of time attributed to the APSSD position;
  - (2) Multiply the maximum allowable full-time salary for the position by the percentage of time attributed to the APSSD position; and
  - (3) Subtract the amount calculated [in] **pursuant to** **in** (a)8ii(2) above from the amount calculated [in] **pursuant to** **in** (a)8ii(1) above. If the result is greater than zero, this is the non-allowable part-time or split-time salary.

9. A salary of an employee not covered [by] **pursuant to** **by** (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries [determined in] **pursuant to** **determined in** N.J.A.C. 6A:23A-18.3(o), (p), and (q) whose position does not require [certification] **a certificate** **certification**, license, or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) [are] **is** **are** not consistent with [those] **the** **those** functions [described in] **set forth at** **described in** N.J.A.C. 6A:23A-18.2.

- i. An APSSD shall prorate salaries for such part-time or split-time positions, including salaries in entities [described in] **[[referenced at]] described in** N.J.A.C. 6A:23A-18.3(e) and (f).
  - ii. The part-time and split-time maximum allowable salary is calculated as follows:
    - (1) Multiply the staff member's total salary by the percentage of time attributed to the APSSD position;
    - (2) Multiply the lowest maximum allowable salary in the same county by the percentage of time attributed to the APSSD position; and
    - (3) Subtract the amount calculated [in] **[[pursuant to]] in** (a)9ii(2) above from the amount calculated [in] **[[pursuant to]] in** (a)9ii(1) above. If the result is greater than zero, this is the non-allowable part-time or split-time salary.
10. Costs of fringe benefits when based on, and/or associated with, a non-allowable salary;
11. Legal, accounting, or consultant fees resulting from a frivolous **[[or unsuccessful]]** challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering factors including, but not limited to, the following:
  - i. Overall merit of the claim; or
  - ii. Whether the challenge serves the public interests;
12. Consultant fees for **[[purchased professional]]** services that fail to meet the following standards:
  - i. The work of the consultant shall be detailed in an executed written contract signed by both parties that includes:
    - (1) A detailed description of the nature of the services to be provided;

- (2) Duration of the contract;
  - (3) Detailed fee information;
  - (4) Fee payment schedule(s);
  - (5) The approximate number of days to complete the work; and
  - (6) The anticipated product or outcome of the work;
- ii. [Performed] [[**The services shall be performed**]] **Performed** by a consultant who does not possess the appropriate [school certification] [[certificate]] **school certification** when such certification exists; [[and]]
- [[iii. **A fee in excess of the salary that would be permitted for an employee or employees performing the same or substantially similar services pursuant to a(6) and (9) above.**]]
13. Total contributions, donations, awards, and scholarships in excess of \$750.00;
14. Depreciation unacceptable [under] [[pursuant to]] **under** N.J.A.C. 6A:23A-18.5(a)3 and 4 and depreciation:
- i. On donated goods and assets;
  - ii. Not based on estimated straight-line method;
  - iii. On automobiles in excess of the dollar or percentage limitation contained under Internal Revenue Code (IRC) Section 280F, including any passenger vehicle not used in transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);
  - iv. On a stepped-up basis resulting from the sale to a related party as defined in IRC Section 318 for Constructive Ownership of Stock. For a nonprofit organization, Section 318 [will] [[shall]] **will** apply to the members of the board of directors or related parties as defined in IRC Section 267(b) or 267(c) unless the gain from such a sale was used to offset tuition for a prior year; or

- v. On a stepped-up basis from transfer from one spouse to another upon death as defined in IRC Section 1014;
15. The cost of:
- i. Depreciation associated with the purchase and ownership of any passenger vehicle not used for transporting students or supplies purchased on or after July 1, 2017, if:
    - (1) The depreciable basis upon which depreciation is calculated exceeds \$30,000;
    - (2) The depreciation expensed exceeds allowable depreciation calculated on the straight-line basis over a period of not less than five years; or
    - (3) The depreciation expensed is attributable to a passenger vehicle that has been assigned to, or used on a regular basis[,], by[,], an APSSD staff member who is not the APSSD executive director, director, and/or owner.
  - ii. Vehicle lease payments made pursuant to the lease agreement entered into[,], on[,], or after July 1, 2017, when:
    - (1) The annual lease payment(s) exceeds the annual depreciation allowable on an owned passenger vehicle with a maximum depreciable basis of \$30,000; or
    - (2) The lease payments are for a leased passenger vehicle that has been assigned to, or used on a regular basis by, an APSSD staff member who is not the APSSD executive director, director, and/or owner.
16. Investment expenses associated with the purchase/sale of stock, securities, other investment instruments, or other investments not associated with the education of students with disabilities;
17. Total costs in excess of \$500.00 incurred for entertainment expenses;

18. The cost of food/beverages in excess of \$1,500 for activities such as, but not limited to, staff meetings, parent/teacher meetings, workshops, and professional development seminars for parents or teachers;
19. Costs from a fine or penalty resulting from a violation of, or failure by, the APSSD to comply with a Federal, State, and/or local law or rule;
20. Meal costs in excess of the limits set forth [in] ~~at~~ **in** N.J.A.C. 6A:23A-18.23.
21. The cost of keyman insurance, except where a term insurance policy is required by a lender as collateral for a loan;
22. The cost of an employee's life insurance coverage, both term and whole life policies, in excess of 3.5 times the employee's gross salary;
23. Costs for fringe benefits as follows:
  - i. When the benefits are [determined in an arbitrary or capricious manner, including, but not limited to, class of employee, whether by title or position rather than] ~~not~~ **determined in an arbitrary or capricious manner, including, but not limited to, class of employee, whether by title or position rather than** according to an existing written uniform policy based on an equitable standard of distribution, such as years of service or education. The criteria cannot be exclusionary [regardless] ~~even~~ **regardless** if based on an equitable standard of distribution, such as years of service or education;
  - ii. When the fringe benefit has not been adopted by the APSSD's board of directors at a board meeting prior to the benefit's implementation[,], ~~and~~ documented in the meeting minutes, and the employees were not made aware of the policy; or



- iii. When the benefit is not listed [in] [[at]] **in** N.J.A.C. 6A:23A-18.5(f) or not approved by the Commissioner, or [his or her] [[**the Commissioner's**]] **his or her** designee;
- 24. The cost of fundraising, including, but not limited to, costs for a financial campaign, an endowment drive, or solicitation of a gift and bequest to raise capital or obtain a contribution;
- 25. Goodwill;
- 26. Interest costs on loans when:
  - i. Interest is in excess of the general prevailing rate at the time the loan was taken;
  - ii. The loan is a less-than-arm's length/related party transaction that has not been previously approved by the Department and has not been repaid in accordance with the Department's approval letter; or
  - iii. The loan is not exclusively used to meet educational program needs;
- 27. Interest costs on long-term loans or mortgages if:
  - i. The loan is used for other than financing of fixed assets;
  - ii. The loan is not secured by the fixed asset being financed; or
  - iii. The interest costs are on the portion of the loan term that exceeds the recovery period for depreciation of the fixed asset securing the loan;
- 28. A loss incurred on the sale or exchange of fixed assets between related parties;
- 29. The write-off of uncollected accounts receivable (bad debts):
  - i. Before three years has elapsed and before a reasonable effort has been made to collect such accounts receivable[[,]] [and] [[**as demonstrated by documentation that includes, but is not limited to, copies of monthly or quarterly invoices and collection memorandums, supplemented with a**] **and** detailed log outlining collection attempts; /or
  - ii. That arise out of the APSSD's provision of:

- (1) Extraordinary services;
  - (2) Services to students placed by an out-of-State agency; or
  - (3) Services to private placement students;
30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;
31. Retirement plan costs that are:
- i. Not in conformance with the Employee Retirement Income Security Act of 1974 [(ERISA)], P.L. 93-406 and its successor legislation, and that exceed costs allowed by the Internal Revenue Service;
  - ii. For a non-qualified retirement plan(s);
  - iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see IRC Section 415(c)) as the lesser of 100 percent of the employee's compensation or \$53,000 as adjusted annually in IRC;
  - iv. For a defined benefit plan in excess of an amount, by employee, that would allow the defined plan to provide a benefit in excess of the percentage of the employee's number of years of service divided by 55 times the highest three-year average salary and at an age prior to age 55;
  - v. For contributions to a retirement plan that are not applied consistently in accordance with (a)23 above even if in compliance with Employee Retirement Income Security Act of 1974 (ERISA). Such excess contributions [will] [[shall]] **will** be deemed a non-allowable cost;
  - vi. Not paid to a qualified plan within nine months of the end of the APSSD's fiscal tax year;
  - vii. Not paid in accordance with the fringe benefits criteria [in] [[at]] **in** (a)23 above; and

- viii. If applicable, not in conformance with a church plan as defined in ERISA;
32. Costs of a contingent pay increase or merit pay award when the amount(s) was not in accordance with N.J.A.C. 6A:23A-18.5(a)14 or 15 or the contingent pay increase or merit pay award(s) is inconsistent with the plan(s) submitted to and approved by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, prior to implementation;
  33. Costs for the payment of a bonus;
  34. Costs for a loss on an investment;
  35. Costs associated with a research activity, including, but not limited to, staff salaries, supplies, or printing and reproduction of a material;
  36. Payment of Federal, State[[,]] and local income taxes on income other than tuition;
  37. Costs associated with travel to and from the officer's or employee's home and the school or agency;
  38. Costs for all personal expenses, such as a personal travel expense or repair on a personal vehicle;
  39. Costs associated with personal use of an APSSD-owned or -leased vehicle, including, but not limited to, to/from work commutation as determined pursuant to N.J.A.C. 6A:23A-18.5(a)18;
  40. Costs associated with an APSSD-owned or -leased vehicle or a vehicle contained in a related party transaction involving the purchase of transportation services where a detailed daily mileage log documenting vehicle usage was not maintained;
  41. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the IRS for automobile travel;
  42. Transportation costs for a student to and from school, except where the student's IEP requires after-school activities;

43. Rental costs for buildings and equipment when the lessor is not a separately identifiable legal entity;
44. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such transactions are defined by the relationship of the parties and include, but are not limited to, transactions between divisions of an institution; institutions or organizations under common control through common officers, directors, members, or owners; and an institution and a director, trustee, officer, or key employee of the institution or [his or her] ~~[[their]]~~ **his or her** immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:
- i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23A-18.5(a)3, mortgage interest, real estate taxes, property insurance, and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The APSSD shall submit a cost of ownership form in a Commissioner-supplied format. The property or business owner shall sign and notarize the cost of ownership form and include a copy of the lease agreement, and a list of anticipated costs to be incurred by the property owner;
  - ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense, and maintenance costs) incurred by the sub-lessor. Profit, return on investment, or windfall of any kind shall not be included in the sub-rental cost. The sub-lease agreement

shall include a list of anticipated costs to be incurred by the sub-lessor and shall be signed by the sub-lessor and notarized;

- iii. Cost of purchasing/lease purchasing buildings, equipment or other goods from related parties in excess of the original cost to the related party, less depreciation calculated using the [straight line] **[[straight-line]] straight line** method;
  - iv. Cost of personal services paid to a related party when the services are provided by an employee of, or consultant to, the APSSD acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year, including, but not limited to, wages, salaries, management fees, and fringe benefits; and
  - v. Cost of the purchase of goods or services from a related party in excess of the actual allocated costs of providing the purchased goods and/or services, including, but not limited to, salaries, fringe benefits, insurance, operation, maintenance, straight-line depreciation incurred by the related party owner. Costs may include a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The APSSD shall file a cost of ownership form in a Commissioner-prescribed format. The cost of ownership form shall be signed by the property or business owner and shall include a copy of the purchase agreement, and a list of anticipated costs to be incurred by the related party;
45. Cost of a less-than-arm's length/related party transaction when the related party and/or the APSSD, as applicable, does not:
- i. Provide to the Commissioner **[[or Commissioner's designee]]** documentation on Commissioner-prepared forms to support the actual

costs of ownership, or does not allow the Commissioner **[[or Commissioner's designee]]** access to such information for review and audit during normal business hours. Documentation shall include, but not be limited to:

- (1) The related parties' tax returns;
  - (2) The related parties' invoices received, payroll and payroll tax records, bills and canceled checks, or electronic transfer records concerning the transaction; and
  - (3) Any other document(s) requested by the Department; or
- ii. Disclose the related party relationship on Commissioner-prepared forms pursuant to this subchapter and N.J.A.C. 6A:23A-19;
46. Rental costs under sale and leaseback arrangements in excess of the amount that would be allowable if the APSSD continued to own the property;
47. Indirect and direct costs that are:
- i. For unrelated activities or enterprises [as defined in] **[[set forth at]] as defined in N.J.A.C. 6A:23A-18.3(g);** or
  - ii. Unrelated to the function, operations, and/or program of an APSSD as [defined in] **[[set forth at]] defined in N.J.A.C. 6A:23A-18.3(d);**
48. Costs for the year-end audited financial statements when prepared by an individual who does not meet the requirements [in] **[[at]] in N.J.A.C. 6A:23A-18.10(a);**
49. Costs for membership in civic, business, technical, and professional organizations when the cost is:
- i. Not reasonably related to the value of the services or benefits received;
  - ii. For membership in an organization that devotes any activity(ies) to influencing legislation or State regulation(s) not directly related to the educational

- instruction program of students with disabilities and the activity(ies) is not subsidized by sources other than membership fees from APSSDs;
- iii. Not an established annual rate charged to all members, but one that is periodically adjusted during the year; or
  - iv. Not supported by an annual affidavit signed by the organization's board of directors indicating all legal and lobbying costs not directly associated with the educational instruction programs for students with disabilities were funded by sources other than dues from APSSDs;
50. A staff member's salary that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23A-18.5(a)10;
51. A salary or payment made to a member(s) of the board of directors/trustees for services performed in [his or her] **[[the individual's]] his or her** capacity as a member of the board of director/trustees;
52. Cost of a pension plan contribution made on behalf of, and/or medical benefits for, current or retired members of the board of directors/trustees;
53. Cost of medical benefits **[[and/or consultant fees]]** for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency, or a New Jersey APSSD and have less than 10 years of service in an APSSD;
54. Costs of salaries and fringe benefits of unrecognized position titles not properly approved pursuant to N.J.A.C. 6A:9B-5.5;
55. Cost of employee severance pay:
- i. In excess of four weeks' salary; and
  - ii. If, in addition, the cost of a buyout of the employee's contract;
56. Cost of a buyout of an employee contract:

- i. In excess of 90 days' salary; and
  - ii. If, in addition, the cost of the employee's severance pay;
57. Cost of a salary or consultant fee paid to a full-time employee or consultant for performing more than one administrative function in the APSSD;
58. Cost to purchase or rent an administrative office or business office at a location other than at the APSSD location that was not approved pursuant to N.J.A.C. 6A:23A-18.5(d);
59. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23A-18.5(k);
60. Start-up costs in excess of costs allowed pursuant to N.J.A.C. 6A:23A-18.4(d);
61. Costs of salaries and fringe benefits for employees providing services that are not in compliance with N.J.A.C. 6A:23A-18.5(e)2;
62. The cost of a fine levied pursuant to N.J.S.A. 18A:6-7.5 for any staff member who does not have:
- i. A criminal history clearance prior to starting employment or;
  - ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;
63. Legal costs for an APSSD and/or for an APSSD representative(s), including an owner, employee, or agent who has plead guilty and/or is found to be guilty or liable in a case involving the misuse of funds, fraud (criminal or civil), or endangerment or abuse of a child(ren);
64. The salary **[[or consultant fee]]** in excess of the associated maximum salary [identified in] **[[set forth at]] identified in** N.J.A.C. 6A:23A-18.3(q) and determined in accordance with N.J.A.C. 6A:23A-18.5(o) and (p);
65. Costs found to be patently unreasonable by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, or an independent auditor/accountant;



66. Cost(s) of payments made to an individual employee(s) for earned unused sick benefit that is in excess of 2.2 percent of the individual employee's contracted salary amount during the fiscal year in which the payment is made;
67. Proportional costs of salary and fringe benefits for any administrative staff member, as [defined in] [[set forth at]] **defined in** N.J.A.C. 6A:23A-18.3(o), with the exception of principal [and unrecognized position titles in the administrative category] **and unrecognized position titles in the administrative category**, that are in excess of a total of 3.0 FTE administrative positions per APSSD, per fiscal year. If the combined administrative positions exceed 3.0 FTE, the disallowed amount [will] [[shall]] **will** be apportioned equally across all of the positions;
68. Costs associated with travel, [defined in] [[as set forth at]] **defined in** N.J.A.C. 6A:23A-18.21, that:
  - i. Exceed [.0025] [[.25 percent]] **.0025** of the total actual allowable costs, less travel costs, in a fiscal year for an APSSD, or \$20,000, whichever is less; and/or
  - ii. Violate the provisions of N.J.A.C. 6A:23A-18.21(g);
69. Costs associated with waiver of health insurance coverage that violate the provisions of N.J.A.C. 6A:23A-18.5(f)1;
70. Costs associated with depreciation of leasehold improvements that violate N.J.A.C. 6A:23A-18.5(a)4;
71. Costs of the salary, benefits, [[fees,]] or other compensation provided to an APSSD employee or contractor/consultant who is receiving retirement benefits as a result of [his or her] **his or her** retirement from the APSSD after two calendar years have expired since the individual began retirement;

72. Costs associated with undocumented outflows from petty cash, pursuant to N.J.A.C. 6A:23A-18.5(a)16; and
73. Costs associated with the failure to comply with the requirements of N.J.A.C. 6A:23A-18.5(d).

### **6A:23A-18.7 Surcharge**

- (a) For profit-making APSSDs, the tuition rate may include an annual surcharge up to 2.5 percent of the APSSD's allowable actual costs.
- (b) For profit-making APSSDs, interest earned in accordance with N.J.A.C. 6A:23A-18.3(h) is an unrestricted revenue and shall not be part of the school's surcharge computation.
- (c) [For profit-making] [[**Profit-making**]] **For profit-making** APSSDs[,], [[**shall compute**]] the allowable Federal, State, and local income tax payment [in] [[**pursuant to**]] **in** N.J.A.C. 6A:23A-18.6(a)36 [shall be computed] **shall be computed** using only the public school placement tuition income and all allowable and non-allowable APSSD expenses that are allowable tax deductions on the school's Federal, State, and local income tax returns.

### **6A:23A-18.8 Public school placement restricted working capital fund**

- (a) For nonprofit APSSDs, the tuition rate may include an amount that will permit the APSSD to establish a public school placement restricted working capital fund of up to 15 percent of the APSSD's actual allowable costs. However, the APSSD shall not include in the certified actual cost per student an amount in excess of 2.5 percent of the APSSD's actual allowable costs per year. The restricted working capital fund shall not exceed 15 percent of an APSSD's actual annual allowable cost in a fiscal year.

- (b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the APSSD's total allowable costs incurred in account numbers classified as undistributed expenditures-central when calculating the certified actual cost per student.
- (c) Interest earned in accordance with N.J.A.C. 6A:23A-18.3(h) shall be unrestricted revenue and shall not ~~[[be]]~~ part of the APSSD's public school placement restricted working capital fund computation.

#### **6A:23A-18.9 Calculation of student attendance**

- (a) Each APSSD shall maintain a school register in accordance with N.J.A.C. 6A:32-8, to record all student attendance.
- (b) Each APSSD shall submit to the Commissioner, or [his or her] ~~[[the Commissioner's]]~~ **his or her** designee, by September 1, verification of the ADE for the previous school year on Department-provided forms.
- (c) Each APSSD shall identify private placements in the register.
- (d) Each APSSD shall maintain a separate register by class type.

#### **6A:23A-18.10 Audit requirements**

- (a) Regardless of the APSSD's fiscal year, each APSSD shall submit to the Commissioner, or [his or her] ~~[[the Commissioner's]]~~ **his or her** designee, audited financial statements based on the July 1 to June 30 school year. The audited financial statements shall be postmarked on or before November 1, or the following business day if November 1 falls on a weekend or holiday.
  - 1. The APSSD shall engage~~[[,]]~~ to conduct the annual audit only, an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who holds a valid registration license as a public school accountant of New Jersey.

2. The APSSD shall ensure the auditor's independent status in accordance with the Code of Professional Conduct and **[[the]]** General Principles and Responsibilities issued by, and available from, the American Institute of Certified Public Accountants (AICPA).
  3. Additionally, upon review by the Department, an auditor shall not be considered independent if [he or she] **[[the auditor]]** **he or she** may have been influenced by other parties, including, but not limited to, APSSD directors or other staff, or by conflicting interests such as if the independent auditor or members of [his or her] **[[the auditor's]]** **his or her** firm are engaged to perform services other than the year-end audit and tax return functions for the APSSD. If the Department determines an independent auditor engaged to conduct the APSSD's annual audit has not acted independently, the Department may take any and all appropriate action.
- (b) The audit shall follow generally accepted auditing standards (GAAS), as set forth by the Auditing Standards Board (ASB) in the **[[most recent edition of the]]** Codification of Statements on Auditing Standards, [2015] **2015**, published for the American Institute of Certified Public Accountants, [(1211 Avenue of the Americas, NYC, NY 10036-8775)] **(1211 Avenue of the Americas, NYC, NY 10036-8775)**, incorporated herein by reference, as amended and supplemented, and when applicable; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Audit issued by the Federal Office of Management and Budget; or NJOMB Circular Letter 15-08, as amended and supplemented. The APSSD shall ensure the use of the auditing guidelines as published and distributed by the Commissioner, or [his or her] **[[the Commissioner's]]** **his or her** designee.
1. The APSSD shall ensure the audit includes basic financial statements, required supplementary information, schedules, and narrative explanations.

- (c) The APSSD shall ensure the audited financial statements reflect the certified actual cost(s) per student as determined by an independent auditor and final tuition rate(s) charged at the end of the school year as determined by the APSSD's management.
- (d) The APSSD management representative(s) shall discuss with the auditor the results of the auditor's determination of the certified actual cost per student for management to determine the final tuition rate charged as a result of the audit.
  - 1. The APSSD shall charge as the final tuition rate an amount equal to or less than the certified actual cost per student.
  - 2. The APSSD shall ensure the audit report contains a letter signed by both the independent auditor and an authorized school representative indicating both parties have met and discussed the audit, and the determination of the final tuition rate charged was a management decision.
- (e) Within 60 days of receipt of the year-end audit, APSSD management shall develop a corrective action plan pursuant to this subchapter in response to recommendations contained in the year-end audit, and shall submit the corrective action plan to the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, for review and approval. The corrective action plan shall be on a form prescribed by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee.
- (f) The APSSD shall not amend the final tuition rate charged after approval by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee.
- (g) Any adjustment(s) that results from the approval following a compliance review of the audited financial statements performed by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, and that is in excess of \$10.00 per sending district board of education shall be paid in accordance with N.J.A.C. 6A:23A-18.3(l) and (m).

- (h) An APSSD that files an audit postmarked after November 1 shall cause the tentative tuition rate per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and the provisions of N.J.A.C. 6A:23A-18.3(j) shall not apply.
- (i) Failure to comply with this section may result in the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, placing the APSSD on conditional approval status.
- (j) Upon request, the APSSD shall submit to the Department a copy of the APSSD corporation's agency-wide audited financial statements.
- [[k) The Commissioner, or the Commissioner's designee, may request a corrective action plan for, but not limited to, deficit fund balances, habitual non-compliance determinations, or continual failure to respond to the Department's requests for responses to non-compliance letters.]]**

#### **6A:23A-18.11 Appeals**

- (a) The decision of the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, regarding the calculation of the tentative tuition rate, pursuant to N.J.A.C. 6A:23A-18.3(j), the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.4, and conditional approval status pursuant to N.J.A.C. 6A:23A-18.10(i) may be appealed in accordance with N.J.A.C. 6A:3, Controversies and Disputes.
- (b) The decision of the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, regarding certification may be appealed in accordance with N.J.A.C. 6A:3.
- (c) The decision of the Commissioner regarding N.J.A.C. 6A:23A-18.4 may be appealed in accordance with N.J.A.C. 6A:4. For purposes of this subchapter, a decision by the Commissioner's designee shall not constitute final agency action.

### **6A:23A-18.12 Roundtable work group**

The Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, may create a working group that may consist of, at the Commissioner's discretion, Department staff, representative(s) from the APSSD community, or others as the Commissioner so shall designate. The working group's purpose shall include, but shall not be limited to, discussing issues that impact APSSDs. [Any such] [[The working group's]] **Any such** discussions or actions [of the working group] **of the working group** are non-binding. [Such] [[The]] **Such** working group may be disbanded without prior notice and at any time at the Commissioner's discretion.

### **6A:23A-18.13 Out-of-State approved private schools for students with disabilities**

- (a) An out-of-State private school for students with disabilities shall be approved to provide special education programs by the department of education of the state in which the private school is located. Exceptions may be made only at the discretion of the Department's Office of Special Education [Programs] **Programs** in accordance with N.J.A.C. 6A:14-7.1(f).
- (b) The Commissioner shall abide by the tuition regulations for an APSSD adopted by the department of education or other regulatory agency in the state in which the private school for students with disabilities is located. The APSSD shall submit to the Commissioner verification of the tuition rate's approval either on Commissioner-prescribed forms or verification from the out-of-State department of education or other regulatory agency.
- (c) If the out-of-State APSSD is located in a state in which the department of education or other regulatory agency does not approve or sanction tuition rates, such tuition rates shall be determined in the following manner:
  1. The out-of-State APSSD and the sending district board of education or state agency that determined the placement shall mutually agree to the tuition rate. The

tuition rate shall be agreed upon prior to the child's placement, and documentation indicating agreement of the rate shall be forwarded to the Commissioner.

2. An out-of-State APSSD that is licensed as a child care facility by the New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the out-of-State APSSD, the sending district board of education, and the Department of Human Services, Office of Education. The tuition rate shall be agreed upon prior to the child's placement and documentation of the rate shall be forwarded to the Commissioner.
3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the out-of-State APSSD shall file a budget in a format prescribed by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, to determine a tentative tuition rate and shall comply with the subchapter's provisions to collect tuition from a sending district board of education, charter school **[[or renaissance school project]]** board of trustees, or agency. The cost of the audit required pursuant to N.J.A.C. 6A:23A-18.10 may be charged to the sending district board of education or agency that did not mutually agree to the tuition rate.

#### **6A:23A-18.14 Inspection of records**

- (a) All financial and accounting records maintained by the APSSD, as required [by] **[[pursuant to]] by** this subchapter, shall be open during normal business hours for review and audit by the Commissioner, or [his or her] **[[the Commissioner's]] his or her** designee, for the period [indicated in] **[[established at]] indicated in** N.J.A.C. 6A:23A-18.5(a)20.
- (b) All financial and accounting records maintained by a related party, as [defined by] **[[set forth at]] defined by** N.J.A.C. 6A:23A-18.6(a)45, that pertain to a transaction(s) or the relationship between the related party and the APSSD shall be open during normal business hours for review and audit by the Commissioner, or [his or her] **[[the**



Commissioner's]] **his or her** designee, for the period [indicated in] [[**established at**]] **indicated in** N.J.A.C. 6A:23A-18.5(a)20.

- (c) All auditor's workpapers used in the preparation of the year-end audited financial statements shall be open during normal business hours for review by the Commissioner, or [his or her] [[**the Commissioner's**]] **his or her** designee, for the period [indicated in] [[**established at**]] **indicated in** N.J.A.C. 6A:23A-18.5(a)20.

#### **6A:23A-18.15 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans**

- (a) The Commissioner, or [his or her] [[**the Commissioner's**]] **his or her** designee, shall monitor APSSDs in accordance with this subchapter. On-site monitoring shall be conducted at [least] [[**the discretion of the Commissioner or Commissioner's designee, but not less than**]] **least** every six years.
- (b) The monitoring process may include, but is not limited to, all financial information required [in] [[**pursuant to**]] **in** this subchapter.
- (c) After the monitoring process is completed, [[**the Department shall write**]] a report [shall be written] **shall be written** and [sent] [[**send it**]] **sent** to the APSSD, the executive county superintendent, and the APSSD's independent auditor for the period(s) under audit.
- (d) If the APSSD receives a final report that indicates noncompliance, [[**the APSSD shall develop**]] a corrective action plan [[**and**]] shall [be developed and submitted,] [[**submit it**]] **be developed and submitted**, on a form prepared by the Commissioner, or [his or her] [[**the Commissioner's**]] **his or her** designee, to the Department for approval within 30 days of the final report's receipt.
- (e) The corrective action plan shall include, but not be limited to, the following:
1. Objective and strategies for correcting each noncompliance item; and

2. The dates by which noncompliance will be corrected.
- (f) When an APSSD is determined to be in noncompliance, the Commissioner[[, or the Commissioner's designee]] may[[, in consultation with the Office of Special Education]]:
1. Issue a conditional approval status when noncompliance with State regulations and requirements and/or implementation of the corrective action plan is demonstrated;
  - [[2. Revoke approval, effective at the end of a school year, when an APSSD has been chronically placed on conditional approval status and/or demonstrates systemic noncompliance; or]]
  - [2.] [[3.]] **2.** Immediately remove program approval when it is documented that the health, safety, or welfare of students is in danger.
- (g) The actions of the Commissioner, or [his or her] [[Commissioner's]] **his or her** designee, may be appealed according to N.J.A.C. 6A:3 and/or 6A:23A-18.11, as applicable.
- (h) The Department annually shall publish the results of the fiscal monitoring of APSSDs, as well as the audited financial statements and associated reports or documents.

#### **6A:23A-18.16 Fiscal and budget information**

- (a) In accordance with a timeline and format prescribed by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, each APSSD shall submit information to the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee, including, but not limited to:
1. Fiscal and program information, including:
    - i. The number of students served;
    - ii. The number of each class type;

- iii. Number of schools days;
  - iv. The daily hours in session; and
  - v. Revenues, appropriations, and supporting documents;
2. Staffing information, including, but not limited to:
- i. A staff roster, which may include requested information, such as names, job titles, salaries, hours worked, and [certification(s)] **[[certificate(s)]] certification(s)**, degree(s), and license(s) held;
3. An affidavit the program meets the standards of, and is conducted in full compliance with, the Individuals with Disabilities Education Act; Section 504 of the Rehabilitation Act of 1973; Title II and III of the Americans with Disabilities Act, P.L. 101-336; N.J.S.A. 18A:46-1 et seq.; this subchapter; and N.J.A.C. 6A:14; and
4. An affidavit the owner(s)/operator(s) of the program is aware of the non-allowable costs [contained in] **[[set forth at]] contained in** N.J.A.C. 6A:23A-18.6 and the costs charged as allowable costs in the APSSD tuition rate are consistent with a student with disabilities' IEP and shall be reasonable, that is, ordinary and necessary and not in excess of the cost incurred by an ordinarily prudent person in the administration of public funds.

**[[5. Failure to meet established submission timelines of fiscal and budget information shall result in the APSSD being placed on conditional approval status.]]**

- (b) The Department annually shall publish a Taxpayer's Guide to Education Spending for APSSDs.
- (c) An APSSD shall [have] **[[provide]] have** a copy of the board of director's minutes, or the minutes of the partners meetings for a partnership, [available] **available** upon the Department's request.

**6A:23A-18.17 Failure to comply with Department directives**

The [Department] [[**Commissioner, or the Commissioner’s designee**]] **Department**, may place an APSSD on conditional approval status if the APSSD fails to comply with Department regulations such as, but not limited to, failure to **[[meet established timelines regarding the submission of fiscal data,]]** refund tuition funds as a result of a Department tuition audit~~[[,]]~~ or [failure to] **failure to** provide requested documentation. **[[The Commissioner, or the Commissioner’s designee, may revoke, in consultation with the Office of Special Education, approval of an APSSD, effective at the end of a school year, when chronic or systemic noncompliance is demonstrated.]]**

**6A:23A-18.18 Sale or disposition of assets of an approved private school for students with disabilities**

- (a) In the event of the bulk sale or non-bulk sale of the capital assets of an APSSD to any individual or entity, including another APSSD, the selling APSSD shall:
1. Agree to an independent valuation of the acquired assets for the purpose of allocation of the total purchase price to the various acquired capital assets;
  2. Enter into a written agreement of sale that references and incorporates the values presented in the independent valuation of the acquired capital assets. The written agreement of sale shall clearly identify the transferred capital assets and, at a minimum, include the date(s) of acquisition and historical cost(s), the dates of capital improvement(s) and historical cost(s), the term of depreciation, the method of depreciation, and the accumulated depreciation for financial purposes of each transferred capital asset. The written agreement of sale shall allocate the total consideration provided to the selling APSSD based upon the independent valuation of the acquired assets;
  3. Within 30 days of sale, the selling APSSD shall provide the Department with a copy of the sale agreement, the independent valuation of the capital assets, and the

- allocation of the purchase price as defined in Internal Revenue Code (IRC) Section 1060 and documented by Internal Revenue Service Form 8594 or successor form;
4. The selling APSSD shall include in the annual audited financial statement[[[,] [as required by] [[pursuant to]] **as required by** N.J.A.C. 6A:23A-18.10, in the year of sale, a separate schedule showing the sale or disposition of its assets, and any corresponding tuition refund(s) to the sending district(s) based on the sale of assets (books, supplies, desks, computers, equipment under \$ [2,000] [[5,000]] **2,000**, depreciable equipment, etc.) other than Class VI or VII as defined in the IRC cited above (goodwill, going concern, etc.);
  5. If the buying entity is a new or existing APSSD, establish the APSSD's beginning book value for each acquired asset using the independent valuation and the written agreement of sale, except as provided for [in] [[at]] **in** (a)6 below; and
  6. If the buyer is an APSSD that is a less-than-arm's-length buyer or a related party to the selling APSSD, the buying APSSD shall carry forward the selling APSSD's acquisition dates(s), historical cost(s) plus improvements, term and method of financial depreciation, accumulated depreciation, and book value of the acquired asset(s) for purposes of determining the allowable annual depreciation or amortization pursuant to the acquisition.
- (b) In the fiscal year of the sale or disposition pursuant to (a) above, the gain or loss on the sale of capital or non-capital asset(s) shall not be included in the calculation of allowable costs used to determine the certified actual cost per student, the calculation of surcharge pursuant to N.J.A.C. 6A:23A-18.7, or public school placement restricted working capital pursuant to N.J.A.C. 6A:23A-18.8.
- (c) In addition to the provisions [of] [[at]] **of** (a) above, the following conditions shall apply in the event of a sale of real property by an APSSD:
1. If the selling APSSD acquires real property placed in service for the express

purpose of operating the APSSD using all of the proceeds from the sale of real property within 30 business days of the sale, the selling APSSD shall not be subject to (c)2 through 4 below.

2. The selling APSSD shall immediately deposit the proceeds received upon the sale at settlement into a bank account maintained by the APSSD and credited to the retained earnings of the profit-making APSSD or the working capital from sale of real property account of the nonprofit APSSD, except for the simultaneous purchase of real property placed in service for the express purpose of operating the APSSD. The sale and treatment of the proceeds shall be included in a separate schedule in the annual audited financial statement as required by N.J.A.C.

6A:23A-18.10 in the year of sale and all subsequent years through the fiscal year in which any corresponding tuition refund(s) has been completed.

3. The selling profit-making APSSD shall:
  - i. Not withdraw any amount deposited pursuant to (c)1 above from the APSSD-maintained bank account and/or retained earnings for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD, or to distribute proceeds [as provided for] **as provided for** in [[accordance with]] (c)3ii below; and
  - ii. Within 13 months after the sale, distribute the proceeds not used to acquire real property owned by the APSSD and placed in service for the express purpose of operating the APSSD from retained earnings to sending school districts that paid tuition to the APSSD during the five years of operation prior to and including the year of sale as set forth below:
    - (1) The amount of sale proceeds to be refunded to the sending school districts shall be equal to, but shall not exceed, the allowable

accumulated depreciation of the property;

- (2) The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's total ADE for the five years of operation prior to and including the year of sale or disposition of the real property;
- (3) Remaining proceeds may remain in the APSSD's retained earnings for use at the discretion of the profit-making APSSD's management;
- (4) Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.7; and
- (5) The APSSD shall provide a listing of the total distribution of retained earnings to the Department within 90 days of filing the required year-end audited financial statements for the year the required distribution of retained earnings is reported.

4. The selling nonprofit APSSD shall:

- i. Not withdraw any amount deposited pursuant to (c)1 above from the APSSD-maintained bank account and/or working capital for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD, or to distribute working capital [as required by] ~~[[pursuant to]]~~ **as required by** N.J.A.C. 6A:23A-18.5(a)21.
- ii. Within 13 months after the sale by the APSSD, distribute the proceeds not used to acquire real property owned by the APSSD and placed in service for the express purpose of operating the APSSD, or distributed [as required by] ~~[[pursuant to]]~~ **as required by** N.J.A.C. 6A:23A-18.5(a)21 to sending school districts that paid tuition to the APSSD during the five years of operations prior to and including the year of sale as set forth

below:

- (1) The amount of sale proceeds to be refunded to the sending school districts shall be equal to, but shall not exceed, the allowable accumulated depreciation of the property;
  - (2) The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's total ADE for the five years of operation prior to and including the year of sale or disposition of the real property;
  - (3) Remaining proceeds may be transferred to the APSSD's working capital account within the limitations at N.J.A.C. 6A:23A-18.8 for use at the discretion of the APSSD's management; and
  - (4) Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.8.
- (d) In the event of a sale of stock representing ownership of a profit-making APSSD, the new owner of the APSSD assumes the carryover book value of all assets and liabilities held by the profit-making APSSD. Any gain or loss on the sale of the stock shall be outside of the operations of the APSSD and shall not impact the calculation of the certified actual cost per student or the surcharge pursuant to N.J.A.C. 6A:23A-18.7 in the year of sale or disposition.
- [[€ If an APSSD sells a building that operated programs funded by public placement school tuition and purchases another building to be used in the operation of the same or new APSSD, the gain on the sale that must be returned to sending districts pursuant to N.J.A.C. 6A:23A-18.5(a)21 shall be allocated at the same percentage provided by public school funds used as the basis for, depreciation of, and proceeds from the previous or sold building.]]**



- (a) Annually, each APSSD shall file a management disclosure of information statement with the Department on a form prescribed by the Commissioner, or [his or her] [[the Commissioner's]] **his or her** designee. The statement shall be signed by the director, owner, or president of the APSSD who is filing the statement. The signature shall constitute a representation of the accuracy of the statement's contents.
- (b) All disclosure statements filed shall include, but shall not be limited to, salary, pension, and other information regarding staff members, related staff, related parties, vendors, and business interests.
- (c) Annual disclosure statements shall be filed [on November 1, 2017, and, thereafter,] **on November 1, 2017, and, thereafter,** on or before November 1 of each [subsequent] **subsequent** calendar year.
- (d) All annual disclosure statements filed shall be considered public records.
- (e) An APSSD that fails to file a statement, or files an annual disclosure statement containing information the statement filer knows to be false, shall be subject to reporting to appropriate State agencies and/or be assessed non-allowable costs documented in its annual audited financial statements as applicable in this subchapter. Nothing in this subsection shall be construed to prevent or limit criminal prosecution.

#### **6A:23A-18.20 Nepotism**

- (a) Each APSSD shall develop and implement a nepotism policy to be included in the employee handbook, pursuant to N.J.A.C. 6A:23A-18.5(f). The policy shall include the following:
  - 1. A definition of "relative" consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2, and a definition of "member of immediate family" consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;
  - 2. A provision prohibiting any relative of an APSSD official from being employed in an office or position at the APSSD, unless:

- i. The relative is properly qualified for the position;
  - ii. The relative is properly licensed for the position; and
  - iii. The relative's salary and fringe benefits are comparable to a person of like experience and education.
- (b) Nepotism shall be disclosed in the annual disclosure statement filed pursuant to N.J.A.C. 6A:23A-18.19. If the relative relationship is unknown at the time the disclosure form is filed, the APSSD shall file an updated annual disclosure form immediately upon the statement filer obtaining knowledge of the relationship.

#### **6A:23A-18.21 Travel**

- (a) Each APSSD shall ensure the effective and efficient use of funds by adopting and implementing policies and procedures related to the use of funds for travel by its employees and officials.
- (b) Travel expenditures shall be defined as the costs paid by the APSSD, whether directly by the APSSD or by employee reimbursement, for travel by APSSD employees to training and seminars, conventions and conferences, and APSSD-sponsored events or attendance at meetings or conferences. Costs may include transportation, meals, lodging, and registration or conference fees directly related to participation in an event. Travel expenditures shall not include the cost of mileage reimbursement or tolls for travel carried out in the performance of regularly assigned job functions such as, but not limited to, travel between commonly owned APSSDs.
- (c) Regular business travel expenditures shall be educationally necessary and fiscally prudent and shall be directly related to, and within the scope of, the employee's or APSSD's current responsibilities and/or professional development plan(s).
- (d) The **[[total]]** amount of travel expenditures included within the certified actual cost per student each year shall be the lesser of the following:

1. One-quarter of one (.25) percent of an APSSD's total actual allowable costs in the current fiscal year, not including travel expenditures; or
  2. Twenty thousand dollars (\$20,000).
- (e) APSSDs may apply for a waiver of the travel expenditure limitations [in] **in** (d) above. Waiver requests shall be in writing and submitted to the Commissioner, or [his or her] **his or her** designee, prior to the end of the fiscal year for which the waiver is sought. Waivers requests shall be submitted in advance of the travel and [will] **will** be approved only in instances where the APSSD demonstrates that, due to the limitations imposed [under] **under** (d) above, APSSD staff attendance at a necessary or required professional development opportunity or training [will] **will** result in non-allowable costs. **Waiver requests shall include the following, at a minimum:]**
1. The name, location, and date(s) of the event supported by a copy of the agenda or program for the event;
  2. A statement justifying the necessity for each staff member(s) attendance, including the primary purpose of the event, the relevance of the event to the staff member's work duties, and how the event will improve instruction or the operation of the APSSD; and
  3. A detailed budget for the event, including, but not limited to, the travel method(s) and cost, identification of the hotel or other accommodation and the rate per night, total meal allowance, and the cost of registration.
- (f) Any travel expenditure(s) that exceeds the limits [in] **in** (d) above without an approved waiver shall be considered a non-allowable cost consistent with N.J.A.C. 6A:23A-18.6(a)70.
- (g) The following types of expenditures shall not be eligible for inclusion in the certified actual cost per student:

1. Travel expenditures by employees whose duties are unrelated to the travel event's purpose or who are not required to attend to meet continuing education requirements or to comply with law or regulation;
2. Travel by spouses, civil union partners, domestic partners, immediate family members, or other relatives or unrelated persons who are not school employees;
3. Costs for employee attendance for coordinating other attendees' accommodations at the travel event;
4. Lunch or refreshments for training sessions, professional development, and retreats held within the APSSD, including in-service days beyond the limitations at N.J.A.C. 6A:23A-18.6(a)18;
5. Training to maintain a [certification] [[**certificate**]] **certification** that is not required as a condition of employment;
6. Charges for laundry, valet service, or entertainment;
7. Limousine services and chauffeuring costs to or during an event;
8. Alcoholic beverages;
9. Entertainment costs, including, but not limited to, amusement, diversion, and social activities, and any directly associated costs;
10. Gratuities or tips in excess of those permitted by the Federal per diem rates;
11. Hospitality rooms;
12. Souvenirs, memorabilia, promotional items, or gifts;
13. The cost associated with a conference, meeting, or seminar held in countries not contiguous to the United States; and
14. Other travel expenditures that are unnecessary and/or excessive.

**6A:23A-18.22 Behavior modification**

- (a) APSSDs recording expenditures for behavior modification shall adopt a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD's behavior modification program.
- (b) Behavior modification, provided pursuant to (a) above, shall not include:
  - 1. Cash or checks;
  - 2. The replacement of meals or components of meals on a regular basis outside of special achievements outlined in the policy [described in] **[[pursuant to]] described in** (a) above; or
  - 3. High-dollar value items such as personal electronics.

**6A:23A-18.23 Child nutrition**

- (a) APSSDs may provide meals to students that align to the Dietary Guidelines for Americans, using United States Department of Agriculture's meal patterns reviewed and/or approved by the New Jersey Department of Agriculture. The costs associated with providing meals may be included in the certified actual cost per student if the following requirements are met:
  - 1. Nonprofit APSSDs shall:
    - i. Ensure the menu is approved by the New Jersey Department of Agriculture;
    - ii. Apply for and receive funding from the Child Nutrition Program administered by the New Jersey Department of Agriculture;
    - iii. Charge students for a reduced and/or paid meal; and
    - iv. Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)1iii above, that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture.

Excess expenditures are non-allowable costs, except for where they are solely attributable to substitutions to meals when the disability restricts the child's diet.

2. For-profit APSSDs shall:
  - i. Ensure the menu is approved by the New Jersey Department of Agriculture;
  - ii. Charge students for a reduced and/or paid meal; and
  - iii. Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)2ii above, that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture. Excess expenditures shall be deemed non-allowable costs, except for where they are solely attributable to substitutions to meals when the disability restricts the child's diet.

**[[b) The cost of meals for staff shall not be included in the certified actual cost per student.]]**

## **Subchapter 19. Emergency State Aid and Residency Determination**

### **6A:23A-19.1 Emergency aid**

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) A district board of education may request emergency aid pursuant to N.J.S.A. 18A:58-11 as follows:
  1. The district board of education shall submit to the executive county superintendent [as follows] **the following**:
    - i. A resolution that indicates the specific requested amount of emergency aid and identifies the emergency condition that exists within the school district;
    - ii. A detailed statement about the emergency condition[, which] **that**

indicates the reason why the condition was unforeseeable and/or why the costs associated with the condition were unforeseeable;

iii. The **district board of education** secretary's latest monthly financial report, accompanied by a statement showing the projected end-of-the-year general fund free balance and a detailed accounting of how the emergency aid will be expended; and

iv. A statement included in the [board's] **district board of education's** minutes that no other funds can be reallocated within the existing budget for the emergency condition without adversely impacting the district board of education's ability to meet the New Jersey Student Learning Standards.

2. The district board of education shall separately account for disbursements against emergency aid funds in its general fund accounting records.

(c) The executive county superintendent may request additional documentation as deemed necessary to support a district board of education's request for emergency aid.

(d) The executive county superintendent shall submit a recommendation regarding a request for emergency aid and all of the information submitted by the district board of education making the request to the [Office of School Facilities and] **Division of Finance and Business Services** to determine whether to recommend to the Commissioner that a request be sent to the State Board of Education for approval.

1. In determining whether a recommendation for emergency aid will be sent to the State Board of Education, the Department will consider the extent the district board of education budgeted an adequate level of surplus for unexpected expenditures.

2. If the district board of education did not budget an adequate level of surplus, the Department will not recommend the emergency aid request.

(e) The State Board of Education will review any emergency aid requests that have been recommended and will fully approve, partially approve, conditionally approve, or deny

an emergency aid request.

#### **6A:23A-19.2 Method of determining the district of residence**

- (a) The district of residence for school funding purposes shall be determined according to the following criteria:
1. The "present district of residence" of a child in a residential State facility, [defined in] **pursuant to the definition of "resident enrollment" at N.J.S.A. 18A:7F-45** and referred to [in the first paragraph of] **at N.J.S.A. 18A:7B-12.b**, means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day prior to October 16.
  2. The "present district of residence" of a child placed by a State agency in a group home, skill development home, approved private school for students with disabilities, or out-of-State facility, also referred to [in] **at N.J.S.A. 18A:7B-12.b**, means the New Jersey district of residence of the child's parent(s) or guardian(s) as of the date of the child's most recent placement by the State agency. In subsequent school years spent in the educational placement made by a State agency, the child's "present district of residence" shall be determined in the same manner as for a child in a residential State facility as set forth [in] **at (a)1** above.
  3. If the State becomes the child's legal guardian after the date of the child's initial placement by a State agency, **or if the child has resided in a domestic violence shelter, homeless shelter, or transitional living facility located outside the district of residence for more than one year**, the State will assume financial responsibility for the child's educational costs in subsequent school years.
- (b) **The Commissioner, or the Commissioner's designee, shall determine the** "present district of residence" or "district of residence" referred to [in] **at N.J.S.A. 18A:7B-12.b** [shall be determined by the Commissioner or his or her designee] based upon the address submitted by



the Department of Corrections, the Department of Children and Families, or the Juvenile Justice Commission on forms prepared by the Department of Education.

- (c) The [district board of education shall be notified by the] Department **shall notify the district board of education** of the determination of the district of residence. [In order to] **To** prevent a lapse in the child's education and/or child study services, the district board of education shall be bound by [such] **the** determination unless and until it is reversed on redetermination or appeal pursuant to [the provisions of] (e) and (f) below.
- (d) A district board of education contesting the Department's determination of district of residence shall submit [a written notification of a dispute] to the [Office of School Facilities and] **Division of Finance and Business Services, a written notification of the dispute** within 30 days of the receipt of a final notice that a child was determined to be a resident of the **school** district for purposes of State funding. As part of this written notice, the following information shall be submitted:
1. A written statement detailing the effort of the district board of education to verify the determination of the Department;
  2. Written rationale for rejecting the **Department's** determination [of the Department]; and
  3. Any additional information the district board of education has obtained that might enable redetermination of the district of residence.
- (e) The [Office of School Facilities and] **Division of Finance and Business Services** shall attempt to resolve the dispute administratively and shall notify the district board of education whether a redetermination of district of residence will be made within 90 days of the receipt of written notification that a dispute exists.
- (f) A district board of education may initiate a formal proceeding before the Commissioner to resolve such a dispute if the [Office of School Facilities and] **Division of Finance and Business Services** is unable to resolve a dispute within the 90-day time limit, by filing a

Petition of Appeal with the Commissioner pursuant to [the provisions of] N.J.A.C. 6A:3, Controversies and Disputes.

- (g) [As prescribed by] **In accordance with** N.J.S.A. 18A:7B-12, the [“]district of residence[”] for a homeless child whose parent(s) or guardian(s) temporarily moves from one school district to another is the **school** district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This **school** district shall be designated as the district of residence [for as long as] **until** the parent(s) or guardian(s) [remains homeless] **establishes a domicile in a new school district in accordance with N.J.S.A. 18A:38-1.d and, unless the child lives in one of the dwellings set forth at (a)3 above, the new school district shall become the district of residence pursuant to N.J.S.A. 18A:38-1.d.**

#### **6A:23A-19.3 Address submission for determining the district of residence**

- (a) The address submitted to the Department for determining the district of residence for school funding purposes for a child described below shall be the address defined below:
1. If the State has custody of the child or if a court or the State has appointed a third party as the **child’s** custodian [of the child], the present address of the parent(s) or guardian(s) with whom the child resided immediately prior to [his or her] **the child’s** most recent admission to a State facility or placement by a State agency shall be submitted. If the child resides in a resource family home **where the child was placed prior to September 9, 2010**, the present address of the resource family parent(s) shall be submitted pursuant to N.J.S.A. 18A:7B-12.a(1). **For a child placed in a resource family home on or after September 9, 2010, the present address of the parent(s) or guardian(s) with whom the child lived prior to such placement shall be submitted pursuant to N.J.S.A. 18A:7B-12.a(2).**

2. If the child's parents are divorced with joint guardianship, the present address of the individual parent with whom the child resided as of the date required [by] **at** N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.
3. If the child's parents are divorced with joint guardianship and the child resides with each parent equally, the present address of both [the child's father and mother] **parents** as of the date required [by] **at** N.J.A.C. 6A:23A-19.2(a)1 or 2 shall be submitted.
4. If the child's sole parent or legal guardian resides in a State facility, the State will assume financial responsibility for the child's educational costs until such time as the parent or guardian no longer resides in the State facility.
5. If the child resides in a non-resource family home with a relative for less than one year immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's parent(s) or guardian(s) at the time **of** this placement [is] **shall be** submitted.
6. If the child resides in a non-resource family home with a relative pursuant to N.J.S.A. 18A:38-1.d for one or more years immediately prior to the child's most recent admission to a State facility or most recent placement by a State agency, the present address of the child's relative(s) at the time of this placement [is] **shall be** submitted.
7. If the child is age 18 or older or has been legally emancipated; and has lived on [his or her] **the child's** own before the initial placement, the present address of the child as of the date required [by] **at** N.J.A.C. 6A:23A-19.2(a)1 or 2 [is] **shall be** submitted.

## **Subchapter 20. Purchase and Loan of Textbooks**

### **6A:23A-20.1 Eligibility**

- (a) For the purposes of this subchapter, a district board of education does not include an educational services commission or jointure commission.
- (b) **Pursuant to** N.J.S.A. 18A:58-37.1 et seq., [requires] each district board of education [in which a nonpublic school is located,] **shall be required** to purchase and to loan[,]  
without charge, upon individual requests, textbooks to students in the nonpublic [school or] schools located within the school district when such students are residents of [the State] **New Jersey**.
- (c) Children who are enrolled in a nonpublic school whose parents or legal guardians do not maintain a residence in [this] **the State**, [are] **and children whose tuition is paid by a district board of education shall not be** eligible to receive [such] textbooks. [Children who are enrolled in a nonpublic school whose tuition is paid by a district board of education are not eligible to receive such textbooks.]

#### **6A:23A-20.2 Responsibility of the district board of education**

A district board of education shall distribute to all students on an equitable basis existing book stocks and newly purchased textbooks purchased pursuant to N.J.S.A. 18A:58-37.1 et seq. A district board of education shall not discriminate against students in either public or nonpublic schools.

#### **6A:23A-20.3 Individual requests**

- (a) Individual written requests signed by the parent(s) or legal guardian(s) of nonpublic school students for the loan of textbooks [are] **shall be** addressed to the district board of education in which the nonpublic school is located.
- (b) Individual requests [are] **shall be** submitted directly to the district board of education in which the nonpublic school is located or to the nonpublic school. In the latter case, the nonpublic school official shall forward [such] **the** requests collectively to the district board of education.

- (c) Individual requests [are] **shall be** due on or before March 1 preceding the school year.
- (d) A district board of education shall purchase textbooks in accordance with district board of education policy and purchasing practices.
- (e) Students attending public schools are not required to submit such requests.

#### **6A:23A-20.4 Ownership and storage of textbooks**

- (a) All textbooks purchased [under the provisions of] **pursuant to** N.J.S.A. 18A:58-37.1 et seq., remain the property of the district board of education, which shall indicate [such] ownership [in each book] by [a label] **labeling each book**.
- (b) The district board of education shall be responsible for the receipt of the textbooks from the vendor and **maintaining an** inventory of such textbooks.
- (c) The district board of education may require that the textbooks be returned to the district board of education at the end of the school year, or may enter into agreements with the nonpublic schools to store [such] **the** books. In the event of such [an] agreement(s), the district board of education shall not pay storage charges of any kind to [a] **the** nonpublic schools for this service.

#### **6A:23A-20.5 Accounting entries**

- (a) Expenditures for the purchase of textbooks may include the cost of freight or postage for transporting [such] **the** books from the vendor to the district board of education.
- (b) The district board of education shall enter the cost of textbooks for students enrolled in [the] **its** public schools in the general current expense fund in the account designated in the minimum chart of accounts. **The cost of electronic textbooks shall be treated in the same manner.**
- (c) The district board of education shall enter the cost of textbooks for nonpublic school students in the special revenue fund in the account designated in the minimum chart of

accounts. The district board of education shall record State aid received pursuant to N.J.S.A. 18A:58-37.1 et seq. separately in the special revenue fund as State aid.

#### **6A:23A-20.6 Charge for textbook loss or damage**

- (a) Each district board of education shall make reasonable rules and regulations governing the loan of textbooks, which may contain requirements for [reimbursement by] students to **reimburse** the district board of education for damage, loss, or destruction of the loaned textbooks.
- (b) [Such] **These** rules and regulations [are] **shall be** applicable to both public and nonpublic school students.

### **Subchapter 21. Management of Public School Contracts**

#### **6A:23A-21.1 Change orders and open-end contracts**

- (a) Changes in quantities, work performed, services rendered, materials, supplies, or equipment delivered or provided shall not be authorized, permitted, or accepted, except by the procedures established in this section. All change orders [are subject to] **shall be in accordance with** N.J.A.C. 5:30-11, as applicable, and the following:
  1. Each change order shall be in writing and shall be numbered consecutively (beginning with the number one) for each project or contract;
  2. Change orders that result in payment reduction below the originally contracted price may be made by locally established procedure, provided that any change orders increasing costs on the same contract shall include reference to such reductions;
  3. Quantities of items or work shall not be changed in such a manner as to nullify the effect of the competitive determination of lowest responsible price that was made at the time of contract award, provided that at said time the changes could have been reasonably foreseen; and

4. [Responsibility] **Responsibilities that are** required by this section to be exercised specifically by the district board of education or charter **school** board of trustees may not be delegated. In those instances in which authority is to be exercised by a school official, the authority, responsibility, and required procedures [should] **shall** be clearly spelled out in advance, by resolution.
- (b) Orders placed under open-end contracts [are] **shall not be** considered change orders for purposes of this section.
- (c) Change orders for capital project contracts [are governed by] **shall be in accordance with** N.J.A.C. 6A:26-4.9.
- (d) Change orders for contracts for materials, supplies, and equipment that are not part of a capital project contract [are] **shall be** governed by the following:
  1. Change orders may be used to change the number of units or items originally advertised and contracted for, provided:
    - i. Unit prices were sought at the time of advertising and included in the contract; and
    - ii. The advertising and the contract included a provision that the unit prices could be so used.
  2. Change orders [may] **shall not** be used to substantially change the quality or character of the items to be provided, inasmuch as such factors would have been a factor in the original bidding.
  3. [Such] **The net cost of** changes shall not [cause] **exceed** the originally awarded contract price [to be exceed cumulatively] by more than 20 percent [net].
  4. Availability of funds shall be certified by the school business administrator/board secretary prior to authorizing any change orders that increase costs.
  5. Changes may be effectuated by the school official authorized to serve as purchasing agent, subject to [such] contracts or approval requirements [as] the

district board of education or charter school board of trustees [may] lawfully imposes.

6. Change orders may be authorized by the purchasing agent for price adjustment for petroleum products, provided:
  - i. [There has been a determination by the] **The** school board attorney **has determined** that such a price adjustment is authorized by law;
  - ii. The original bidding specifications and contract so authorize;
  - iii. An objective price benchmark not under the direct control of the supplier is utilized to establish the price changes, and the changes are not for the purpose of correcting asserted bidding errors; and
  - iv. Adequate funds have been certified as being available.
- (e) Change order for professional and extraordinary unspecified services (EUS) contracts are governed by the following:
  1. Changes shall be within the scope of activities of the original contract, and not for the purpose of undertaking new or different work or projects. Changes in payments for activities within the scope of **the contract's** activities [of the contract] shall be in accordance with a schedule of specific charges or rates contained in the contract and shall be effectuated by a written change order authorized by the appropriate school official. If such a schedule is not included in the contract, the contract shall be amended to provide for same.
  2. If the change is not within the scope of **the original contract's** activities [of the original contract]:
    - i. If the contract was awarded without competitive bidding being required by law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. 18A:18A-5.a(2)), any change beyond the original scope of activities may be made by



amendatory contract; and

ii. If the consulting contract was not a **contract for “professional services,” as defined at N.J.S.A. 18A:18A-2.h**, and was required to be subject to competitive bidding, any change beyond the original scope of activity shall be by new contract based on new bidding.

3. The school business administrator/board secretary shall certify the availability of funds and that all required approvals have been received pursuant to N.J.A.C. 6A:23A-13 prior to authorizing any change order that increases costs.

4. An amendatory contract may be effectuated by the same method required for the authorization of the original contract.

(f) The issuance of purchase orders pursuant to an open-end contract [is] **shall be** considered to be the carrying out of the contract and not a change order. The following requirements **shall** apply:

1. A district board of education or charter school **or renaissance school project** board of trustees shall not [use] **issue or order purchase** orders under open-end contracts for purposes [such as changing] **that would change** the quality or character of items to be provided, or exceed the maximum number(s) of items or units provided for in the original specifications and contract. Such changes [would constitute a] **may be made only pursuant to an approved** change order;

2. The district board of education or charter school **or renaissance school project** board of trustees shall execute [such] **an open-ended** contract for a period not to exceed the requirements of **the Public School Contracts Law**, N.J.S.A. 18A:18A-1 et seq., [the Public School Contracts Law,] unless specifically authorized by law;

3. The district board of education or charter school **or renaissance school project** board of trustees shall execute a certificate of availability of funds [each time an

order is placed] covering the amount of the order **each time an order is placed against the open-ended contract**, unless the district board of education or charter school **or renaissance school project** board of trustees [wishes] **decides** to commit and certify **at the outset** the full amount of the open-end contract [at the outset].

The certificate [must] **shall** be executed before the district board of education or charter school **or renaissance school project** board of trustees incurs a contractual liability on its part; and

4. The school official authorized to serve as purchasing agent pursuant to N.J.S.A. 18A:18A-2 shall place such orders subject to [such] **the** controls or approval requirements [as] **that are lawfully imposed by** the district board of education or charter school **or renaissance school project** board of trustees [may lawfully impose].

#### 6A:23A-21.2 Acceptance of bonds [under] **pursuant to** the Public School Contracts Law

- (a) A district board of education or charter school board of trustees may require the following bonds, as authorized [by] **at** N.J.S.A. 18A:18A-23 [to] **through** 25:
  1. A performance bond;
  2. A bid bond; and/or
  3. A labor and material bond.
- (b) A district board of education or charter school board of trustees may require, in the notice to bidders or in the specifications, that bidders guarantee they will enter into a contract with the district board of education or charter school board of trustees and will furnish any prescribed performance bond or other security required as a guarantee or indemnification. The guarantee may be given, at the option of the bidder, by certified check, cashier's check, or bid bond. When the guarantee is given in the form of a bid bond, the district board of education or charter school board of trustees shall ensure that [such] **the bid bond will be**

**given by:**

1. [Be given by a] A responsible surety or insurance company licensed to operate in New Jersey. A district board of education or charter school board of trustees [is] **shall be** prohibited from requiring [that] bidders **to** submit a bid bond from a particular surety or insurance company; or
  2. [Be given by a] A responsible individual residing in New Jersey. The district board of education or charter school board of trustees may reject [such] **an** individual bid bond if not satisfied with the sufficiency of the individual surety offered.
- (c) The district board of education or charter school board of trustees shall ensure that the bond is in the form of a certificate[, identifying] **that identifies** the bidder whose acts are guaranteed, the name of the surety company, insurance company or individual surety, and the district board of education or charter school board of trustees in whose favor the bonds are given.
- (d) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance bonds, labor and material bonds, and all other such bonds is expressed in words and figures as a specific number of dollars and not as a percentage of the bid.
- (e) The district board of education or charter school board of trustees shall ensure that the "penalty" or "penal sum" on performance and labor and material bonds is in the amount of 100 percent of the contract price.

**6A:23A-21.3 Public sale of bonds**

- (a) A district board of education may accept a financial surety bond in lieu of a certified[, cashier's[,] or treasurer's check as a bid deposit pursuant to N.J.S.A. 18A:24-41.a, and in accordance with [the rule adopted by the Local Finance Board at] N.J.A.C. 5:30-2.10.

- (b) A district board of education may [choose to] conduct the public sale of bonds through the submission of electronic bids or proposals, as authorized at N.J.S.A. 18A:24-36.a, and in accordance with [the rules adopted by the Department of Community Affairs at] N.J.A.C. 5:30-2.9 and 2.10.

#### **6A:23A-21.4 Contracts for behind-the-wheel driver education**

- (a) A district board of education or charter school board of trustees shall negotiate or award, by resolution at a public meeting, contracts with private driver education schools providing behind-the-wheel driver education for any term not exceeding **three years** in the aggregate [three years], pursuant to N.J.S.A. 18A:18A-42.i, without public advertising for bids. The district board of education or charter school board of trustees shall [indicate in such] **require through the resolution that** the private driver education school [is required to] **shall** provide behind-the-wheel driver education that is substantially equivalent to [that] **the program** provided by the district board of education or charter school board of trustees at [less] **a lower** cost than current or other proposed programs.
- (b) A district board of education or charter school board of trustees shall negotiate or award such contracts with [approved] **only** private driver education schools[. A driver education school holding] **that hold** a current license or certificate of approval issued by the Chief Administrator of the Motor Vehicle Commission [is considered approved by the Commissioner of Education] for the purpose of providing behind-the-wheel driver education. The district board of education or charter school board of trustees shall obtain from the private driver education school a copy of [such] **its** current license or certificate of approval and **shall** maintain the copy on file with the contract.

#### **6A:23A-21.5 Joint purchasing systems**

A district board of education or charter school board of trustees may **establish**, by resolution,

[establish] joint purchasing systems, pursuant to N.J.S.A. 40A:11-11. Such joint purchasing system is effective only upon approval of the Director of the Division of Local Government Services in the Department of Community Affairs.

#### **6A:23A-21.6 Multi-year leasing**

A district board of education or charter school board of trustees shall execute multi-year leases only as authorized by the Public School Contracts Law at N.J.S.A. 18A:18A-42.f and 18A:20-4.2(f) and in accordance with [rules promulgated by the Department of Community Affairs at] N.J.A.C. 5:34-3.

### **Subchapter 22. Financial Operations of Charter Schools and Renaissance School Projects**

#### **6A:23A-22.1 Definitions**

The words and terms as used in this subchapter are defined [in] at N.J.A.C. 6A:23A-1.2 and 15.1.

#### **6A:23A-22.2 Bookkeeping and accounting for charter schools and renaissance school projects**

A charter school board of trustees **and renaissance school project board of trustees** shall comply with GAAP and other requirements and provisions [as] set forth [in] at N.J.A.C. 6A:23A-16.

#### **6A:23A-22.3 Certification**

A charter school board of trustees **and renaissance school project board of trustees** shall employ, or contract with, a person who holds a New Jersey standard or provisional [school business] administrator certificate **with a school business administrator endorsement**, in accordance with N.J.A.C. 6A:9B-12.7 to oversee **the school's** fiscal operations [of the charter school].

## 6A:23A-22.4 Financial requirements

- (a) A charter school board of trustees may incur debt for a period no greater than 12 months except:
1. During the first year the charter school is approved when the debt is incurred by the charter school board of trustees for a period no longer than January 15 of the preceding school year to June 30 of the first school year of the charter; and
  2. For all other years the charter school is approved when the debt incurred by the charter school board of trustees for a period of 12 months or greater is:
    - i. Fully secured by the value of the real property or other asset, so the total value of all such debt does not exceed the total appraised value of the property or asset by which the debt is secured; and
    - ii. Non-recourse to the charter school.
- (b) A charter school board of trustees **or renaissance school project board of trustees** may acquire real property by a lease or a lease with an option to purchase for use as a school facility providing that the [charter school] board of trustees shall ensure:
1. The lease contains a provision terminating the obligation to pay rent upon the denial, revocation, non-renewal, or surrender of the charter **or renaissance school project contract**; and
  2. The lease does not contain a provision accelerating the obligation to pay rent in the event of default.
- (c) A district board of education shall transmit State and local public funds to a charter school only after the final granting of the charter by the Commissioner has occurred. If funds are withheld pending the final granting of the charter, the district board of education shall pay all withheld funds to the charter school with the first scheduled payment after the effective date of the charter.
- (d) A charter school shall be subject to monitoring by the Commissioner to ensure that the percentage of school funds spent in the classroom is at least comparable to the average

percentage of school funds spent in the classroom in all other public schools in the State.

The calculation for this percentage in both the annual budget and the [Comprehensive Annual Financial Report] **ACFR** is based on [National Center for Educational Statistics] **NCES**, as published by the U.S. Department of Education.

- (e) If[, at any time,] the Commissioner denies, revokes, or does not renew a school's charter, or a charter school board of trustees surrenders its charter or becomes insolvent, **the Commissioner shall equitably distribute** all assets of the charter school board of trustees[,] **that remain** after satisfaction of all outstanding claims by creditors, [are subject to equitable distribution by the Commissioner] among the participating district of residence and non-resident **school** district(s). A charter school board of trustees shall include a provision in its bylaws concerning distribution of assets upon denial, revocation, non-renewal, or surrender of its charter or insolvency of the charter school that is consistent with this rule.

#### **6A:23A-22.5 Public school contract law**

- (a) A charter school board of trustees shall be subject to the provisions of the [public school contracts law] **Public School Contracts Law**, N.J.S.A. 18A:18A-1 et seq.
- (b) Any agency, corporation, person, or entity that enters into a contract or agreement on behalf of a charter school to provide administrative, educational, or other services shall be subject to the provisions of the [public school contract law] **Public School Contracts Law**, N.J.S.A. 18A:18A-1 et seq.

#### **6A:23A-22.6 Public relations and professional services; board policies; efficiency**

- (a) Each charter school **and renaissance school project** board of trustees shall establish by [policy or policies] **policy(ies)**, a [strategy or strategies in order] **strategy(ies)** to minimize the cost of public relations, as defined [in] **at** N.J.A.C. 6A:23A-9.3(c)14, and

professional services. The [policy or policies] **policy(ies)** shall include, to the extent practicable and cost effective, but need not be limited to, the following provisions:

1. A maximum dollar limit, established annually prior to budget preparation, for public relations, as defined [in] **at** N.J.A.C. 6A:23A-9.3(c)14, and each type of professional service, with appropriate notification to the board of trustees if it becomes necessary to exceed the maximum. Upon such notification, the board of trustees may adopt a dollar increase in the maximum amount through formal board action;
2. Establishment of procedures to ensure the prudent use of legal services by employees and board of trustees members and the tracking of the use of those services;
3. Charter schools shall establish procedures to effectively manage legal costs.

Procedures may include:

- i. A limitation on the number of contact persons with the authority to request services or advice from contracted legal counsel;
  - ii. Criteria or guidance to prevent the use of legal counsel unnecessarily for management decisions or readily available information contained in charter school materials such as policies, administrative regulations, or guidance available through professional source materials;
  - iii. A provision that requests for legal advice shall be made in writing and shall be maintained on file in the business office and a process to determine whether the request warrants legal advice or if legal advice is necessary; and
  - iv. A provision to maintain a log of all legal counsel contact, including name of legal counsel contacted, date of contact, issue discussed, and length of contact. Legal bills shall be compared to the contact log and any variances shall be investigated and resolved;
4. A provision that requires that contracts for legal services comply with payment requirements and restrictions pursuant to N.J.S.A. 18A:19-1 et seq. and as follows:



- i. Advance payments shall be prohibited;
  - ii. Services to be provided shall be described in detail in the contract;
  - iii. Invoices for payment shall itemize the services provided for the billing period; and
  - iv. Payment shall be only for services actually provided;
5. Professional services contracts are issued in a deliberative and efficient manner that ensures the charter school receives the highest quality services at a fair and competitive price or through a shared service arrangement. This may include, but is not limited to, issuance of such contracts through a request for proposals (RFP) based on cost and other specified factors or other comparable process; and
6. Professional services contracts are limited to non-recurring or specialized work for which the charter school does not possess adequate in-house resources or in-house expertise to conduct.
  - i. Charter schools **and renaissance school projects** are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or cause of action on behalf of charter school **and renaissance school project** administrators and/or any individual board members for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the charter school **or renaissance school project** as a whole.
  - ii. Charter school **and renaissance school project** publications shall be produced and distributed in the most cost-efficient manner possible that will enable the charter school to inform and educate the target community. The use of expensive materials or production techniques where lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, is

prohibited.

- iii. Public relations activities, such as booths at Statewide conferences, marketing activities and celebrations for opening schools and community events, and TV productions that are not part of the instructional program or do not provide, in a cost-effective way, information about charter school or board operations to the public, that are excessive in nature are prohibited. All activities involving promotional efforts to advance a particular position on elections or any referenda are prohibited.
- iv. Nothing in this section shall preclude boards of trustees from accepting donations or volunteer services from community members, local private education foundations, and local business owners to conduct or assist in public relations services. Examples include, but are not limited to:
  - (1) Providing charter school **and renaissance school project** flyers, newsletters, or other materials containing charter school **or renaissance school project** related information of public concern to local businesses, public meeting places, or other local organizations to display or make available for dissemination;
  - (2) Making charter school **and renaissance school project** related information of public concern available to local newspapers to publish related articles; and
  - (3) Utilizing volunteered services of local community members, charter school **and renaissance school project** employees, members of parent organizations, or local businesses with expertise in related areas such as printing, advertising, publishing, or journalism.

## **Accountability and Compliance (OFAC) investigation report**

- (a) Any charter school **and renaissance school project** that has been subject to an audit or investigation by the Department's Office of Fiscal Accountability and Compliance (OFAC) shall discuss the findings of the audit or investigation at a public meeting of the charter school **or renaissance school project** board of trustees no later than 30 days after receipt of the findings.
- (b) Within 30 days of the public meeting required in (a) above, the charter school board of trustees **or renaissance school project board of trustees** shall adopt a resolution certifying that the findings were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings. This resolution shall be submitted to OFAC within 10 days of adoption by the board of trustees.

### **6A:23A-22.8 Verification of payroll check distribution**

- (a) At least once every three years between the months of September through May, charter schools **and renaissance school projects** shall require each charter school **and renaissance school project** employee to report to a central location(s) and produce picture identification and sign for release of [his or her] **the employee's** paycheck or direct deposit voucher. The charter school **or renaissance school project** may exclude per diem substitutes from the required verification.
- (b) Picture identification shall be in the form of a charter school **or renaissance school project** issued identification card, valid drivers' license, official passport, or other picture identification issued by a state, county, or other local government agency.
- (c) The chief school administrator/lead person shall designate an appropriately qualified staff member to match the picture identification to the employee roster maintained by the office of personnel or human resources prior to release of the [pay check] **paycheck** or direct deposit voucher.

- (d) Where no appropriate identification can be produced, the school business administrator shall withhold paychecks or stop direct deposits until such time that the payee/charter school employee can produce appropriate identification or until an investigation and corrective action is concluded, as appropriate to the circumstances.
- (e) Upon completion of the payroll check distribution verification procedures set forth in this section, the chief school administrator/lead person shall submit a certification of compliance, in a form prescribed by the Department, to the executive county superintendent. Verification of the charter school's **or renaissance school project's** compliance with the provisions of this section will be required as part of the annual audit.

**6A:23A-22.9 Board of trustees expenditures for non-employee activities, meals, and refreshments**

- (a) The following words and terms used in this section shall have the following meanings, unless the context clearly indicates otherwise:
  - 1. “Activities” means events or functions provided or held for the benefit of students, dignitaries, and other “non-charter school” employees (for example, parents) that are paid from public funds.
  - 2. “Dignitary” means a notable or prominent public figure; a high-level official; or one who holds a position of honor. A dignitary, for purposes of this section, is not a charter school employee or board of trustees member.
- (b) Allowable expenditures for non-employee charter school **and renaissance school project** board of trustees activities shall include:
  - 1. All reasonable costs, including light meals and refreshments, directly related to activities that benefit students and are part of the instructional program, including expenditures for field trips and extracurricular programs that are not solely for entertainment. Nothing in this subsection shall preclude boards of trustees from using student activity funds or accepting donations to support student activities

- that are solely for student entertainment;
2. All reasonable costs directly related to activities of dignitaries and other “non-charter school” employees (for example, parents), including light meals, refreshments, and any other directly related expense. It is expected that expenditures for this purpose will be minimal and infrequent;
  3. All reasonable costs of commencement and convocation activities for students; and
  4. Expenditures related to charter school **and renaissance school project** employees to the extent such employees are essential to the conduct of the activity.
- (c) A charter school **or renaissance school project** board **of trustees** shall, at a minimum, take actions regarding student activities as follows:
1. Pre-approve field trip destinations;
  2. Establish dollar thresholds for awards to recognize special accomplishments; and
  3. Establish a budget supported by general fund revenues for each category of activity in a non-discriminatory manner (for example, football, boys soccer, girls soccer, photography club). Student activity funds are excluded.
- (d) Pursuant to N.J.S.A. 18A:11-12 and New Jersey Department of the Treasury, Office of Management and Budget Circular 16-11-OMB, Travel Regulations, and 11-09-OMB, Entertainment, Meals, and Refreshments, the following costs shall not be permitted using public funding:
1. Receptions, dinners, or other social functions held for or honoring any employee or group of employees of the charter school (for example, breakfast, luncheon, dinner, or reception for retirees or award recipients). This does not prohibit charter schools from honoring employees without a social function or using public funds to support reasonable costs of employee recognition awards (for example, teacher of the year awards, years of service awards). Use of public funds for reasonable costs of employee awards is a local discretionary expenditure;

2. Meals or refreshments served to guests at any athletic event or other games or contests; and
  3. Expenses for alcoholic beverages.
- (e) Documentation required to support activities, meals, and refreshments at charter school [student] **pupil** or renaissance school project events shall be:
1. A description of the activity;
  2. The purpose/justification of the activity, expressed in terms of the goal(s) or objective(s) of the charter school;
  3. The make-up of the group participating in the activity; and
  4. The names and titles of board **of trustee** members or employees included in the group.

#### **6A:23A-22.10 Nepotism policy**

- (a) As a condition of receiving charter school aid, **State school aid, or renaissance school project aid, a charter school or renaissance school project** board of trustees shall implement the nepotism policy established by this subsection. The nepotism policy shall include the following:
1. A definition of "relative" [that is consistent] **in accordance** with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2 and a definition of "immediate family member" [that is consistent] **in accordance** with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;
  2. A provision prohibiting any relative of a board **of trustee** member, lead person, or chief school administrator from being employed in an office or position in the charter school except that a person employed or to be promoted by the charter school on the effective date of the policy or the date a relative becomes a board **of trustees** member or chief school administrator shall not be prohibited from

continuing to be employed or to be promoted in the school, and a charter school **and renaissance school project** may employ a relative of a board **of trustee** member, lead person, or chief school administrator provided the charter school has obtained approval from the executive county superintendent [of schools].

Such approval shall be granted only upon demonstration by the charter school that it conducted a thorough search for candidates and the proposed candidate is the only qualified and available person for the position;

3. A provision prohibiting the chief school administrator/lead person from recommending to the board **of trustees**, pursuant to N.J.S.A. 18A:12-21 through 34, any relative of a board **of trustees** member or chief school administrator/lead person unless the person is subject to the exception [of] **at (a)2** above;
4. A provision prohibiting a charter school **or renaissance school project** administrator from exercising direct or indirect authority, supervision, or control over a relative of the administrator. Where it is not feasible to eliminate such a direct or indirect supervisory relationship, appropriate screens and/or alternative supervision and reporting mechanisms must be in place;
5. A provision prohibiting a charter school **or renaissance school project** administrator or board **of trustees** member who has a relative who is a member of the bargaining unit from discussing or voting on the proposed collective bargaining agreement with that unit or from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team; nor should [that charter school] **the** administrator be present with the [school] board **of trustees** in closed session when negotiation strategies are being discussed; provided, however, the administrator may serve as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the [charter] school can provide such information; and

6. A provision prohibiting a charter school **or renaissance school project** administrator who has an immediate family member who is a member of the same Statewide union in a school district or another charter school **or renaissance school project** from participating in any way in negotiations, including, but not limited to, being a member of the negotiating team or being present with the board **of trustees** in closed sessions when negotiation strategies are being discussed, prior to the board **of trustees** attaining a tentative memorandum of agreement with the bargaining unit that includes a salary guide and total compensation package; once the tentative memorandum of agreement is established, a charter school **or renaissance school project** administrator with an immediate family member who is a member of the same Statewide union in a school district or another charter school **or renaissance school project** may fully participate in the process, absent other conflicts. Notwithstanding the above in this paragraph, a charter school **or renaissance school project** administrator who has an immediate family member who is a member of the same Statewide union in another charter school **or renaissance school project** may service as a technical resource to the negotiating team and may provide technical information necessary to the collective bargaining process when no one else in the charter school **or renaissance school project** can provide such information.
- (b) A charter school **or renaissance school project** may exclude per diem substitutes and student employment from its board **of trustees** nepotism policy.

#### **6A:23A-22.11 Contributions to board of trustees members and contract awards**

- (a) As a condition of receiving charter school **or renaissance school project** aid, charter schools **and renaissance school projects** shall have policies that comply with the provisions of this section to ensure that the charter school **or renaissance school project**



shall maintain honest and ethical relations with vendors and shall guard against favoritism, improvidence, extravagance, and corruption in its contracting processes and practices. The terms "business entity" and "interest" as used below are defined as set forth [in P.L. 2004, c. 19] **at N.J.S.A. 19:44A-20.7.**

1. No board **of trustees** will vote upon or award any contract in the amount of \$17,500 or greater to any business entity that has made a contribution reportable by the recipient [under P.L. 1973, c. 83 (] **pursuant to** N.J.S.A. 19:44A-1 et seq.,[)] to a member of the charter school board of trustees during the preceding one-year period.
2. Contributions reportable by the recipient [under P.L. 1973, c. 83 (] **pursuant to** N.J.S.A. 19:44A-1 et seq.,[)] to any member of the charter school board of trustees from any business entity doing business with the charter school are prohibited during the term of a contract.
3. When a business entity referred to [in] **at** (a)2 above is a natural person, a contribution by that person's spouse or child who resides therewith shall be deemed to be a contribution by the business entity. Where a business entity is other than a natural person, a contribution by any person or other business entity having an interest therein shall be deemed to be a contribution by the business entity.
4. The disclosure requirement set forth [in section 2 of P.L. 2005, c. 271 (] **at** N.J.S.A. 19:44A-20.26[)] also shall apply when the contract is required by law to be publicly advertised for bids.
5. This subsection shall not apply to a contract when a charter school **or renaissance school project** emergency requires the immediate delivery of goods or services.

#### **6A:23A-22.12 Internal controls**

- (a) As a condition of receiving charter school aid, **State school aid, or renaissance school project aid**, each charter school **or renaissance school project** shall establish specific policies and procedures on internal controls to provide management with reasonable assurance that the charter school's goals and objectives will be met and that meet the requirements [of] **at** N.J.A.C. 6A:23A-22.6 through 22.15. Internal controls shall promote operational efficiency and effectiveness, provide reliable financial information, safeguard assets and records, encourage adherence to prescribed policies, and comply with law and regulation.
- (b) The specific internal controls [contained] in this subchapter shall be established together with other internal controls [contained] in **accordance with** N.J.A.C. 6A and other law and regulations, required by professional standards, including auditing standards generally accepted in the United States [under] **pursuant to** [Generally Accepted Accounting Principles (]GAAP[)], standards contained in Government Auditing Standards (GAS) issued by the Comptroller General of the United States, and as deemed necessary and appropriate by **the charter school's or renaissance school project's** management. Any charter school **or renaissance school project** may submit a written request to the Commissioner to approve an alternate system, approach, or process for implementing the internal controls required in this subchapter. The application [must] **shall** include documented evidence that includes, but is not limited to, an independent, third-party written assessment that the alternative system, approach, or process will achieve the same safeguards, efficiency, and other purposes as the specified internal control requirement(s).

#### **6A:23A-22.13 Segregation of duties; organization structure**

- (a) All charter schools **and renaissance school projects** shall evaluate business processes annually and allocate available resources appropriately in an effort to establish a strong control environment.

- (b) The school business administrator shall identify processes that, when performed by the same individuals, are a violation of sound segregation of duties. The school business administrator shall segregate the duties of all such processes among business office staff based on available charter school **or renaissance school project** resources, assessed vulnerability, and the associated cost-benefit.

**6A:23A-22.14 Standard operating procedures (SOPs) for business functions**

- (a) Each charter school **and renaissance school project** shall establish SOPs for each task or function of the business operations of the charter school **or renaissance school project**.
- (b) An SOP manual shall include sections on each routine task or function of the following areas:
1. Accounting, including general ledger, accounts payable, accounts receivable, payroll, fixed assets, and year-end procedures for each;
  2. Cash management;
  3. Budget development and administration, including tasks such as authorization of transfers and overtime;
  4. Position control;
  5. Purchasing:
    - i. **For charter schools, purchasing**, including such tasks as preparation of requisitions[,], **and** approval of purchase orders and encumbering of funds, bid, and quote requirements; and verification of receipt of goods and services; **or**
    - ii. **For renaissance school projects, purchasing, including such tasks as preparation of requisitions, approval of purchase orders, and encumbering of funds; and verification of receipt of goods and services;**
  6. Facilities, including administration of work and health and safety;

7. Security;
  8. Emergency preparedness;
  9. Risk management;
  10. Transportation;
  11. Food service;
  12. Technology systems; and
  13. Information management.
- (c) An SOP shall be established that ensures office supplies are ordered in appropriate quantities, maintained in appropriate storage facilities, and monitored to keep track of inventory.

**6A:23A-22.15 Approval of amounts paid in excess of approved purchase orders; board of trustee policy**

- (a) A charter school board **or renaissance school project board of trustees** shall adopt a policy establishing the approval process for any remittance of payment for invoice amounts greater than the approved purchase order. The policy shall require the school business administrator, or assistant school business administrator, to identify and investigate, if necessary, the reason for any increase to a purchase order. If it is found that [such an] **the** increase is warranted, the school business administrator, or assistant school business administrator, shall either approve a revision to the original purchase order with the reason noted, approve the issuance of a supplemental purchase order for the difference, or cancel the original purchase order and issue a new purchase order. If it is found that [such an] **the** increase is not warranted, the purchase order shall be canceled and the goods returned. In no instance shall an adjustment be made to a purchase order that changes the purpose or vendor of the original purchase order or a bid award.
- (b) Financial systems shall be programmed to:

1. Limit system access so only appropriate business office staff may make purchase order adjustments;
  2. Reject adjustments in excess of any established approval thresholds;
  3. Prevent unauthorized changes to be processed;
  4. Reject payments where the sum of the invoice amount plus any previous invoices charged to the purchase order exceeds the sum of the original purchase order amount plus any authorized adjustments;
  5. Reject duplicate purchase order numbers;
  6. Reject duplicate invoice numbers; and
  7. Prepare an edit/change report listing all payments made in excess of the originally approved purchase order amount.
- (c) The school business administrator shall review, on a monthly basis, edit/change reports listing all payments made in excess of the originally approved purchase order amount to ensure all payments made are properly authorized.