

**Notice of Adoption Regarding the Readoption with Amendments at N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency and Budgeting Procedures, Subchapters 16 through 22**

The following is the accessible version of the notice of adoption for the readoption with amendments at N.J.A.C. 6A:23A-16 through 22. The document includes two sections – [comments and responses](#) and [amendments upon adoption](#).

## **Education**

### **State Board of Education**

#### **Fiscal Accountability, Efficiency, and Budgeting Procedures**

#### **Readoption with Amendments: N.J.A.C. 6A:23A-16 through 22**

Proposed: May 6, 2024, at 56 N.J.R. 658(a).

Adopted: October 3, 2024, by New Jersey State Board of Education, Kevin Dehmer, Acting Commissioner, Department of Education, and Acting Secretary, State Board of Education.

Filed: October 3, 2024, as R.2024 d.106, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

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

Effective Dates:       October 3, 2024, Readoption;  
                                  November 4, 2024, Amendments.

Expiration Date:       October 3, 2031.

#### **Summary of Public Comments and Agency Responses:**

The following is a summary of the comments received from the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1.       John Mulholland, Executive Director, Association of Schools and Agencies for the Handicapped (ASAH)
2.       Brian Detlefsen, President, Association of Schools and Agencies for the Handicapped (ASAH)
3.       Ann Marie Scorzo, Business Manager, Windsor and Shepard Schools
4.       Susanne Buchanan, Executive Director, Autism New Jersey

5. Christopher Porrino Esq., Lowenstein Sandler Law Firm, on behalf of the Council of Private Schools for the Disabled
  6. Freda Wolfson, Esq., Lowenstein Sandler Law Firm, on behalf of the Council of Private Schools for the Disabled
  7. Dr. Dorothy C. Handfield, Board-certified behavior analyst (BCBA)
  8. Susan Young, Executive Director, New Jersey Association of School Business Officials (NJASBO)
- 
1. Comment: The commenter stated that N.J.A.C. 6A:23A-1.2 includes a definition for “school business administrator,” but “school business administrator/board secretary” is used 14 times at N.J.A.C. 6A:23A-16 through 22. The commenter objected to the use of “school business administrator/board secretary” in each instance and requested that the rules be changed to reference only “school business administrator” because the school business administrator and board secretary are separate positions and not a combined position. (8)  
Response: The Department disagrees. The rules do not recognize or create a combined position of “school business administrator/board secretary.” However, school districts routinely include a requirement for the school business administrator to serve as the board secretary as permitted pursuant to N.J.S.A. 18A:17-14.1.
  2. Comment: The commenter stated that the Department did not explain the rationale behind the rules proposed for readoption with amendments at N.J.A.C. 6A:23A-16 through 22. The commenter also stated that the proposed amendments will negatively impact approved private schools for students with disabilities (APSSDs) and recommended that N.J.A.C. 6A:23A-16 through 22 be readopted without amendment prior to the expiration in April 2024 to permit adequate time to discuss the proposed amendments. (7)

Response: The Department disagrees that N.J.A.C. 6A:23A-16, 17, and 19 through 22 should be readopted without amendment. The Department has not received any negative feedback from stakeholders regarding the amendments to these subchapters. The Department agrees that N.J.A.C. 6A:23A-18 (Subchapter 18), regarding tuition for APSSDs, should be readopted without amendments to allow more time for discussion. The Department proposed, at the March 5, 2024 State Board of Education (State Board) meeting, to readopt Subchapter 18 without amendments.

3. Comment: The commenters stated that the State Legislature has delegated, to the State Board, the power to promulgate rules that will safeguard students with disabilities. The commenters also stated that the proposed amendments at Subchapter 18 will do the opposite and will harm students with disabilities. The commenters further stated that the rules proposed for readoption with amendments at Subchapter 18 will threaten the financial viability of APSSDs, as well as subvert the APSSD students' constitutionally guaranteed thorough and efficient education and a free and appropriate public education (FAPE), pursuant to the Federal Individuals with Disabilities Education Act (IDEA). The commenters urged the State Board to readopt Subchapter 18 without amendments to allow for further consideration and additional stakeholder input. (5 and 6)

Response: The Department has determined that Subchapter 18 should be readopted without amendments to allow more time for discussion. The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments.

4. Comment: The commenter stated that during the public testimony portion of the February 7, 2024 State Board meeting, many people testified about the increased costs associated with complying with the rules proposed for readoption with amendments at Subchapter

18. The commenter also stated that the Department determined that the rules proposed for readoption with amendments at Subchapter 18 “would not cause a significant increase in compliance costs for APSSDs.” The commenter requested that the Department provide evidence of the analysis and methodologies for reaching this conclusion. (6)

Response: The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments, which will allow more time for discussion regarding the potential impact of any changes.

5. Comment: The commenter opposed proposed amendments at Subchapter 18 because they will impose draconian cuts on APSSDs, endanger their financial viability, and negatively impact the students with specialized needs who are served by APSSDs. The commenter stated that parents, students, teachers, and administrators have opposed the proposed amendments at Subchapter 18 since their public release and emphasized their adverse impact on APSSDs and their students. The commenter also stated that the Department plays an essential role in ensuring that APSSDs succeed in their educational mission and claimed that the proposed amendments at Subchapter 18 undermine APSSDs, which provide services to the State’s most vulnerable children. (5)

Response: The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments.

6. Comment: The commenter stated that the proposed amendments at Subchapter 18 are inconsistent with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The commenter stated that the Department has lacked transparency by failing to engage with stakeholders. The commenter stated that the APSSDs’ analysis shows that the rules proposed for readoption with amendments would have an adverse financial impact on APSSDs. (5)

Response: The Department has determined that Subchapter 18 should be readopted without amendments to allow more time for discussion. The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments.

7. Comment: The commenter stated that the proposed amendments at Subchapter 18 may violate Section 504 of the Federal Rehabilitation Act of 1973. The commenter stated that funding reductions that reduce services to persons with disabilities may be perceived as discriminatory. The commenter stated that the Department has been repeatedly advised that the proposed amendments will result in reduced services being provided to students with disabilities. The commenter stated that if the proposed amendments are adopted despite warnings from stakeholders about the negative effects, there will be a valid claim for intentional discrimination against students with disabilities. (5)

Response: The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments.

8. Comment: The commenter thanked the State Board for its consistent commitment to students enrolled in APSSDs and for engaging with stakeholders during the process of reauthorizing N.J.A.C. 6A:23A. (1)

Response: The Department appreciates the comment.

9. Comment: The commenters thanked the State Board for listening to their concerns regarding the previously proposed amendments at Subchapter 18. The commenters also thanked the Acting Commissioner for meeting with stakeholders to discuss their concerns and for placing the needs of students first. The commenters expressed their support for

the proposed readoption of the subchapter without amendment. (1, 2, 3, and 4)

Response: The Department thanks the commenters for the support.

10. Comment: The commenters expressed an interest in continuing to meet with the Acting Commissioner and other Department representatives to discuss changes at Subchapter 18 to address the real fiscal and programmatic needs of APSSDs. (1, 2, 3, and 4)

Response: The Department thanks the commenters for their interest in continuing dialogue regarding Subchapter 18. While the readoption without amendments at Subchapter 18 has been adopted, the Department remains available to engage in additional discussions regarding the subchapter.

11. Comment: The commenter stated that APSSD staff, students, and families appreciate that the Acting Commissioner considered their concerns in proposing to readopt Subchapter 18 without amendments. (1)

Response: The Department thanks the commenter for the support.

12. Comment: The commenters stated that APSSDs are partners in providing a free and appropriate public education to students sent from school districts. The commenters also stated that APSSDs provide vital infrastructure where students are treated with compassion and respect. The commenters further stated that the focus should be on positive outcomes for students. (1, 2, 3, and 4)

Response: The Department is committed to supporting schools and school districts in providing a free and appropriate education to all students.

13. Comment: The commenter requested that the Department place further restrictions on tuition costs for APSSDs at N.J.A.C. 6A:23A-18.3(a)2. The commenter requested that

the rule be amended to require any charge for increases in APSSD tuition rates to occur in subsequent school years. The commenter stated that the escalating cost of APSSD tuition is a significant burden for school districts, which are limited to only two percent levy increases. The commenter also stated that allowing tuition rates to change after school districts have adopted their budgets is incredibly burdensome as school districts cannot make midyear adjustments. (8)

Response: The Department has determined that Subchapter 18 should be readopted without amendments to allow more time for discussion. The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments.

14. Comment: The commenters stated that the proposed amendment at N.J.A.C. 6A:23A-18.3(i)1 limits, at two percent, the tentative tuition increase that an APSSD may charge without regard to larger increases by public schools or inflation. The commenters also stated that the current rule provides greater flexibility. The commenters stated that the proposed amendment would potentially slow the growth of the tentative tuition rate charged to sending school districts because it may be less than the current allowable increase, which is twice the rate of the Consumer Price Index (CPI). The commenters disagreed with the Department's justification that sending school districts would eventually cover any difference when the final tuition was calculated. The commenters stated that limiting the allowable increase for tentative tuition charges will lead to additional costs due to the length of time it takes for auditing tuition costs. The commenter also stated that the extended timeframe would require APSSDs to take out loans, thereby increasing costs that would eventually be passed on to sending school districts. (5 and 6)



Response: The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments, which will continue to allow the tentative tuition charged to sending school districts to increase up to four percent per year without further approval from the Commissioner.

15. Comment: The commenter objected to the proposed amendments at N.J.A.C. 6A:23A-18.3(o) and (p) regarding the calculation of maximum salaries. The commenter stated that, unlike public school teachers, APSSD educators do not receive a State pension. The commenter stated that the Department surprised the APSSD community by proposing to further restrict maximum salaries and not discussing, in good faith, an increase in salaries for APSSD teachers. (6)
16. Comment: The commenters stated that the proposed amendments at N.J.A.C. 6A:23A-18.3(o) and (p) would fundamentally change the calculation of maximum salaries for teachers and administrators. The commenter also stated that the existing rule bases the maximum salary increase on the average salary increase over the past two years. The commenters further stated that the proposed amendment at N.J.A.C. 6A:23A-18.3(o) and (p) ties the maximum salary to either a list of salaries for each job title in each county, as determined by the Commissioner, or a two percent increase, whichever amount is greater. The commenters also stated that deleting the proposed amendment that excluded from the calculation pay based on advanced degrees was not enough. The commenters further objected to the proposed exclusion of longevity pay, bonuses, and unused sick days in the calculation of the list of salaries. (5 and 6)

17. Comment: The commenters expressed concern that the salary study, pursuant to N.J.A.C. 6A:23A-18.3(o)3, was not completed prior to the Department proposing amendments to the maximum salary calculation. The commenters stated that the failure to complete the study raises questions about the Department's due diligence pursuant to the New Jersey Regulatory Flexibility Act and the propriety of the proposed amendments. The commenters also stated that the proposed amendments at N.J.A.C. 6A:23A-18.3(o) and (p) lack adequate basis and transparency in determining salaries. (5 and 6)
18. Comment: The commenter objected to the proposed amendment at N.J.A.C. 6A:23A-18.3(o) and (p) that would remove educational service commissions (ESC) from the school districts considered comparable to APSSDs for the calculation of maximum salaries. The commenter stated that ESCs operate two dozen schools in the State that are similar, in many respects, to APSSDs. The commenter also stated that N.J.A.C. 6A:14-4.3(b) treats ESCs and APSSDs as substantially equivalent. The commenter further stated that ESCs should remain in the salary comparison for APSSDs. (6)
19. Comment: The commenters objected to the amendment at N.J.A.C. 6A:23A-18.3(p) that would apply the maximum salary requirement to consultants. The commenters stated that consultants and contractors are hired on an as-needed basis and provide essential services to APSSDs. The commenters stated that consultants are not employees as acknowledged in the proposed definition of "consultant" at N.J.A.C. 6A:23A-18.2, which references the IRS guidance for distinguishing between employees and independent contractors. The commenters also stated that IRS Publication 15 does not support the proposed amendment because the publication specifically delineates contractors as being separate from employees. The commenters further stated that the distinction is crucial because the

types of services that APSSDs require on an as-needed basis are provided by independent contractors, which the publication recognizes as non-employees. The commenters also stated that consultants charge market rates that surpass the maximum salaries calculated in accordance with the rule. The commenters further stated the proposed amendment at N.J.A.C. 6A:23A-18.3(p) will require APSSDs to forego necessary services. (5 and 6)

Response to Comments 15 through 19: The Department has determined that Subchapter 18 should be readopted without amendments to allow more time for discussion. The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments.

20. Comment: The commenter expressed an interest in working with the Department on the maximum salaries established in accordance with N.J.A.C. 6A:23A-18.3(p) and (q). The commenter stated that change is necessary to attract and retain staff during a time of teaching shortages. (3)
21. Comment: The commenter expressed an interest in participating in a working group to discuss the exclusion of costs associated with one-to-one aides and behavior modification from the “instructional costs” expense category in the chart of accounts required at N.J.A.C. 6A:23A-18.5(a)7. (2)

Response to Comments 20 and 21: The Department thanks the commenter for their interest in continuing dialogue regarding Subchapter 18. While the proposed readoption without amendments at Subchapter 18 currently is at adoption level, the Department remains available to engage in additional discussions regarding the subchapter.

22. Comment: The commenters objected to the proposed amendment at N.J.A.C. 6A:23A-18.6(a)11 that would prohibit an APSSD from including the cost of the unsuccessful prosecution of a claim against the State in the calculation of the final tuition rate charged to sending school districts. The commenters stated that “unsuccessful” is undefined in the proposed amendment and the ambiguity would lead to an increase in the cost of litigation. The commenters also stated that the ambiguous amendment creates confusion about whether a settlement would be considered “unsuccessful” litigation and expressed concern that the proposed amendment could discourage settlements. (5 and 6)
23. Comment: The commenters stated that the proposed amendment at N.J.A.C. 6A:23A-18.6(a)11 would be fundamentally inconsistent with the State’s policy on ensuring checks and balances on questionable State actions. The commenters stated that good faith challenges ensure that State officials do not cut corners and expose errors that would otherwise persist. The commenters stated that this “cost cutting” would come at the expense of students served by APSSDs. (5 and 6)
- Response to Comments 22 and 23: The Department has determined that the reference to “unsuccessful” may be ambiguous. Therefore, the Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments.
24. Comment: The commenter stated that the proposed amendment at N.J.A.C. 6A:23A-18.6(a)11 would be a significant departure from the existing practice of disallowing the litigation cost for only frivolous challenges to State action. The commenter compared the proposed amendment at N.J.A.C. 6A:23A-18.6(a)11 with the Internal Revenue Service’s code section that permits businesses to deduct the cost of litigation incurred in resolving tax issues or defending against government claims as an ordinary necessary business

expense regardless of whether the litigation was successful. The commenter also stated that the proposed amendment at N.J.A.C. 6A:23A-18.6(a)11 would be a departure for established accounting practices. (5)

25. Comment: The commenters stated that the proposed amendment at N.J.A.C. 6A:23A-18.6(a)11 punishes APSSDs for exercising their right to petition the government for redress of grievances. The commenters stated that the proposed amendment at N.J.A.C. 6A:23A-18.6(a)11 limits APSSDs' ability to access the courts or pursue other administrative rights. The commentators stated that APSSDs are being singled out and that no other school in the State is prohibited from including the cost of unsuccessful challenges to State action in the cost of tuition. The commenters stated that the proposed amendment at N.J.A.C. 6A:23A-18.6(a)11 violates APSSDs' Federal and State constitutional rights to equal protection, as well as their rights pursuant to the first and fourteenth amendments to the United States Constitution. (5 and 6)

Response to Comments 24 and 25: The Department proposed, at the March 5, 2024 State Board meeting, to readopt Subchapter 18 without amendments.

26. Comment: The commenter stated that charter schools and renaissance school projects fiscal rules at N.J.A.C. 6A:23A-22 should mirror the rules at N.J.A.C. 6A:23A that apply only to school districts. The commenter included the following requirements as examples: the rules for the review of administrator contracts at N.J.A.C. 6A:23A-3.1, the requirement to have a certified superintendent leading the school, the requirement to employ a certified educational facility managers, the requirement for using the uniform chart of accounts and submitting budgets through the Department's standard budget software, and the requirements for approving budget transfers pursuant to N.J.A.C. 6A:23A-13.3(g). The

commenter stated that charter schools and renaissance school projects are public schools and should be held to the same standards as school districts. (8)

Response: The Department disagrees that amendments are necessary to clarify that charter schools and renaissance school projects are held to fiscal accountability standards that are similar to the rules governing school districts. Unlike school districts, charter schools and renaissance school projects do not have independent authority to levy taxes. As such, different provisions are needed to regulate charter schools and renaissance school projects.

#### **Summary of Agency-Initiated Changes Upon Adoption:**

1. The Department is not adopting new N.J.A.C. 6A:23A-16.10(g), which would have 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. Upon further legal review, the Department has determined that the proposed new rule exceeds the Department's statutory authority.
2. The Department is changing N.J.A.C. 6A:23A-22.11(a)1 upon adoption to clarify that the rule applies to renaissance school project boards of trustees in addition to charter school boards of trustees, as was proposed throughout the rulemaking.
3. The Department is changing N.J.A.C. 6A:23A-22.14(b)5i and ii upon adoption for clarity to restructure the subparagraphs without any substantive change.

#### **Federal Standards Statement**

There are no Federal standards or requirements applicable to the rules readopted with amendments; therefore, a Federal standards analysis is not required.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6A:23A-16 through 22.

**Full text** of the adopted amendments follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

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

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

(a) – (f) (No change from proposal)

\*[(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.]\*

#### Subchapter 22. Financial Operations of Charter Schools and Renaissance School Projects

##### 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 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 pursuant to N.J.S.A. 19:44A-1 et seq., to a member of the charter school **\*or renaissance school project\*** board of trustees during the preceding one-year period.

2. – 5. (No change from proposal.)

#### 6A:23A-22.14 Standard operating procedures (SOPs) for business functions

- (a) (No change from proposal.)
- (b) An SOP manual shall include sections on each routine task or function of the following areas:

1. – 4. (No change from proposal.)

5. Purchasing:

- i. For charter schools, purchasing, including such tasks as **\*[preparation]\*\*:**

**(1) Preparation\*** of requisitions **\*[and approval]\*\*;**

**(2) Approval\*** of purchase orders and encumbering of funds<sup>\*</sup>[, bid, and]<sup>\*\*;</sup>

**(3) Approval of bid requirements;**

**(4) Approval of\*** quote requirements; and **\*[verification]\***

**\*(5) Verification\*** of receipt of goods and services; or

- ii. For renaissance school projects, purchasing, including such tasks as

**\*[preparation]\*\*.\***

**\*(1) Preparation\*** of requisitions<sup>\*</sup>[, approval]<sup>\*\*;</sup>



(2) **Approval**\* of purchase orders\*[,]\* and encumbering of funds; and  
\*[verification]\*

\*(3) **Verification**\* of receipt of goods and services;

6. – 13. (No change from proposal.)

(c) (No change from proposal.)