



# New Jersey School Boards Association

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## TRAVEL REGULATIONS PROPOSAL- NJSBA COMMENTS MAY 2008

### General comments:

1. NJSBA believes that regulations should be adopted through the traditional Administrative Procedures Act process, with minor exceptions for emergent situations. With the exception of those items which, through statute, have been designated as Commissioner regulations, NJSBA believes that these regulations should go through the APA with the ability for vetting and public comments. NJSBA is concerned with the suggestion that these regulations will be put in place through language in the Appropriations Act. NJSBA has always opposed the annual adoption of Abbott regulations through the Appropriations Act and similarly opposes this proposal.
2. *N.J.A.C. 6A:XX-8.16(r)* and *N.J.A.C. 6A:XX-8.17(b)* – The requirement that payment by board members and employees must be made “*personally*” by them, raises serious concerns. This language appears to preclude the school business administrator from paying the vendor directly for the travel, even after the travel event has taken place.

Further, when a board member or board employee pays for these costs from their personal funds, the employee must pay sales and other taxes. These purchases are not taxable if purchased directly by the district. Reimbursement of these expenses, paid by the employee, will actually result in greater expense to the school district. Requiring board members or board employees to pay for these costs from their personal funds can amount to a hardship and is fiscally unfair to those members/employees who do not have the financial means to advance these costs or pay with credit. Application of this provision would require an employee to pay in advance for non-discretionary travel that is occasioned by the performance of his job responsibilities, and would require a board member, a volunteer official, to pay in advance for mandated training in order to retain his public office, a concern that could implicate the very right to hold public office.

We would request that the Department reconsider imposing the requirement on board members and district employees.

3. Several proposed regulations raise issues related to Americans with Disabilities Act accommodations, necessary accommodations which may not be possible under these regulations. e.g. valet parking.
4. Clarification is necessary as to how the functions of these regulations are to be carried out in State-operated districts, especially with regard to superintendent and board approval. In state-operated school districts, the state superintendent is the board and has final approval. The board can make advisory decisions subject to state superintendent approval.
5. In many sections throughout the proposed regulations, references are to “employees” only. Is it the intention of DOE to apply employee restrictions to publicly elected board members?
6. The proposed regulations do not specifically reference OMB Circular 06-14. We suggest that DOE include clarification about the applicability of the circular, particularly since the regulations include several items listed in the circular.
7. *N.J.S.A. 18A:11-12(f)* makes the statutory travel provisions specifically applicable to boards of trustees and employees of charter schools. Notwithstanding that fact, charter school trustees and employees are nowhere to be found in the travel regulations.
8. While NJSBA generally questions the value of simply reiterating the statute in code, when a code provision reiterates a section of statute, it is helpful to the reader and avoids confusion when the complete statutory language is included rather than selected lines or excerpts. We ask that you consider, as an alternative approach, to include in code only: information that expands upon and explains the existing statutory references including additional applicable provisions taken from other state and federal guidance, circulars, etc.
9. NJSBA has received hundreds of inquiries over the past year regarding applicability of the travel statute to specific situations. There has been much confusion and uncertainty. We recommend the development of an advisory opinion process, so that board members and school administrators can have their travel questions answered up front and in a timely manner. This will greatly assist boards of education in efficient compliance with the regulations and eliminate unnecessary confusion. In addition, it will save school districts money as the ability to seek an advisory opinion will reduce the need for school board attorney opinions, with their attendant cost to the school district.

### Specific Code Proposal Comments:

10. *N.J.A.C. 6A:XX-8.14(d)* should be clarified to state that costs for required training for all board members (not only new board members) are included as school district travel expenditures. Also, that paragraph is almost identical to *N.J.S.A. 18A:11-12(a)(3)* except that it drops the last line of the statute, “and attendance at specific conferences authorized in existing employee contracts.” We suggest that for consistency, the additional language be included.
11. *N.J.A.C. 6A:XX-8.14(e)* and (f) – NJSBA believes that these provisions restrict only the expenses incurred for board member and employee travel expenditures that are incurred during events held for the benefit of students and field trips. NJSBA believes that these provisions do not restrict the school district’s general authority to sponsor field trips and other student activities. We believe that to interpret these provisions otherwise would exceed the authority of *N.J.S.A. 18A:11-12* (the authorizing statute), which is concerned with employee and board member travel, and not with other types of expenditures. *N.J.S.A. 18A:11-12* defines “travel expenditures” to mean costs paid by the district for travel by district employees or board of education members.
12. *N.J.A.C. 6A:XX-8.14(e)* would be enhanced by the addition of examples of what are “activities, events or functions provided or held for the benefit of students.”
13. *N.J.A.C. 6A:XX-8.14(f)* speaks to field trips that are “part of the instructional program.” Would employee chaperones be reimbursed for overnight student field trips that are extracurricular? (ski trip, band trip, chorus trip, overnight athletic events, etc.)
14. *N.J.A.C. 6A:XX-8.14(g)(4)* – NJSBA requests clarification, as this provision can be read in conflicting ways. We believe that the intent of this rule is to authorize reimbursement under (g) if either: 1) the board member/employee’s duties are related to the purpose of the travel event, **or** 2) the board member/employee is required to attend to meet continuing education requirements (e.g., by contract) or to comply with law/regulation (e.g., board member’s mandated training under A5). As written, the proposed code provision appears to require that the board member/employee’s duties be related to the travel event and that the board member/employee be required to attend the event for training before the event would become reimbursable. For example, the current language could be read to reimburse only those board members who are attending a continuing education or mandatory training program. It is believed that such a restrictive result is not intended by the code.
15. *N.J.A.C. 6A:XX-8.14 (g)(4)* i, ii and iii require clarification. NJSBA co-sponsors events with other organizations and often holds training sessions at these conferences. We seek confirmation of our understanding that if NJSBA is

one of several sponsoring organizations, subsection *N.J.A.C. 6A:XX-8.14* (g)(4)(i) will apply. That is, with a waiver, board members, superintendents and SBAs living greater than 50 miles away may attend overnight, as may other administrators attending two or more seminars on consecutive days.

16. *N.J.A.C. 6A:XX-8.14(a)(4)(ii)(iii)* - For those conferences that are singularly sponsored by NJASA or NJASBO, NJSBA believes that board members should, like educational administrators, be able to attend programs where they would benefit from the workshop and seminars.
17. *N.J.A.C. 6A:XX-8.14 (g)(4)(ii)(iii)(iv)* do not mention that board members may attend other “conventions” or “in-state travel events.” Board members should be included in these sub-sections to the extent that they can benefit from the workshops or seminars being offered.
18. *N.J.A.C. 6A:XX-8.14(g)(7)* raises questions with regard to training to maintain a certification. What does it mean for a certification to be “required” as a condition of employment—must it be required by law/code, or may it include district-created requirements set forth in a job description? Does it include training to maintain a certification that an employee might need in the event of a RIF or a transfer?
19. *N.J.A.C. 6A:XX-8.14(g)(9)*, with regard to the prohibition against valet service (e.g., valet parking), implicates accessibility concerns under the Americans With Disabilities Act and other discrimination laws.
20. *N.J.A.C. 6A:XX-8.14(g)(10)* Clarification would be helpful. The line is often blurred between what is considered a chauffeur/limousine and what is considered a taxi, especially with some of the hybrid airport transportation services which publicize themselves as limousines but are actually commuter vans.
21. *N.J.A.C. 6A:XX-8.14(g)(11)*, NJSBA suggests that the reference to “State” business be omitted, as it does not seem relevant. The language appears to be directly taken from Circular 08-19-OMB and should be revised to reflect “school district” business.
22. *N.J.A.C. 6A:XX-8.14(g)(13)* states that entertainment costs are prohibited. However, some activities that could be considered entertainment are exceptions to the prohibition when they are held for the benefit of students (e.g., school play, student football game), as set forth in *N.J.A.C. 6A:XX-8.14(e)* and (f) and also in *N.J.A.C. 6A:XX-8.22*. We suggest that *N.J.A.C. 6A:XX-8.14(g)(13)* be clarified so that it is clear that a board member/employee may be reimbursed for the reasonable costs of maintaining a presence at student activities, field trips and other school district events for the benefit of students.

23. *N.J.A.C.* 6A:XX-8.14(g)(14) indicates that gratuities and tips are not reimbursable travel expenditures. However, both State circular 08-19-OMB in paragraph X(5) regarding overnight travel, and the federal guidelines regarding OMB A-87, provide that non-meal tips, up to \$3.00 per day, are reimbursable expenditures. The preclusion on tips is not consistent with state and federal guidelines, and should be reconciled.
24. *N.J.A.C.* 6A:XX-8.15(c)(3) states that the board “shall specify in its travel policy the applicable restrictions and requirements set forth in the State and federal guidelines....etc.” It is not clear exactly which restrictions and requirements must be specified. Do requirements from other federal and state guidelines and regulations apply, in addition to 08-19-OMB? For example, does [GSA Part 301-74](#) (Conference Planning) set forth on the U.S. GSA website, apply to school districts? What is the applicability of the GSA regulation that permits an increase in the established lodging portion of the per diem rate of a hotel by up to 25 percent, if necessary?

It is unclear whether the proposed regulations permit individual boards to have the flexibility to determine for themselves which State and federal provisions may apply. If DOE wishes a more uniform approach, we suggest that a list of the applicable State and federal restrictions and requirements be set forth explicitly, rather than by a general reference to State and federal guidelines.

25. *N.J.A.C.* 6A:XX-8.16(a) should reflect the statutory requirements for the approval of travel requests. *N.J.A.C.* 6A:XX-8.16(a) involves approval of travel requests by the superintendent and board, should be clarified so that it specifically applies to employees. We recommend the insertion of the following underlined language: “All travel requests by employees...” Note that *N.J.A.C.* 6A:XX-8.16(b) is the approval provision that applies to board members.
26. *N.J.A.C.* 6A:XX-8.16(c) - For clarification NJSBA recommends inserting the following underlined words, “If an event has a total cost to the board that exceeds \$5,000, regardless.....”
27. *N.J.A.C.* 6A:XX-8.16(d) - Regarding approval of travel for an event that costs the board \$5,000 or when more than three individuals attend, NJSBA is concerned that there are no timelines included. Appropriate approval timelines should not be unduly proscriptive for the traveler, and should ensure a timely turnaround of requests by the Executive County Superintendent to the district Superintendent. Additionally the Executive County Superintendent should be able to designate an alternate approval person where necessary.
28. *N.J.A.C.* 6A:XX-8.16(g) - The requirement for documentation under this section and the requirements in *N.J.A.C.* 6A:XX-8.16(i) appear to overlap. Clarification is necessary.

29. *N.J.A.C. 6A:XX-8.16(h)* – NJSBA suggests that the following underlined language should be inserted for clarification: “The board shall establish the number of days prior to the travel event that travel requests shall be submitted to the board to obtain prior board approval.”
30. *N.J.A.C. 6A:XX-8.16(i)(2)* – NJSBA has a concern that requiring a list of named attendees does not anticipate the ability to substitute a different traveler in the event of illness or if the originally named attendee has left the district. There is no statutory requirement for listing the names of the persons who intend to travel. Boards should have the flexibility to substitute where appropriate.
31. *N.J.A.C. 6A:XX-8.16(j)* is a partial excerpt of *N.J.S.A.18A:11-12(e)*. As a general principle, whenever a section of code is taken from the statute, we suggest that the full section be included as it is helpful to the reader and avoids the confusion that may ensue when only a portion is included. The code should expand upon and/or clarify the underlying legislation.
32. *N.J.A.C. 6A:XX-8.16(k)*. NJSBA reads this provision broadly to exclude from prior approval, any travel events that fall under general contractual or statutory requirements for continuing education or professional development. We would like confirmation of our interpretation. We also would like clarification of whether “contractual provisions” may include contracts other than collective bargaining or individual employment contracts.
33. *N.J.A.C. 6A:XX-8.16(l)* - It would be useful to have several examples of what would constitute an “emergent” situation and other common travel examples that would not be considered emergencies.
34. *N.J.A.C. 6A:XX-8.16(l)(1)* - It would be useful to have a time frame for the approval of the Executive County Superintendent, and there should also be language indicating that approval may be provided by a designee of the Executive County Superintendent.
35. *N.J.A.C. 6A:XX-8.16(p)* - The SBA does not have “approval” authority, in the sense of board approval, and the language so suggesting should be removed each time it appears in this section, as it exceeds the SBA’s statutory role. It is the board and CSA’s statutory role to approve the travel. The SBA’s role is to review the requests and documentation, and to issue payment.
36. *N.J.A.C. 6A:XX-8.16(r)* and *N.J.A.C. 6A:XX-8.17(b)* – The requirement that payment by board members and employees must be made “*personally*” by them, raises serious concerns. This language appears to preclude the school business administrator from paying the vendor directly for the travel, even after the travel event has taken place.

Further, when a board member or board employee pays for these costs from their personal funds, the employee must pay sales and other taxes. These purchases are not taxable if purchased directly by the district. Reimbursement of these expenses, paid by the employee, will actually result in greater expense to the school district. Requiring board members or board employees to pay for these costs from their personal funds can amount to a hardship and is fiscally unfair to those members/employees who do not have the financial means to advance these costs or pay with credit. Application of this provision would require an employee to pay in advance for non-discretionary travel that is occasioned by the performance of his job responsibilities, and would require a board member, a volunteer official, to pay in advance for mandated training in order to retain his public office, a concern that could implicate the very right to hold public office.

We would request that the Department reconsider imposing the requirement on board members and district employees.

- 37.** *N.J.A.C. 6A:XX-8.16(t)* - NJSBA requests confirmation that, where an entire board is attending an event, an appropriate way for the board to approve attendance without violating the School Ethics Act, would be to conduct a roll-call vote on the entire list of attendees, with each board member abstaining on his own attendance but voting on the rest. NJSBA notes that subsection (u) is already contained in statute. Absent additional clarification, this provision is duplicative and should be removed.
- 38.** *N.J.A.C. 6A:XX-8.17(d)* prohibits the retention of frequent flyer miles by board members/employees who use their credit cards to charge reimbursable travel expenses. This provision suggests the unlawful taking of personal property in certain cases. This is especially unfair since credit card companies often charge a premium for allowing the accrual of such miles; further, these miles are often not assignable to persons who do not own the credit card against which the purchase was charged. It would appear that the miles could not be transferred to the district even if the employee tried to do so. If boards of education were permitted to have credit cards, this situation might be remedied.
- 39.** *N.J.A.C. 6A:XX-8.17(e)* Subsection i and ii refer only to employees although they clearly are intended to apply to board members as well.
- 40.** *N.J.A.C. 6A:XX-8.17(e)(2)* prohibits rail travel when two persons are traveling to the same event in the Northeast corridor. However, in light of recent soaring gas prices since the issuance of the OMB Circular 08-19, NJSBA suggests language that permits two or more travelers to take the train if the train would result in overall cost savings.
- 41.** *N.J.A.C. 6A:XX-8.17(f)* - NJSBA questions whether this section will encourage employees and board members to use school vehicles rather than their own

vehicles, and we anticipate that it will increase wear and tear on district-owned vehicles. We also question whether this will have the (unintended?) effect of increasing the number of district-owned vehicles. It was our understanding that providing certain employees use of a car was a disfavored practice. This provision appears to go in the opposite direction.

42. *N.J.A.C. 6A:XX-8.17(f)(1)* - Regarding the mileage rate, NJSBA requests clarification as to which rate governs where a collective bargaining agreement permits a higher rate (e.g., the IRS rate) in either an existing or a future collective bargaining agreement. Should this provision be read to expressly supersede a previously negotiated rate and essentially make any rate in excess of that authorized in the State Appropriations Act non-negotiable?
43. *N.J.A.C. 6A:XX-8.17(f)(5)* and (6) These provisions refer only to employees although they appear to apply to board members as well.
44. *N.J.A.C. 6A:XX-8.18(a)* provides that all travel must be by the most direct, economical, and usually-traveled route. How would this route be determined? Does it anticipate carpooling? How would this route be measured and who determines? Any travel that is not along that route must receive the approval of the Executive County Superintendent prior to the travel. However, this requirement does not take into consideration the fact that an emergency may cause the traveler to use an alternate route. In this event, the prior approval of the Executive County Superintendent would not be feasible. Therefore, the Department should consider revising this section to reflect the possibility that carpooling may arise that preclude the traveler from obtaining the Executive County Superintendent's approval in advance of the travel event.
45. *N.J.A.C. 6A:XX-8.19* - NJSBA suggests that the code include a provision for reimbursement for one-day events (presumably within *N.J.A.C. 6A:XX-8.20*) where the sponsor charges a one-sum fee and provides a meal for which the cost is not broken out. We note that such a provision is proposed in *N.J.A.C. 6A:XX-8.19(d)(3)* for overnight travel events, indicating that reimbursement is permitted if the meal is part of a one-sum fee, and the meal is an integral part of the convention or conference proceedings. We recognize of course, when the meal is paid for as part of a one-sum fee, the board member is not eligible for separate reimbursement. See *N.J.A.C. 6A:XX-8.19(d)(4)*.
46. *N.J.A.C. 6A:XX-8.20(c)* does not speak to training sessions and retreats that occur during dinner and breakfast hours (only speaks to lunch.). As such events sometimes are planned for weekends or evenings, the regulations should indicate whether the appropriate dollar amounts apply for events that coincide with morning and evening meals. Also, it is not clear whether the discussion of staff meetings and in-service days is appropriately placed in this section. Additionally – language similar to that in *N.J.A.C. 6A:XX-8.19* should be

included in this section regarding meals that are part of a one-sum-fee for a one-day travel event.

47. *N.J.A.C.* 6A:XX-8.20(d) should provide some examples of an “official luncheon or dinner.” Would the following qualify: NJSIAA awards dinner; CSA Roundtable; PTO President’s dinner?
48. *N.J.A.C.* 6A:XX-8.20(e) mentions “workshops.” Query whether this was intended to say, “work sessions” which is a term used to refer to board meetings where no votes are taken.
49. *N.J.A.C.* 6A:XX-8.20 (e)(1) fails to mention board members and refers only to employees.
50. *N.J.A.C.* 6A:XX-8.20(e)(6) prohibits the removal of left-over meals except if the district is reimbursed. Is the board permitted to give the meal away to staff/students, *etc.* as long as it is eaten on the premises? If nobody eats the meal on premises or purchases it to eat off-premises, must the board throw the meal away? Arguably, donating the left-over food to a shelter or other similar facility would constitute a gift of public funds and would be prohibited.
51. *N.J.A.C.* 6A:XX-8.20 (e)(5) mentions only the \$10 allowance, assuming that board meetings take place at dinner time only. Query whether the lower, breakfast/ lunch amounts should also be listed for meetings (or workshops if that is what was intended as opposed to work sessions) that take place at other times of day, such as a Saturday morning or afternoon.
52. *N.J.A.C.* 6A:XX-8.20(f)(2) refers only to employees and should include a reference to board members.
53. *N.J.A.C.* 6A:XX-8.21(c) should be specific that sufficient documentation shall be maintained in the board office to support.....(add underlined language).
54. *N.J.A.C.* 6A:XX-8.21(d)(3) refers to hours of work and the normal work day-- language geared to employees. NJSBA would like clarification of the equivalent requirement for board members, if one exists.
55. *N.J.A.C.* 6A:XX-8.21(f) refers to the “close of books.” NJSBA believes that a more technical term would be appropriate.
56. *N.J.A.C.* 6A:XX-8.21(d)(9) refers only to employees and should include a reference to board members.
57. *N.J.A.C.* 6A:XX-8.22 - As mentioned earlier in this memorandum, *N.J.S.A.* 18A:11-12 (the authorizing statute) defines "travel expenditures" to mean costs paid by the district for travel by district employees or board of education

members. Provisions such as those in this section attempting to restrict district expenditures for travel by others, such as parent chaperones, students and dignitaries, etc. and those that restrict the district's general authority to pay for field trips and other student activities, seem to reach beyond the language of the authorizing statute, are confusing and blur the focus of the regulations. We believe they should be removed from the proposed regulations.

Should these provisions not be removed, then the regulations should contain examples, as it is not clear what types of activities would be allowable under *N.J.A.C. 6A:XX-8.22*. We suggest that DOE provide several examples of each type of activity mentioned in (a)(2) and in (b)(1) through (4). For example, are costs for decorations allowable at a graduation ceremony? A recent KPMG Report indicated that flowers and balloons at a school district graduation ceremony were inappropriate expenditures.

- 58.** *N.J.A.C. 6A:XX-8.22(c)(2)* - NJSBA requests clarification on which participants may not be permitted to have refreshments. At athletic events, who is permitted to have meals or refreshments other than students? Is this intended to exclude the partaking in meals/refreshment by employees who are chaperoning as part of their job assignments? What exactly is contemplated here?
- 59.** *N.J.A.C. 6A:XX-8.22(e)* – This provision seems to ignore the fact that charter school trustees and employees are covered by the travel statute and should be covered by the regulation.