



# New Jersey School Boards Association

413 West State Street • Trenton, NJ 08618 • Telephone: 609.695.7600 • Toll-Free: 888.88NJSBA • Fax: 609.695.0413

## **Task Force on New Jersey's Accountability Regulations FINAL REPORT**

***N.J.A.C. 6A:23A***



October 14, 2016

**New Jersey School Boards Association**

**New Jersey School Boards Association  
Task Force on New Jersey's Accountability Regulations  
N.J.A.C. 6A:23A**

**FINAL REPORT**



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# Report of NJSBA’s Task Force on New Jersey’s Accountability Regulations

October 14, 2016

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**TO:** Donald Webster, Jr., President  
Lawrence S. Feinsod, Ed.D., Executive Director

**FROM:** Michael Kaelber, Esq., Director  
NJSBA Legal & Labor Relations Services Department

**SUBJECT:** Final Report—NJSBA Task Force on New Jersey’s Accountability Regulations

**DATE:** October 14, 2016

I am pleased to submit the Final Report of the New Jersey School Boards Association’s Task Force on New Jersey’s Accountability Regulations (*N.J.A.C. 6A:23*). This document reflects nearly 12 months of research, study, discussion and collaboration by the 16-member group, appointed in the fall of 2015 by President Donald Webster, Jr., and Executive Director Dr. Lawrence S. Feinsod.

The Task Force included local school board members; resource persons representing the state’s executive county school business administrators and the New Jersey Association of School Business Officials; local school district administrators, and NJSBA staff.

In reaching its findings and recommendations, the Task Force considered several principles and factors, including preservation of local governance; the impact of the state’s 2 percent property tax cap; the need for clear, precise code language; and the reaffirmation of practices that promote effective and efficient expenditures.

The Final Report of the Task Force on New Jersey’s Accountability Regulations concludes with 63 recommendations designed to ensure responsible and efficient operations in our public schools, without placing excessive administrative and/or financial burdens on local school districts.



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**TO:** Michael F. Kaelber, Esq.  
Director, Legal & Labor Relations Services  
Chair, Task Force on New Jersey's  
Accountability Regulations

**FROM:** Dr. Lawrence S. Feinsod  
Executive Director

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**DATE:** November 19, 2015

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**RE:** Charge to the NJSBA Task Force on New Jersey's Accountability Regulations

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Following is the charge to the NJSBA Task Force on New Jersey's Accountability Regulations:

**Task Force on New Jersey's Accountability Regulations**  
(*N.J.A.C. 6A:23A, "Fiscal Accountability Efficiency and Budgeting Procedures"*)

CHARGE

By June 30, 2016, the Task Force will complete the following activities:

1. Analyze the current regulations including, but not limited to, provisions addressing administrator and board member accountability; review and approval of administrator contracts; school district fiscal accountability; effective and efficient expenditures; conditions for the receipt of state aid; travel policies and procedures; and budget review procedures.
2. Consult with experts on school district financial operations at the local, county and state levels, including the New Jersey Association of School Business Officials.
3. Collect data from local school districts concerning their experience with the current regulations, including their effectiveness, ease or burden of implementation, and cost.
4. Develop a plan to advocate for new and revised regulations, designed to ensure responsible and efficient school business and non-instructional operations without placing administrative and/or financial burdens on local districts.

## **Task Force on New Jersey's Accountability Regulations**

The following individuals have been appointed to the Task Force by Dr. Lawrence S. Feinsod, Executive Director, and Donald Webster, Jr., President.

### **MEMBERS**

#### **Chairman**

Michael Kaelber, Esq., Director, NJSBA Legal & Labor Relations Services Department

#### **NJSBA Staff**

Patrick Duncan, Manager, Labor Relations

Terri Lewis, Field Service Representative

Steve McGettigan, Manager, Policy

Charlene Peterson, Field Service Representative

Jonathan Pushman, Legislative Advocate, Governmental Relations

Jeanette Rundquist, Communications

Gwen Thornton, Field Service Representative

Cynthia Harrison, Administrative Assistant, Legal & Labor Relations Services Department

#### **Board of Education Members**

Chanta L. Jackson, Vice-President, Neptune Township Board of Education

Corey Lowell, Member, Asbury Park Board of Education

Andrew McElroy, President, Byram Township Board of Education

William Seeselberg, Member, South Plainfield Board of Education

David C. Verducci, Ph.D., Member, Upper Saddle River Board of Education

#### **Consultant**

Mr. Neil Cramer, Executive County School Business Administrator  
Sussex/Warren Counties

Louis J. Pepe, RSBA, President, New Jersey Association of School Business Officials  
School Business Administrator, Summit Public Schools

#### **Ex Officio**

Donald Webster, Jr., NJSBA President

Dr. Lawrence S. Feinsod, Executive Director

## **Background and Analysis**

### ***Sunset of Accountability Regulations***

The Fiscal Accountability, Efficiency and Budgeting Procedures code (*N.J.A.C. 6A:23A*), which encompasses the Accountability Regulations, was originally scheduled to expire on November 25, 2014. However, a 2011 statute (*P.L. 2011, c. 45*) amended the state's Administrative Procedures Act and extended from five to seven years the expiration date of nearly all chapters in the New Jersey Administrative Code. As a result, *N.J.A.C. 6A:23A* is set to expire on November 26, 2016.

The State Board of Education has initiated the first phase of the re-adoption process for sections 16 through 22 of *N.J.A.C. 6A:23A*, the provisions over which it has control. The proposed re-adoption of these sections, which address finance and business services, came before the state board at first discussion level on September 7, 2016.

The remainder of *N.J.A.C. 6A:23A*, sections 1 through 15, was first adopted in 2008 and readopted in November 2009 through a special rule-making process established by a 2008 statute (*P.L. 2008, Chapter 37*). Under this special process, the Commissioner of Education, rather than the State Board of Education, has authority to adopt and readopt regulations governing the implementation of statutes that address the following subjects, among others:

- School district fiscal accountability;
- Early termination of superintendent contracts;
- Review of employment contracts for central office administrators;
- Certificate revocation of superintendents, assistant superintendents and school business administrators;
- The property tax cap;
- The office of the Executive County Superintendent;
- Regionalization plans;
- School district travel regulations;
- Efficiency standards, and
- Budget procedures.

Sections 1 through 15 of *N.J.A.C. 6A:23A* will also sunset in November 2016. Re-adoption of these sections would come through action of the commissioner of education.

In addition, the Accountability Regulations, at *N.J.A.C. 6A:23A-3.1(e) (2)*, incorporates the superintendent salary cap, which became effective in 2011 through the commissioner's rule-making authority. The superintendent salary cap will sunset on November 26, 2016, along with the rest of the Accountability Regulations.

### ***Accountability Regulations: Genesis***

The Accountability Regulations were a compilation of regulatory responses to a series of anecdotal abuses and misconduct in school districts, mostly singular in nature. Many of the Accountability Regulations reflected existing rules applicable only to the former Abbott districts. Upon adoption of the Accountability Regulations in December 2008, all school districts came under these rules.



### *Review/Study Process*

The NJSBA Task Force on New Jersey’s Accountability Regulations met on nine occasions, from November 19, 2015 through June 15, 2016. Each meeting was held at NJSBA Headquarters in Trenton.

In its review of the Accountability Regulations, the Task Force considered the following principles and factors:

- Preservation of local governance of public education.
- The impact of the 2% property tax levy cap, which was not in effect at the inception of the regulations. (*To the extent that the 2% cap constrains expenditures, are some of the regulations still necessary?*)
- The prevalence of “caps within caps” in statute and code—for example, the superintendent salary cap, the administrative spending growth limit, and restraints on certain school district expenditures such as those for professional services, public relations and publications, and employee recognition awards.
- The need to review these limits, with an eye towards amending them to reflect current economic practices, regional cost differences and/or certain indices such as the Consumer Price Index, IRS rates, etc.
- Practices that promote effective and efficient expenditures.

The task force also sought to clarify code language, revise timelines and dates, identify requirements already completed, update provisions to reflect current practices, and reduce duplication.

For each provision, the Task Force considered the legislative and regulatory history behind issues addressed by Accountability Regulations, as well as the following resources:

- NJSBA Policies and Positions on Education;
- Recommendations of the state’s 2012 Education Transformation Task Force Report;
- NJSBA Commentary on the 2009 Re-adoption of the Accountability Regulations;
- The NJSBA Final Report on the Study of the Impact of the Salary Cap on Chief School Administrators (2014);
- The Leadership for Educational Excellence Commentary on the Accountability Regulations (2016), and
- Comments on *N.J.A.C. 6A:23A* by the New Jersey Association of School Business Officials (2016).

The Task Force also conducted a survey of New Jersey’s local school board presidents, superintendents and school business administrators about the effectiveness of the various provisions of the Accountability Regulations. Over 39% of the state’s school districts are represented in the survey results.



## **Task Force Recommendations**

As a result of its deliberations, the Task Force made 63 recommendations for revision, amendment or elimination of provisions of the Accountability Regulations (*N.J.A.C.* 18A:23A-1 through 22). Below are summaries of various provisions, followed by the Task Force recommendation(s) and the rationale for each.

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### **Executive County Superintendent of Schools**

*N.J.A.C.* 6A:23A-2

A 2007 law (*P.L.* 2007, chapter 63) strengthened the authority of the state Department of Education’s county officials (now called “Executive County Superintendents”) over local school district budgeting and operations. It also gave the Executive County Superintendents the specific task of developing plans to regionalize school districts within their jurisdictions.

This section of the Accountability Regulations was designed to provide the structure to implement the various responsibilities of the Executive County Superintendent (ECS).

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#### ***N.J.A.C.* 6A:23A-2.2 – School District Regionalization and Consolidation of Services Advisory Committee**

Requires the ECS to create a School District Regionalization and Consolidation of Services Advisory Committee.

**RECOMMENDATION: Eliminate this section** (*N.J.A.C.* 6A:23A-2.2).

**RATIONALE:** The Advisory Committees are neither necessary nor operational at this time. Each county has identified a grouping of school districts that may be “ready” for regionalization. The Department of Education has established an Office of Regionalization and Consolidation, the representatives of which visit school districts that may be ready for regionalization. Discussions are continuing, particularly among school districts involved in sending-receiving tuition arrangements.

The Task Force recommendation is consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

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#### ***N.J.A.C.* 6A:23A-2.3 – Consolidation and sharing of services; joint and cooperative purchasing**

Requires the ECS to study, and make recommendations on, the consolidation of school district administrative services, creation of new administrative service providers or shared administrative arrangements. The provision specifies certain school district configurations and shared-administrative models to be considered.

**RECOMMENDATION: Eliminate this section** (*N.J.A.C.* 6A:23A-2.3), except for the requirement that consolidated administrative services be discussed quarterly at superintendents’ and school business administrators’ county roundtables (subparagraph g).

**RATIONALE:** The required studies have been completed, and information is available in county offices. Subparagraph (g), however, should be amended to reflect the current reality. The concept of sharing services is discussed on a regular basis and implemented where possible, particularly among secondary regional and constituent elementary districts and districts in sending-receiving relationships. Economic realities are driving the discussions.

This recommendation is consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

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***N.J.A.C. 6A:23A-2.4 – Districts that do not operate schools***

Requires the ECS to submit to the Commissioner a plan to eliminate non-operating districts—i.e., districts that have no schools and send their students to a neighboring district or districts through a sending-receiving tuition arrangement.

**RECOMMENDATION: Eliminate this section** (*N.J.A.C. 6A:23A-2.4*).

**RATIONALE:** The ECS reports on non-operating school districts have been completed, and the plans have been submitted to the commissioner. As such, the goals of the legislation (*P.L. 2007, chapter 63*) have been accomplished, and there is no longer a need for the code provision.

On July 1, 2009, 13 of the state’s 26 non-operating school districts were merged with the neighboring school districts where their students were already attending classes. Each of the 13 eliminated districts was engaged in a sending-receiving relationship with a single school district. In the remaining non-operating districts, certain considerations, including the impact on multiple sending-receiving partners, need to be addressed before merger could be effectuated.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

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***N.J.A.C. 6A:23A-2.5 – Plans to create K-12 regional school districts***

Requires the ECS to study consolidation of elementary-only and secondary-only school districts with neighboring districts, resulting in all K-12 systems, and to submit the regionalization plans to the commissioner by March 15, 2010. (The plans were not to have involved county vocational or special services districts.)

**RECOMMENDATION: Eliminate this section** (*N.J.A.C. 6A:23A-2.5*).

**RATIONALE:** The ECS reports on consolidation have been completed and filed. As such, the goal of the legislation (*P.L. 2007, chapter 63*) has been accomplished, and there is no need for this code provision.

Although the ECSs collected data and there were discussions of consolidation, no funding was available to complete the necessary feasibility studies.

This recommendation is consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

*N.J.A.C. 6A:23A-2.6* – **Transportation Efficiency Study**

Requires each ECS to complete a study of pupil transportation services no later than July 12, 2009 and sets forth factors to be considered in the study. The purpose of the study was to identify ways to provide pupil transportation in a more cost-effective and efficient manner.

**RECOMMENDATION: Eliminate this section** (*N.J.A.C. 6A:23A-2.6*).

**RATIONALE:** Transportation efficiency studies were completed and filed in July 2009. Therefore, the goal of this code provision has been accomplished.

This recommendation is consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

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*N.J.A.C. 6A:23A-2.7* – **Shared Special Education Services**

Requires the ECS to facilitate the sharing of special education services within the county and places certain requirements on school districts. Provisions include:

- Notification to the ECS when an out-of-district placement is contemplated;
- Identification by the ECS of available programs in other districts;
- A written explanation if the individualized education program (IEP) team determines a placement other than the one identified by the ECS;
- Creation of lists of appropriately licensed and certified professionals, and
- Investigation of school districts sharing special education staff members.

**RECOMMENDATION: Eliminate subparagraphs i, ii, iii and iv of paragraph 3, which involve procedures to be followed prior to out-of-district placement.**

**RATIONALE:** These provisions are overly prescriptive.

**RECOMMENDATION: Eliminate Sections 6 through 9,** which involve development of lists of appropriately certified professionals, investigation into the sharing of special education staff members and creation of inventories of surplus equipment *unless the state can fund and staff these initiatives.*

**RATIONALE:** Special education directors meet on a regular basis in each county and share this type of information. The Task Force found these concepts to be “good ideas” but only if they were supported by adequate county office staffing. As such, it concluded that there is no need to retain these provisions if they are not operational.

These recommendations are consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

**Administration and Board Member Accountability**  
*N.J.A.C. 6A:23A-3 (includes the superintendent salary cap)*

With the creation of the position of Executive County Superintendent, the Legislature expanded the duties, responsibilities and authority of the county offices of education. The general powers and duties of the Executive County Superintendent of Schools, as stated *N.J.S.A. 18A:7-8*, include the following:

*Review and approve, according to standards adopted by the commissioner, all employment contracts for superintendents of schools, assistant superintendents of schools, and school business administrators in school districts within the county, prior to the execution of those contracts.*

The regulations set forth in this section, *N.J.A.C. 6A:23A-3*, provide the structure to implement county office review of administrator contracts and the superintendent salary cap.

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***N.J.A.C. 6A:23A-3.1 – Review of Employment Contracts for Superintendents, Assistant Superintendents, School Business Administrators (includes the superintendent salary cap)***

Creates the superintendent salary cap based upon school district enrollment and other factors.

Establishes the procedures and standards for Executive County Superintendent review of employment contracts for superintendents, assistant superintendents, deputy superintendents and school business administrators, including persons serving in those roles in an acting or interim capacity. The review encompasses:

- New employment contracts, including contracts that replace expired contracts for existing tenured and non-tenured employees;
- Renegotiations, extensions, amendments, or other alterations of the terms of existing employment contracts that have been previously approved by the Executive County Superintendent; and
- Provisions for contract extensions where such terms were not included in the original employment contract or are different from the provisions contained in the original approved employment contract.

**RECOMMENDATION:** Eliminate Subsection (e) (2), the Chief School Administrator Salary Cap.

**RECOMMENDATION:** Eliminate definitions in *N.J.A.C. 6A:23A-1* that are part of the CSA Salary Cap structure, including “Additional District Salary Increment,” “High School Salary Increment” and “Maximum Salary Amount.”

**RATIONALE:** The Task Force believes the superintendent salary cap is unnecessary. It concurs with NJSBA’s position against the concept of CSA salary caps:

1. The NJSBA believes in, and actively advocates for, local control and management over school district operations and finances. Consistent with this policy, NJSBA opposes the imposition of a hard cap on the salaries of chief school administrators
2. Salary caps tied to district enrollment are overly rigid and do not take into account variables, such as consolidation of additional administrative responsibilities in the position of the superintendent. In many smaller school districts, the chief school administrator also serves as a principal. In other

districts, the superintendent assumes responsibilities that eliminate the need for an additional administrative position, resulting in cost savings to the district.

3. The statutory 2% property tax levy cap and the administrative spending growth limit, along with other provisions of the Accountability Regulations, render a superintendent salary cap unnecessary. It is a “cap within the cap.”
4. The ECS review of all new contracts for chief school administrators, required under this section, provides a necessary and practical control against exorbitant compensation, while maintaining an appropriate level of local discretion and authority.

This recommendation is consistent with the recommendations of the New Jersey Leadership for Educational Excellence Group and the New Jersey Association of School Business Officials.

#### Task Force Survey

The recommendation to eliminate the superintendent salary cap reflects concerns expressed by school leaders in the Task Force survey, “Accountability Regulations 2016: Assessing the Impact.” The CSA salary cap elicited the strongest reaction among respondents, with 68.6% statewide indicating that it had a negative impact on their districts. Concerns included superintendent turnover, lack of continuity and the experience level of candidates.

The s superintendent salary cap also prompted the most comments from survey respondents, 133. They included the following:

*“We are unable to attract superintendents with experience. In some cases, we cannot attract other administrators because their salary is high and not capped in the current district.”*

– School business administrator

*“It was detrimental to the district because it forced a long-standing superintendent into retirement. Personally, I have benefitted from the cap because it led to my hiring as superintendent. Our board of education is frustrated that it cannot unilaterally exercise the ability to set the pay of its superintendent, which it believes to be the responsibility of locally elected officials.”*

– Superintendent

*“I am currently a shared superintendent between two small districts. Two small neighboring districts informally approached me about being the shared superintendent for all four districts. While I could have handled the added responsibilities and brought a high level of experience to the districts, it was not something I would do for the small \$10,000 per district extra pay available. The stipend would not have begun to be commensurate with the additional workload.”*

– Superintendent

If the CSA Salary Cap is continued—and the Task Force strongly recommends that it should not—the regulations should be amended to include indexing to a growth indicator, such as a Consumer Price Index indicator, and regional cost differences. The regulations should apply to charter schools, educational services commissions and vocational-technical schools.

**RECOMMENDATION: Clarify Subsection (e) (4), School Administrator Contributions,** which prohibits reimbursement of employee contributions toward benefits required by law (such as Social Security) or through the district’s teachers contract (e.g., health benefits, life insurance).

**RECOMMENDATION: Clarify Subsection (e) (6), School Administrator Supplemental or Duplicative Benefits**, which prohibit inclusion of benefits that supplement or duplicate those that are available by law, under an existing group plan, or by other means.

**RATIONALE:** Much confusion exists over whether benefit and employee contribution levels in contracts for superintendents, assistant superintendents and school business administrators could be greater than those for other school district employees. Issues have arisen over the level of health coverage (single v. family, prescription, dental, vision) and the level of contributions. County office responses to these issues in the administrator contract approval process have been inconsistent.

**RECOMMENDATION: Revise Subsection (e) (7), Compensation for Accumulated Sick Leave**, so that it references both of the statutes that addressing payment for unused sick leave.

**RATIONALE:** The current code references *N.J.S.A. 18A:30-3.5*, which limits payment for unused sick leave. It should also cite *N.J.S.A. 18A:30-3.6*, which specifically applies to new administrator hires and limits supplemental compensation for accumulated sick leave to \$15,000. All employees hired after June 2010, including school administrators, are subject to this accumulated sick leave cap.

**RECOMMENDATION: Revise Subsection (e) (9)**, so that it references a 240-day work year for 12-month employees.

**RATIONALE:** A 240-day work year is more consistent with that used for other 12-month teaching staff employees. The current code references a 260-day work year.

**RECOMMENDATION: Eliminate Subsection (e) (10), Qualitative and Quantitative Merit Goal Bonuses**

**RATIONALE:** This provision sets forth the criteria and process for implementing the qualitative and quantitative merit goal bonuses under the superintendent salary cap. The Task Force recommendation is consistent with its recommendation to eliminate the salary cap provisions.

This recommendation is consistent with the recommendations of the New Jersey Association of School Business Officials.

**RECOMMENDATION: Revise Subsection (e) (15), Additional Compensation for Graduate Degree, Tuition Reimbursement**

**RATIONALE:** This provision should reference the need to comply with statute, *N.J.S.A. 18A:6-8.5*, which sets the following criteria for tuition reimbursement:

1. *In order for a board of education to provide to an employee tuition assistance for coursework taken at an institution of higher education or additional compensation upon the acquisition of additional academic credits or completion of a degree program at an institution of higher education:*
  - a. *The institution shall be a duly authorized institution of higher education as defined in section 3 of P.L.1986, c.87 (C.18A:3-15.3);*
  - b. *The employee shall obtain approval from the superintendent of schools prior to enrollment in any course for which tuition assistance is sought. In the event that the*

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*superintendent denies the approval, the employee may appeal the denial to the board of education.*

*In the case of a superintendent, the approval shall be obtained from the board of education; and*

- c. The tuition assistance or additional compensation shall be provided only for a course or degree related to the employee's current or future job responsibilities.*
-



## **School District Fiscal Accountability**

*N.J.A.C. 6A:23A-4*

The School District Fiscal Accountability Act, *N.J.S.A. 18A:7A-54, et seq.* provides the Commissioner of Education with the authority to appoint staff, including a state monitor, to provide direct oversight of school district business operations and personnel decisions under certain conditions including, but not limited to, an adverse, disclaimer or qualified opinion in the annual audit, or a finding of a weakness in internal controls.

The regulations set forth in this section were designed to provide the structure to implement this fiscal oversight.

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### *N.J.A.C. 6A:23A-4.1* – **Additional Powers of Commissioner to Achieve Fiscal Accountability**

Sets forth the process by which the Commissioner of Education may appoint an external entity to perform a compliance audit of a school district’s general fund, the contents of the final compliance audit and the means for payment.

**RECOMMENDATION: Amend Subsection (a), Appointment of External Entity to Perform Compliance Audit, so that it contains a definitive standard of due process for the board of education.**

**RATIONALE:** Notice and an opportunity to respond should be provided to a board of education before the appointment of an external entity, which may result in a significant cost to the state and potentially to the school district. Guidance should be provided to boards of education in this area. Consideration should be given to the hearing process that is provided to boards of education when there is a deduction in state aid pursuant to section 5.1 of the Accountability Regulations (“Order to show cause to withhold or recover State aid due to excessive, unreasonable, ineffective or inefficient expenditures”). The same process may work well in this section.

**RECOMMENDATION: Revise Subsection (d), Payment for the Compliance Audit to state that school district reimbursement to the Department of Education must be related to the audit findings.**

**RATIONALE:** Subsection (d) requires the school district to reimburse the Department of Education for the “total cost” of the compliance audit where it determined that spending of state aid did not comply with law and regulation. As currently written, any finding of non-compliance—no matter how insignificant—triggers *total* cost reimbursement to the Department of Education. The amount of reimbursement should be related to the compliance audit findings. Balance, materiality and relevancy are keys. The greater the lack of compliance with statute and regulations, the greater should be the level of reimbursement.

**Additional Measures to Ensure Effective and Efficient Expenditures of Funds**

*N.J.A.C. 6A:23A-5*

The Task Force found provisions of this section to be extremely prescriptive and, in many respects, unnecessary. The reality is that the 2% tax levy cap places significant control over all school district spending, requiring a deliberate review of all costs in search of the most effective and efficient expenditure of school funds. Boards of education and school administrators should have greater flexibility and control, as they are in the best position to determine program needs and spending priorities in their schools.

***N.J.A.C. 6A:23A-5.2 – Public Relations and Professional Services; Board Policies; Efficiency***

Prohibits or limits certain non-classroom services and activities, including public relations/publicity, access to legal counsel, and use of other professional services. The Task Force recommends elimination of this section or, failing that, restating certain provisions as best practices and/or revising them to provide school boards with more flexibility.

**RECOMMENDATION: Eliminate Section (a) (2), Legal Services.**

**RATIONALE:** Identifying who may contact the board attorney, requiring that requests for legal advice be made in writing and maintained on file, establishing a process to determine whether a request warrants legal advice, keeping a detailed contact log, etc., should be determined by the client, the board of education, through policy, and not through state regulation. The requirement that other in-house resources must be consulted before calling the attorney may be detrimental programmatically and financially, and may create a legal exposure for school districts.

If this section is retained, expenditure controls should take into account regional cost differences. In addition, it should permit retainer agreements for basic legal services, a process that can be extremely cost-effective for school districts.

This recommendation is consistent with those the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

**RECOMMENDATION: Eliminate Section (c), Production and Distribution of School District Publications, and Section (d), Community Distribution of Materials, Prior to a School Election – Executive County Superintendent Review**

**RATIONALE:** It is difficult to imagine better examples of state micro-management of school district operations than these provisions. Section (c) prohibits the use of certain paper stock and inks in school district publications. Section (d) states that, within 90 days of a school election, the school district may not distribute any publication that contains a board member's picture to the community at large via regular mail, bulk mail, website postings or other electronic means. Additionally, within 60 days of a school election, any school district publication, whether it contains pictures or not, must be reviewed by the Executive County Superintendent prior to distribution to ensure that the public funds are being expended in a reasonable and cost-effective manner.

**RECOMMENDATION: Eliminate Section (e) – Public Relations Activities**

This section prohibits various public relations activities, ranging from district-sponsored booths at conferences to community events and school opening ceremonies. If the section is not eliminated from the regulations, it should be revised to permit district sponsorship of booths at statewide conferences. These programs are valuable opportunities for school districts to share exemplary programs and services and provide education-related opportunities for students. In particular, County Vocational Technical Schools and Academies, Choice School Districts, Special Services School Districts, Educational Services Commissions and local school districts with specialized programs would benefit from such activities.

This section’s prohibition of promotional efforts to advance a particular position on school elections or referenda is supported by NJSBA. However, that restriction is already reflected in long-standing and widely known case law and is normal practice throughout the state.

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***N.J.A.C.* 6A:23A-5.4 – Violation of Public School Contracts Law**

Requires the withholding of state funds from any school district that violates a provision of the Public School Contracts Law. The amount of funds withheld is the amount of the contract awarded, except for contracts awarded under the extraordinary unspecifiable services (EUS) exception to the requirements for public advertisement and bidding services.

**RECOMMENDATION: Revise this section of the code (*N.J.A.C.* 6A:23A-5.4).**

**RATIONALE:** The penalty for a violation of the Public School Contracts Law should be proportional to the frequency, severity and materiality of the violation, not the full amount of the contract awarded, as currently stated. A more balanced approach is necessary.

This recommendation is consistent with the recommendations of the Education Transformation Task Force, the New Jersey Leadership for Educational Excellence Group and the New Jersey Association of School Business Officials.

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***N.J.A.C.* 6A:23A-5.5 – Expenditure and Internal Control Auditing**

Requires additional audits—separate from the annual audits required under state law, *N.J.S.A.* 18A:23-1—in school districts with budgets comprising 50% or greater state aid, with more frequent additional audits for those districts with state aid levels of 75% or higher.

**RECOMMENDATION: Eliminate this section of the code (*N.J.A.C.* 6A:23A-5.5)**

**RATIONALE:** The provision is unnecessary and, to the Task Force’s knowledge, has not been implemented within the timeframe indicated in the code. The cost of these state-required additional audits would be completely borne by the school district. If implemented, it would pose an undue cost burden on school districts, particularly those least able to pay. Because school districts are already subject to NJQSAC review (state monitoring), annual audits and Statements of Assurance, this provision is redundant.

Whether the current regulations have produced significant findings in these districts is unknown. To the best of the Task Force’s knowledge, none of these additional audits have actually been done. If the code provision is not currently operational, why keep it?

This recommendation is consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

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**N.J.A.C. 6A:23A-5.8 – Board of Education Expenditures for Non-Employee Activities. Meals and Refreshments**

Establishes allowable and prohibited expenditures by boards of education for various school related activities, including meals and refreshments at school district events.

**RECOMMENDATION: Amend this section (N.J.A.C. 6A:23A-5.8) to allow for reasonable expenditures for staff recognition events (e.g., breakfast on back-to-school day).**

**RATIONALE:** School district expenditures based on limits set forth in state travel regulations or Office of Management and Budget circulars would be reasonable and not excessive in any way. In addition, even if reasonable expenditures were permitted, nothing would prevent a school district from continuing what has become a common practice: having a vendor or the local teachers’ association donate the refreshments in return for the ability to display signage or make a statement regarding the donation.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

In the NJSBA Task Force survey, more than half of the respondents found that restricting district expenditures on meals and refreshments for staff was considered “detrimental” or “somewhat detrimental.” Less than one quarter of the respondents considered the restriction “beneficial.” The query on this provision of the Accountability Regulations prompted 89 comments from respondents, including the following:

*“There is no good reason why modest refreshments should not be able to be provided at all meetings. Why should administrative time be spent looking for donors?”*

– Board President

*“The amount of money spent on these items had virtually no budgetary impact. However, the fact that they cannot be done is disgraceful and is permitted in all other businesses – private and public.”*

– Board President

*“As superintendent, I currently take money out of my own pocket in order to provide staff with a ‘Back to School’ luncheon. Total elimination of these activities has a detrimental effect on culture building, morale, and makes the schedule of professional development days challenging.”*

– Superintendent

*“This should be a local decision. Some light refreshments are a simple morale booster. Currently administrators bear these expenses personally to boost morale or just because it is the appropriate thing to do.”*

– School Business Administrator

## Conditions for Receipt of State Aid

N.J.A.C. 6A:23A-6

This section requires compliance with certain financial standards, policy requirements and operational controls as conditions for receiving state aid.

### N.J.A.C. 6A:23A-6.2 – Nepotism Policy

Requires that every school district have a nepotism policy that places restrictions on the hiring of relatives of the chief school administrator and board of education members; limits administrator supervision of relatives; and limits board of education and school administrator participation in collective negotiations when a relative receives the benefit of the in-district contract or when an immediate family member is working in another school district and receives the benefit of the contract from a similar statewide union with which the board of education is negotiating. These restrictions were originally part of the Commissioner's Abbott Regulations; they became applicable to all school districts through the Accountability Regulations in 2008.

**RECOMMENDATION: Eliminate this requirement (N.J.A.C. 6A:23A-6.2); the New Jersey School Ethics Act and other guidance documents provide sufficient direction.**

**RATIONALE:** In addition to the School Ethics Act, the Code of Ethics for School Board Members and policy models in NJSBA's *Critical Policy Reference Manual* provide sufficient guidance to prevent nepotism and conflicts of interest in hiring decisions.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence.

#### Revision: Definition of Relative

Should the Nepotism Regulation not be eliminated, the Task Force recommends that the Accountability Regulations definitions of "relative" and "immediate family member," set forth at N.J.A.C. 6A:23A-1.2, match the School Ethics Act definitions, rather than those in the State Conflict of Interest Law.

In enacting the School Ethics Act, the Legislature stated, "To ensure and preserve public confidence, school board members and local school administrators should have the benefit of *specific standards* to guide their conduct..." (Emphasis added)

At time of enactment, the Legislature already had in place the State Conflict of Interest Law, to govern the activities of state officials, and the Local Government Ethics Act, to govern the activities of municipal and county officials. The Legislature could have amended either of these to include school officials; it did not. Instead, it created a separate law, the School Ethics Act, to govern school officials' conduct. The actions of the Legislature should be acknowledged and respected and not clouded with definitions from other statutes that govern behavior of other public officials.

The School Ethics Act, at N.J.S.A. 18A:12-23, defines "relative" and "immediate family member" as follows:

*"Member of immediate family" means the spouse or dependent child of a school official residing in the same household;*

*"Relative" means the spouse, natural or adopted child, parent, or sibling of a school official;*

These definitions should be incorporated into the Accountability Regulations.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence.

*Revision: Out-of-District Conflicts*

Additionally, the Task Force recommends that the school district boundary should be line of demarcation for conflicts, particularly in collective negotiations. NJSBA has had policy on the matter since 1994:

*The NJSBA believes that board members and school administrators should be authorized to fully participate in the collective negotiation process where their conflict is limited to an out-of-district union affiliation.*

As such, the Task Force recommends that Section (a) (6) be eliminated as it pertains to out-of-district same statewide union affiliation conflicts in negotiations.

*Revision: In-District Conflicts*

For in-district conflicts, the NJSBA believes that the preclusion on negotiations participation should be limited to in-household conflicts. NJSBA long-standing policy (1994) states:

*The NJSBA believes that board members and school administrators should be precluded from participation in the collective negotiation process when they have immediate family members employed in the district in the bargaining unit in question.*

Therefore, the Task Force recommends that Section (a) (5) be amended to limit the collective negotiations participation exclusion to “immediate family members” who work in the school district, and not to the more expansive “relatives.”

This recommendation is consistent with that of New Jersey Leadership for Educational Excellence.

*Revision: Per Diem Substitute and Student Employee Exception*

Section (b) of *N.J.A.C. 6A:23A-6.2* states, “A school district or county vocational school district may exclude per diem substitutes and student employees from its board nepotism policy.”

The Task Force recommends that this exception to nepotism policy be eliminated. While the Task Force acknowledges that it is ultimately a matter of local control, it sees no reason for the exception.

*Task Force Survey*

The following comment, from the Task Force Survey, addresses the problem posed by the current expansive definition of out-of-district conflict:

*“This is the BIGGEST problem in the regulations, along with how the nepotism cases are construed. A statutory fix may be required. Right now our BA and our CSA are both ‘conflicted out’ from participating in negotiations. There is no one at the table from administration who has an understanding of the operational ramifications of any decision. There is no way a superintendent or BA is going to be influenced because his or her spouse may be a union member in some other district.”*

– Board President



**School District Travel Policies and Procedures**

*N.J.A.C. 6A:23A-7*

This section requires boards of education to establish and implement policy and procedures pertaining to travel expenditures for its employees and school board members that are in accordance with provisions of the 2007 School District Accountability Act, codified at of *N.J.S.A. 18A:11-12*, and various Office of Management and Budget circulars. These policies and procedures shall ensure that all travel by employees and board members is educationally necessary and fiscally prudent. The statute sets forth numerous standards to be included in school district policy and procedures.

The Task Force found many of these requirements to be overly prescriptive and unnecessary, given the 2% tax levy cap and its impact on school district spending. (This finding is consistent with that of the Education Transformation Task Force.)

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*N.J.A.C. 6A:23A-7.3* – **Maximum Travel Budget**

Requires a school board to annually establish a maximum travel expenditure amount for school district staff and officials. It also sets maximum annual travel amounts per employee for “regular school business travel” and a maximum individual registration fee for programs for employees and board members. The section also includes a definition of “regular school business travel.”

**RECOMMENDATION: Revise this section to include a maximum annual dollar amount per board member for regular school business travel.**

**RATIONALE:** Subparagraph (b) (1) of this section includes a maximum dollar amount for employees’ regular school business travel. However, board members must also attend training and meetings on behalf of the school district. The travel regulations should recognize this fact and include a maximum annual dollar amount per board member for travel and professional development, for which additional board approval is not required.

In addition, the maximum amount per employee and per board member should be set at \$3,000 and adjusted annually for inflation through a factor such as the Consumer Price Index. The current maximum, \$1,500, was set almost ten years ago.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

**RECOMMENDATION: Increase the maximum “in-state” registration fee for in-state professional development for which board of education approval is not required.**

**RATIONALE:** The current maximum registration fee for in-state professional development, \$150, was set almost ten years ago. It should be increased to \$300 for activities included in the definition of “regular business travel,” and adjusted annually for inflation through a factor such as the Consumer Price Index.

This recommendation is consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.



*N.J.A.C.* 6A:23A-7.4 – **Travel Approval Procedures**

Prescribes the approval processes for board member and staff travel, including the board of education’s and superintendent’s roles in the approval process, conditions for pre-approval of travel, and restrictions on post-approval of travel in unforeseen situations.

**RECOMMENDATION: Revise the regulations to allow post-event approval for board member attendance at conferences, training events and programs, within certain established parameters.**

**RATIONALE:** On occasion, a board member may become aware of a valuable program when there is no board of education meeting scheduled in time to obtain pre-approval. Establishing a maximum dollar amount for board member travel, as recommended by the Task Force in its analysis of *N.J.A.C.* 6A:23A-7.3 above, would assist in this area. However, the Task Force believes that allowing post-event approval of board member travel is still necessary.

**RECOMMENDATION: Revise the prohibition against post-event approval for conferences, training events and programs in unforeseen situations, as stated in Subparagraph (e) (3).**

**RATIONALE:** If post-event approval of such travel is not generally permitted under certain established parameters, then the regulations should allow it as an emergency situation, subject to Executive County Superintendent approval.

**RECOMMENDATION: Revise the regulations so that, in regard to the need for superintendent approval, there is a distinction between employee and board member travel.**

**RATIONALE:** The superintendent, as an employee of the school board, should not be placed in the position of approving board member travel. Board member travel should be subject to board of education approval within the pre-event and post-event parameters recommended by the Task Force.

The following comments, from the Task Force Survey, address the current approval process:

*“Board members who volunteer their time have been denied the ability to participate in a class because they weren’t able to get pre-event approval.”*

– Board President

*“Extra paperwork, never a problem in district. Again, a broad stroke to address a problem in a few places.”*

– Superintendent

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*N.J.A.C.* 6A:23A-7.8 – **Prohibited Travel Reimbursement**

Prohibits or restricts travel reimbursement based upon type of event and type of expenditure.

**RECOMMENDATION: Amend this section so that it clearly permits reimbursement of board member training related to board of education responsibilities.**

**RATIONALE:** As currently written, subparagraph (a) (3) could be misinterpreted to restrict board member participation in programs addressing their responsibilities in labor relations, policy, school

law and other areas because such training might not be specifically required under statute. The section should be rewritten to make it clear that reimbursement for training related to board of education responsibilities is permissible.

This recommendation is consistent with the recommendations of the New Jersey Association of School Business Officials.

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**N.J.A.C. 6A:23A-7.11 – Subsistence Allowance – Overnight Travel**

Sets criteria for the reimbursement of overnight accommodations and meals at in-state and out-of-state conferences.

**RECOMMENDATION: Eliminate the “50-mile” restriction on reimbursement for overnight travel.**

**RATIONALE:** Subparagraph (d) permits reimbursement for travel expenses only for individuals whose home-to-conference commute exceeds 50 miles. This provision is unnecessary and unfair.

Sufficient safeguards are provided by other provisions of this section. These include the necessity for the commissioner of education to grant a waiver to make a specific multi-day conference eligible for overnight travel reimbursement and the maximum reimbursement rates for overnight accommodations.

The 50-mile provision limits affected board members’ and school employees’ access to training at multi-day statewide programs. Additionally, in situations where the 50-mile limit runs through the school district, some board members can attend the conference, stay over and be reimbursed, while other board members in the same school district cannot.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

The following comment from the Task Force survey addresses this provision:

*“It is impractical for a person to drive 50 miles home and then 50 miles back several times during a 3-day workshop. The cost and value of a person’s time obviously was not considered when this regulation was enacted.”*

– School Business Administrator

**RECOMMENDATION: Eliminate the prohibition on meal reimbursement for the day prior to the conference and after check-out time on the last day.**

**RATIONALE:** If an employee or board member has an early morning event at a conference, either as a presenter or attendee, it may be safer and more efficient for him or her to arrive the night before. On the last day, check-out times vary, some as early as 11 a.m., yet conference programming may run for the full day, perhaps as late as 5 p.m. Subsistence reimbursement should be permitted in these circumstances.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

**RECOMMENDATION: Clarify subparagraph (f), which addresses permissible per diem reimbursement rates for accommodations so that it results in the most cost-effective practice.**

**RATIONALE:** The current wording does not specify if the per diem rate applies to lodging per person or per room. A per person rule would encourage room-sharing and save school districts money.

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***N.J.A.C. 6A:23A-7.12 – Meal Allowance – Special Conditions – and Allowable Incidental Travel Expenditures***

Establishes criteria, including reimbursement levels, for meals consumed during in-state and out-of-state travel, as well as in-district during events such as board meetings.

**RECOMMENDATION: Eliminate the prohibition on lunch reimbursement on in-service days for staff members, who travel from other parts of the school district (Subsection (c) (3)).**

**RATIONALE:** Many school districts do not provide refreshments at in-service days. The regulations should permit reimbursement for lunch at modest rates in accordance with meal allowances in the Office of Management and Budget circular.

This recommendation is consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

**RECOMMENDATION: Eliminate the requirement that leftover food from board meetings be donated to charitable shelters since few such facilities accept left-over food.**

**RATIONALE:** While noble in concept, the requirement, in Subsection (f) (5), is not practicable. Donating leftover food to homeless shelters is difficult, if not impossible. Such facilities often will not accept food unless it is untouched and the packaging has not been opened.

This recommendation is consistent with the recommendations of the Education Transformation Task Force, New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

## Annual Budget Development and Submission

N.J.A. C. 6A:23A-8

This section sets out procedures for budget development and reporting, including restrictions on administrative spending.

### N.J.A.C. 6A:23A-8.3 Administrative Cost Limits

Establishes regional (north, central and south) *per pupil* administrative spending growth limits equal to the greater of 2.5 percent or the consumer price index

**RECOMMENDATION: Eliminate the Administrative Cost limits from the regulations because they are unnecessary and constrain local decision-making concerning the allocation of resources.**

**RATIONALE:** The administrative cost limits, which reflect statute (N.J.S.A. 18A:7F-5), are unnecessary because of other state-level controls that are in place and budgeting practice among New Jersey’s school districts.

The 2% Tax Levy Cap provides a significant control on school district spending, requiring a deliberate review of all costs in search of the most effective and efficient expenditure of school funds. Boards of education and school administrators are in the best position to determine program needs and spending priorities within the 2% Tax Levy Cap.

Significantly, the U.S. Department of Education’s National Center for Education Statistics reports that New Jersey public schools spend a smaller percentage of their budgets on school and district administration than do the vast majority of states.

**RECOMMENDATION: Clearly define the components used in the administrative cost calculation and delineate between instruction-related costs and operational costs.**

**RATIONALE:** As long as state law includes administrative spending growth limits, regulation should clearly define the component used in the calculation. Administrative expenditures considered operational, as well as those needed to carry out state requirements, should not be part of the cost limits because they are outside of the board’s control.

In the Task Force Survey, the provisions setting Administrative Cost Limits prompted the second-strongest reaction, with more than two-thirds of respondents stating that it has been detrimental or somewhat detrimental. In addition, 100 comments were made on this regulation including:

*“Irrelevant because the ‘admin costs’ include copiers, school main office secretaries, legal fees, auditor etc. It is literally a useless definition and therefore invalid measure of expenses. Finally it’s made worse and more ridiculous when enrollment slowly declines, and your per-pupil costs go up. This is basic math and yet no one seems to understand that you cannot fire a principal if you lose 25 kids.”*

– School Business Administrator

*“A cap within a cap limits any flexibility. This must go.”*

– Superintendent

***N.J.S.A. 6A:23A-8.7 – Tuition Rate Adjustment by Districts Receiving Preschool Expansion or Educational Opportunity Aid in the 2007-08 School Year***

Phases in adjustments for certain types of state aid.

**RECOMMENDATION: Eliminate this provision** (*N.J.S.A. 6A:23A-8.7*).

**RATIONALE:** The time frame for this code provision has expired and is no longer necessary. The phase-in from the Abbott Parity Remedy, including Abbott Parity Aid, Educational Opportunity Aid and Discretionary Educational Opportunity Aid, was completed in the 2011-2012 school year.

## **Executive County Superintendent Budget Review**

*N.J.A.C. 6A:23A-9*

As part of the creation of the position of Executive County Superintendent of Schools, the Legislature expanded the duties, responsibilities and authority of the office. Statute (*N.J.S.A. 18A:7-8*) includes the following among the ECS responsibilities:

*Review all school budgets of the school districts within the county, and may, pursuant to section 5 of P.L.1996, c.138 (C.18A:7F-5), disapprove a portion of a school district's proposed budget if he determines that the district has not implemented all potential efficiencies in the administrative operations of the district or if he determines that the budget includes excessive non-instructional expenses...*

The regulations contained in this section were designed to provide the structure to implement the efficiency standards for budget review.

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### ***N.J.A.C. 6A:23A-9.3 – Efficiency Standard for Review of Administrative and Non-instructional Expenditures and Efficient Business Practices***

This section establishes “efficiency standards” related to various areas of school district operations. The standards measure administrative cost per pupil, support services per pupil, and operation/ maintenance costs per pupil. They also apply ratios of faculty to administrative personnel, students to educational support personnel, and employment of custodians for every 17,500 square feet of building space.

#### **RECOMMENDATION: Eliminate references to Commissioner of Education cap waivers from Subsection (a).**

**RATIONALE:** Commissioner of Education cap waivers were eliminated by the 2010 statute creating the 2% Tax Levy Cap.

**RECOMMENDATION: Review the list of efficient administrative and non-instructional costs set forth in subparagraph (c) for relevancy and practicality.** The review should include the following among other factors:

- Use of the state median, or average, as a benchmark in several areas;
- The standard of one custodian or janitor for every 17,500 square feet of building space;
- Overtime pay at 10% or less of regular wages;
- Incentives for employees to waive health coverage;
- Placement of vacant positions budgeted at no more than step one of the salary guide;
- Use of teacher aides not required by law, and
- Self-sufficiency of food service operations.

In addition, regional cost factors should be considered in the review.

**RATIONALE:** This section was originally part of the Commissioner’s “Abbott Regulations.” If it is retained, it should be restructured to reflect current practice.

This recommendation is consistent with the recommendations of the Education Transformation Task Force and the New Jersey Association of School Business Officials.

**RECOMMENDATION: Eliminate the restriction in subparagraph (c) (14), which restricts employment of public relations personnel to half time.**

**RATIONALE:** A full-time public relations professional may be cost-effective and beneficial to county vocational-technical schools, academies, choice school districts, special services school districts, educational services commissions and local school districts with specialized programs. Local school districts are in the best position to determine the resources needed to implement their communications/community relations responsibilities within the constraints of the 2% tax levy cap.

In the Task Force survey, several respondents expressed concern about this provision.

*“Public relations IS a component of local government. Communication is necessary for input and relating messages. We know from teaching that multiple forms of communication are necessary for learners; it is not different for adults.”*

– School Business Administrator

*“Another oversight measure that takes local control from the board.”*

– Superintendent

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**N.J.A.C. 6A:23A-9.5 – Commissioner to Ensure Achievement of the New Jersey Student Learning Standards; Corrective Actions**

This provision is part of a section of code that sets out actions the commissioner of education may take if one or more schools in a district do not achieve the New Jersey Student Learning Standards as evidenced by statewide assessment methods or other statutory or regulatory methods of evaluation.

**RECOMMENDATION: Eliminate the following subparagraph, (b) (6), which lists commissioner of education review of future collective bargaining agreements as a possible corrective action:**

*“Reviewing of the terms of future collective bargaining agreements prior to final approval by the district board of education and an assessment of the impact of such terms on the district's budget, education program and the local property tax levy.”*

**RATIONALE:** This provision is unduly prescriptive and intrudes on local governance of public education. The collective bargaining process is a mutual determination of terms and conditions of employment between the school board’s and the union’s bargaining teams. The parties are in the best position to determine what is needed in the school district from a labor relations perspective. That determination should not be subject to the review and approval of the commissioner of education.



## **Spending Growth Limitation**

*N.J.A.C. 6A:23A-10*

This provision was designed to implement the 2007 4% Property Tax Cap law which, in 2010, was replaced by the 2% Tax Levy Cap. It has never been revised to reflect the new cap law.

### ***N.J.A.C. 6A:23A-10.1 – Moratorium on Spending Growth Limitation and Municipal Governing Body Authority to Determine Amount to Be Raised upon Voter Rejection of Separate Proposal***

This section called for the commissioner of education to conduct a four-year study of the impact of the former 4% property tax and to make a recommendation on its continuation.

**RECOMMENDATION: Eliminate this provision** (*N.J.A.C. 6A:23A-10.1*).

**RATIONALE:** The period of the moratorium was 2008-2009 through the 2011-2012. The statute creating the 2% Tax Levy Cap made the property tax cap permanent, rendering this provision unnecessary.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence.

### ***N.J.A.C. 6A:23A-10.2 – Adjustments to Spending Growth Limitation***

This section implements commissioner spending growth limitation adjustments under the previous school funding law.

**RECOMMENDATION: Eliminate this provision** (*N.J.A.C. 6A:23A-10.2*).

**RATIONALE:** The Commissioner spending growth limitation adjustments – capital outlay, pupil transportation, changes in enrollment, special education costs in excess of \$40,000, receiving school tuition and opening a new school facility – no longer exist.

This recommendation is consistent with the recommendations of the New Jersey Leadership for Educational Excellence Group.

### ***N.J.A.C. 6A:23A-10.3. Unused spending authority (Banked cap)***

This provision addresses the ability of school districts that did not budget up to their cap in one year to apply the unused (“banked”) cap in either of the next two succeeding budget years.

**RECOMMENDATION: Revise this provision so that it matches the timeframe in current statute, *N.J.S.A. 18A:7F-39(c)*, that is, “any one of the next three succeeding budget years.”**

**RATIONALE:** While the likelihood, given the 2% tax levy cap, of banked cap use is small, the code should be consistent with statute.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

## **Tax Levy Growth Limitation**

*N.J.A.C. 6A:23A-11*

This code provision was designed to implement the 2007 4% Property Tax Cap law, codified at *N.J.S.A. 18A:7F-37 et seq.* It was not revised after enactment of the 2% Property Tax Cap law in 2010.

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### ***N.J.A.C. 6A:23A-11.1* – Adjusted Tax Levy Growth Limitation**

Prescribes the calculation of adjustments to a district’s tax levy growth limitation under the previous statute, which created a 4% cap.

**RECOMMENDATION: Eliminate references to cap adjustments for reductions in total unrestricted state aid and to “Commissioner waivers.”**

**RATIONALE:** These concepts do not exist under the current cap law.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

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### ***N.J.A.C. 6A:23A-11.3* – Adjustment for a Reduction in Total Unrestricted State Aid**

Prescribes method for determining a cap adjustment for state aid reduction.

**RECOMMENDATION: Eliminate this section** (*N.J.A.C. 6A:23A-11.3*).

**RATIONALE:** This adjustment no longer exists; it was repealed upon enactment of the 2% Tax Levy Cap in 2010.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence.

**Commissioner Waivers of Tax Levy Growth Limitation; Separate Voter Approval**  
*N.J.A.C. 6A:23A-12*

This code provision was designed to implement the 2007 4% Property Tax Cap law, codified at *N.J.S.A. 18A:7F-37 et seq.* It was not revised after the 2% Property Tax Cap law went into effect in 2010.

*N.J.A.C. 6A:23A-12.1 through 12.11* – **Commissioner Waivers to Tax Levy Cap**

Describes criteria for commission-granted waivers to the state’s former 4% tax levy cap.

**RECOMMENDATION: Eliminate the following sub-sections, which address various types of commissioner waivers:**

12.1 – <b>Waivers Subject to Commissioner Authorization</b>	12.6 – <b>Increases in Insurance Costs</b>
12.1 – <b>Failure to Meet CCCS</b> (state standards)	12.7 – <b>Increases in Transportation Costs to Service Hazardous Routes</b>
12.3 – <b>Energy Cost Increase</b>	12.8 – <b>Increases in Special Education Costs</b>
12.4 – <b>Capital Outlay Cost Increases</b>	12.9 – <b>Increases in Tuition Costs</b>
12.5 – <b>Use of Non-recurring General Fund Revenues</b>	12.10 – <b>Costs Associated with Opening a New School Facility</b>
12.11 – <b>Service Essential to Health, Safety and Welfare of Children</b>	

**RATIONALE:** These commissioner waivers were repealed with the enactment of the 2% Property Tax Cap Law.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

*N.J.A.C. 6A:23A-12.13* – **Voter Authorization to Exceed Tax Levy Limitation; Separate Proposal(s)**

Addresses composition and submission of ballot questions asking voters to approve spending above the tax levy cap.

**RECOMMENDATION: Revise this section to reflect the fact that a simple majority of voters is necessary to approve separate ballot questions.**

**RATIONALE:** In 2010, statute eliminated a previous requirement that an affirmative vote by 60% of participating voters is needed to approve ballot questions to exceed the tax levy cap. Currently, a simple majority is needed. This code provision should reflect current statute.

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

**RECOMMENDATION: Review this section to address the differences between approval of separate ballot proposals in April school election districts and November school election districts and the subsequent impact on budget development and implementation.**

RATIONALE: Over 90% of the state's school district conduct elections in November, an option not available in 2008 when the Accountability Regulations were implemented. The timeframe for implementing approved separate questions differs between April and November election districts.

This recommendation is consistent with the recommendations of the New Jersey Leadership for Educational Excellence Group and the New Jersey Association of School Business Officials.

## **Reserve Accounts**

*N.J.A.C. 6A:23A-14*

**This section addresses the establishment and use of capital reserve accounts.**

**RECOMMENDATION:** Amend the regulations to allow school districts to transfer funds from and between reserve accounts in order to offset fiscal emergencies, *upon approval of the Executive County Superintendent.*

**RATIONALE:** Access to reserve accounts in emergency situations should be allowed with ECS approval and not require placement of a separate question before voters.

For example, during the past year, a school district incurred a budget deficit due to a significant increase in tuition charges from its receiving school district. Even though the school district had a significant amount of money in its capital reserve account and could have covered the deficit, it had to go out to the voters with a separate question to authorize the transfer.

## **State Aid Calculation and Aid Adjustment for Charter Schools**

*N.J.A.C. 6A:23A-15*

This section establishes processes for determining the funding of charter schools. Charter schools receive funding on *per pupil* basis, provided through their students’ districts of residence.

Under state law, *N.J.S.A. 18A:36A-12*, funding for charter schools is provided as follows:

The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to 90% of the sum of the budget year equalization aid per pupil and the pre-budget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation. In addition, the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student and a percentage of the district's special education categorical aid equal to the percentage of the district's special education students enrolled in the charter school and, if applicable, 100% of preschool education aid. The district of residence shall also pay directly to the charter school any federal funds attributable to the student.

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### *N.J.A.C. 6A:23A-15.1* – **Definitions**

**RECOMMENDATION:** Revise definition of “projected enrollment” to establish a better mechanism to forecast first-year enrollment in new charter schools, particularly blended charters.

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### *N.J.A.C. 6A:23A-15.3* – **Enrollment Counts, Payment Process and Aid Adjustment**

**RECOMMENDATION:** Add a second student count date to address the movement of students to and from the charter school.

**RATIONALE:** A second child count date would enable funding to follow the student throughout the academic year, rather than waiting for an end-of-year adjustment.

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### *N.J.A.C. 6A:23A-15.4* – **Procedures for Private School Placements by Charter Schools**

**RECOMMENDATION:** Amend this section to allow the local school district to conduct a needs assessment when a charter school proposes a student placement in a private day or residential program. The school district should also be able to consult with its IEP team prior to provision of notice to the parent.

**Tuition Public Schools**

*N.J.A.C. 6A:23A-17*

This subchapter establishes procedures for determining tuition in sending-receiving relationships, as well as tuition rates for county vocational-technical schools and county special services districts *N.J.A.C. 6A:23A-17.7* .

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*N.J.A.C. 6A:23A-17.1* – **Method of Determining Tuition Rates for Regular Public Schools**

*N.J.A.C. 6A:23A-17.2* – **Method of Determining Tuition Rates In a New District Board Of Education**

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

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

**RECOMMENDATION: Amend the regulations so that tuition increases have an annual cap equal to the sending school district’s tax levy cap.**

**RECOMMENDATION: Revise the definition of “Average daily enrollment” so that it reflects the actual practice used in calculating average daily enrollment.** Currently, average daily enrollment is calculated through a budget language process, not through the process set out in code.

**RECOMMENDATION: Revise the code so that a local school district is not required to pay tuition to vocational-technical schools whose programs are duplicative and redundant to those currently available in the district.**



**Tuition for Private Schools for Students with Disabilities**

*N.J.A.C. 6A:23A-18*

This section establishes a process for determining tuition paid by public school districts whose students are placed in private schools for the disabled.

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*N.J.A.C. 6A:23A-18.2* – **Tuition Rate Procedures**

**RECOMMENDATION: Amend the regulations so that tuition increases for private schools for student with disabilities have an annual cap equal to the 2% tax levy cap for public school districts.**

This recommendation is consistent with the recommendations of New Jersey Leadership for Educational Excellence and the New Jersey Association of School Business Officials.

The Task Force survey prompted several comments on this regulation, including the following:

*“Again, the costs are still so high that our district is dying a slow death. We are being bombarded with special needs students with no way to pay for their care. Our district will likely collapse in the next 5 years because of special education costs.”*

– Board President

*“Private schools should be held to the same “cap” as public schools!”*

– School Business Administrator

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*N.J.A.C. 6A:23A-18.13* – **Fiscal Monitoring of Approved Private Schools for Students with Disabilities and Corrective Action Plans**

**RECOMMENDATION: Amend subparagraph (a) so that fiscal monitoring of private schools for students with disabilities occurs every three years, not once every six years.**

**RECOMMENDATION: Amend subparagraph (c) to require that the post-monitoring reports go to the sending districts as well as to the county superintendent and auditor.**

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**Financial Operation of Charter Schools**

*N.J.A.C. 6A:23A-22*

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***N.J.A.C. 6A:23A- 22.6 – Public Relations and Professional Services; Board Policies; Efficiency***

Prohibits or limits certain non-classroom services and activities, including public relations/publicity, access to legal counsel, and use of other professional services. The Task Force recommends elimination of most sections or, failing that, restating certain provisions as best practices and/or revising them to provide charter schools with more flexibility.

**RECOMMENDATION: Eliminate Section (a) (3,4,5,6), Legal Services.**

**RATIONALE:** Identifying who may contact the charter school's legal counsel, requiring that requests for legal advice be made in writing and maintained on file, establishing a process to determine whether a request warrants legal advice, keeping a detailed contact log, etc., should be determined by the client, the board of trustees, through policy, and not through state regulation. The requirement that other in-house resources must be consulted before calling the attorney may be detrimental programmatically and financially, and may create a legal exposure for the school.

If this section is retained, expenditure controls should take into account regional cost differences. In addition, it should permit retainer agreements for basic legal services, a process that can be extremely cost effective for schools.

**RECOMMENDATION: Revise Section (a) (6) iii, Public Relations Activities, Booths at Statewide Conferences to permit public relations activities such as booths at statewide conferences.**

**RATIONALE:** The conferences can serve as valuable opportunities for charter schools to demonstrate exemplary programs and services and demonstrate opportunities provided to their students. This is particularly relevant for charter schools with specialized programs.

**RECOMMENDATION: Eliminate the restriction in paragraph (a), which restricts employment of public relations personnel to half time.**

**RATIONALE:** A full-time public relations professional may be cost-effective and beneficial to a charter school with specialized programs, enabling the school to market its services.

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***N.J.A.C. 6A:23A-22.9 – Board of Trustees Expenditures for Non-Employee Activities, Meals and Refreshments***

This section sets forth allowable and prohibited expenditures by boards of trustees for various school related activities, including meals and refreshments at charter school events.

**RECOMMENDATION: Amend this section to allow for reasonable expenditures for staff recognition events (e.g., breakfast on back-to-school day).**

**RATIONALE:** Dollar limits for meals included in travel regulations and Office of Management and Budget circulars are reasonable and would not represent an excessive expenditure. These limits should be considered for inclusion in a revision of this section. In addition, nothing would prevent a charter school from continuing what has become a common practice: having a vendor or the teachers' association donate the refreshments at these events in return for the ability to display signage or make a statement regarding its donation.

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

This section requires every charter school to have a nepotism policy that restricts the hiring of relatives of the lead person and board of trustee members, limits administrator supervision of trustee relatives, limits board of trustees and administrator participation in collective negotiations when a relative receives the benefit of the in-district contract or when an immediate family member is working in another school or school district and receives the benefit of the contract from a similar statewide union with which the board of trustees is negotiating.

These restrictions were originally part of the Commissioner's Abbott Regulations and became applicable to all school districts and charter schools through the Accountability Regulations in 2008.

**RECOMMENDATION: Eliminate this requirement;** the New Jersey School Ethics Act and other guidance documents provide sufficient direction.

**RATIONALE:** In addition to the School Ethics Act, the Code of Ethics for School Board Members and policy models in NJSBA's *Charter School Critical Policy Reference Manual* provide sufficient guidance to prevent nepotism and conflicts of interest in hiring decisions.

#### Revision: Definition of Relative

Should the Nepotism Regulation not be eliminated, the Task Force recommends that the Accountability Regulations definitions of "relative" and "immediate family member," set forth at *N.J.A.C. 6A:23A-1.2*, match the School Ethics Act definitions, rather than those in the State Conflict of Interest Law.

In enacting the School Ethics Act, the Legislature stated, "To ensure and preserve public confidence, school board members and local school administrators should have the benefit of *specific standards* to guide their conduct..." (Emphasis added)

At time of enactment, the Legislature already had in place the State Conflict of Interest Law, to govern the activities of state officers, and the Local Government Ethics Act, to govern the activities of municipal and county officers. The Legislature could have amended either of these to include school officials; it did not. Instead, it carved out a separate Act, the School Ethics Act, to govern school official conduct. The actions of the Legislature should be acknowledged and respected and not clouded with definitions from other statutes that govern behavior of other public officials.

The School Ethics Act, at *N.J.S.A. 18A:12-23*, defines "relative" and "immediate family member" as follows:

*"Member of immediate family" means the spouse or dependent child of a school official residing in the same household;*

*"Relative" means the spouse, natural or adopted child, parent, or sibling of a school official;*

These definitions should be incorporated into the Accountability Regulations.

*Revision: Out-of-District Conflicts*

Additionally, the Task Force recommends that the school district boundary should be line of demarcation for conflicts, particularly in collective negotiations. NJSBA has had policy on the matter since 1994:

*The NJSBA believes that board members and school administrators should be authorized to fully participate in the collective negotiation process where their conflict is limited to an out-of-district union affiliation.*

As such, the Task Force recommends that Section (a) (6) be eliminated as it pertains to out-of-district same statewide union affiliation conflicts in negotiations.

*Revision: Per Diem Substitute and Student Employee Exception*

Section (b) of *N.J.A.C. 6A:23A-22.10* states, "A charter school may exclude per diem substitutes and student employees from its board nepotism policy."

The Task Force recommends that this exception to nepotism policy be eliminated. While the Task Force acknowledges that it is ultimately a matter of local control, it sees no reason for the exception.