



APPENDIX A

History of the Accountability Regulations

In July 2008, the Legislature enacted P.L. 2008, Chapter 37, which established the Commissioner of Education as the rule-making authority over several recently enacted school district accountability statutes. These statutes included:

- *N.J.S.A. 18A:7A-54, et seq.*, the School District Fiscal Accountability Act, which authorized the appointment of a state monitor to oversee school district business operations and personnel decisions when certain conditions were met.
- *N.J.S.A. 18:17-20.2a*, which governs early termination of superintendent contracts.
- *N.J.S.A. 18A:6-38.1*, which governs revocation of certificates of superintendents, assistant superintendents and school business administrators.
- *N.J.S.A. 18A:7F-37, et al.*, which governed the 4% property tax cap, which was in place at that time.
- *N.J.S.A. 18A:7-11, et al.*, which governs the CORE proposals, including the Uniform Shared Services and Consolidation Act, User-Friendly Budgets and the Executive County Superintendent of Schools.
- *N.J.S.A. 18A:11-13, et al.*, which governs school district travel regulations.
- *N.J.S.A. 18A:55-3, et al.*, which governs the efficiency standards needed to be met as a condition of receipt of state aid.
- *N.J.S.A. 18A:22-8c*, which governs budget and fiscal procedures including budget contents and user-friendly budgets.

The authorizing statutes uniformly stated that:

Notwithstanding any provision of P.L. 1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Education may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as the commissioner deems necessary to effectuate the budgeting and fiscal procedures under chapter 22 of Title 18A of the New Jersey Statutes which shall be effective for a period not to exceed 12 months following the effective date of P.L. 2008, c.37 (C.18A:11-13 et al.). The regulations shall thereafter be amended, adopted, or readopted by the commissioner in accordance with the provisions of P.L. 1968, c.410 (C.52:14B-1 et seq.); and the commissioner shall, at a minimum, hold at least one public hearing in each of the north, central, and southern regions of the State within 60 days of the public notice of any regulations proposed by the commissioner to be amended, adopted, or readopted pursuant to that act.

These Commissioner regulations, which became known as the Accountability Regulations, were unique in that they bypassed the traditional State Board regulation adoption process, placing significant power and authority in the hands of the Commissioner of Education. Even amendments and re-adoption of these regulations remained in the hands of the Commissioner, although the procedures of the Administrative Procedures Act, *N.J.S.A. 52:14B-1, et seq.*, still controlled, as well as the requirement for regional hearings.

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On July 1, 2008, in accordance with the provisions and requirements of *P.L. 2007, c. 63* and *P.L. 2007, c. 260*, the Department of Education promulgated the first of two phases of emergency rules as *N.J.A.C. 6A:23A-1* through 15 under the Commissioner's rulemaking authority and the procedures for special adoption. Many of the subchapters in the first phase of emergency rulemaking were reserved for the second phase to enable additional opportunity for discussion, review and comment.

The second phase was filed with the Office of Administrative Law on December 18, 2008. This included provisions and requirements of *P.L. 2007, c. 53* and *c. 62*, as well as additional provisions under *P.L. 2007, c. 63* and *c. 260*. These special adopted rules expired on December 28, 2009. In accordance with the requirements of *P.L. 2008, c. 37*, the Commissioner held three regional hearings for public discussion of the proposed readopted rules.

2009 Re-adoption The Accountability Regulations, codified at *N.J.A.C. 6A:23A-1* through 15, were readopted by Commissioner Lucille Davy on November 25, 2009.

The Department of Education reviewed, amended and readopted the finance and business services rules at *N.J.A.C. 6A:23*, which continued under the State Board of Education's rulemaking authority, to ensure consistency and compliance with the Commissioner Accountability Regulations set forth at *N.J.A.C. 6A:23A-1* through 15. The Department of Education determined to recodify the amended finance and business services rules as Subchapters 16 through 22 in the new Financial Accountability, Efficiency and Budgeting chapter at *N.J.A.C. 6A:23A*, so all school finance rules were in one Administrative Code chapter. The finance and business services regulations, readopted, amended and re-codified at *N.J.A.C. 6A:23-16* through 22, were adopted by the State Board of Education on November 25, 2009.

In adopting these regulations, the Commissioner of Education and the State Board of Education advised that these rules would ensure improved State monitoring, oversight and authority, and would also ensure adequate resources for district boards of education to successfully meet the State constitution's mandate for a thorough and efficient system of free education.

Procedural Update The *N.J.A.C. 6A:23A* Financial Accountability, Efficiency and Budgeting Procedures regulations, which include the original Accountability Regulations, were originally scheduled to expire on November 25, 2014. However, *P.L. 2011, c. 45*, amended *N.J.S.A. 52:14B-5.1* to extend by two years the expiration date of nearly all chapters in the *New Jersey Administrative Code* increasing the maximum expiration (or "sunset") period for a new or readopted chapter from five years to seven years. The Financial Accountability, Efficiency and Budgeting Procedures regulations, which include the original Accountability Regulations, are set to expire on November 26, 2016.

The State Board of Education has initiated the first phase of the re-adoption process, proposing the re-adoption of *N.J.A.C. 6A:23A-16* through 22, the sections over which the State Board still maintains control. The proposed re-adoption of these sections was at first discussion level on September 7, 2016.

On November 16, 2016, the New Jersey Department of Education released proposed revisions to a portion of the state's Accountability Regulations, *N.J.A.C. 6A:23A-1* through 15, including changes to the superintendent salary cap provisions. **By virtue of the filing of the proposed revisions, the current regulations, *N.J.A.C. 6A:23A*, will remain in effect for an additional 180 days beyond November 16, and will now sunset on May 24, 2017.**

As permitted under a 2008 statute, the commissioner of education, rather than the State Board of Education, has authority to readopt sections 1 through 15 of the regulations, including the superintendent salary cap.