



APPENDIX D

Education Transformation Task Force Recommendations Regarding the Accountability Regulations

In its final report, issued September 5, 2012, Governor Christie’s Education Transformation Task Force recommended 428 regulatory and 46 statutory changes designed to give teachers, principals and superintendents the autonomy they need to help all students learn and to create a culture that focuses on student outcomes rather than compliance with regulations. A significant number of the recommended changes were within the Accountability Regulations reviewed by the NJSBA’s Task Force on New Jersey’s Accountability Regulations. The following is a compilation of the Education Transformation Task Force recommendations that were considered by the NJSBA Task Force.

SUBCHAPTER 2. EXECUTIVE COUNTY SUPERINTENDENTS OF SCHOOLS

N.J.A.C § 6A:23A-2.2 School district regionalization and consolidation of services advisory committee

“[(a) Each Executive County Superintendent shall create a School District Regionalization and Consolidation of Services Advisory Committee (Advisory Committee) for the purpose of providing advice and consultation to the Executive County Superintendent on the issue of regionalization of school districts or consolidation of school district services ...]”

The Department and State Board should eliminate this regulation, which required the executive county superintendent to create a School District Regionalization and Consolidation Committee to assist in developing a district consolidation plan for the creation of regional school districts. The proposed change would eliminate this provision since the statutory timeline expired on March 15, 2010.

N.J.A.C. § 6A:23A-[2.3]2.2(a) Consolidation and sharing of services; joint and cooperative purchasing

“The [Executive County Superintendent, in consultation with the Advisory Committee,] executive county superintendent shall study the consolidation of local public school districts’ administrative services, to the extent practical. ...”

The Department and State Board should eliminate this regulation, which required the executive county superintendent to consult with the School District Regionalization and Consolidation Committee to assist in developing a district consolidation plan for the creation of regional school districts. The proposed change would eliminate this provision since the statutory timeline expired on March 15, 2010.

6A:23A-2.5 Plan for district consolidation to create regional school districts

“[(a) The Executive County Superintendent, in consultation with the Advisory Committee, shall study the consolidation of local public school districts within the county, other than county school districts and other than preschool or kindergarten through grade 12 operating school districts in the county, into one or more all purpose regional school districts ...]”

The Department and State Board should eliminate this subsection, which required the executive county superintendent to submit to the Commissioner a district consolidation plan for the creation of regional school districts. The proposed change would eliminate this provision since the statutory timeline expired on March 15, 2010.

6A:23A-2.6 Transportation efficiency study

“[(a) Each Executive County Superintendent shall complete a study of pupil transportation services in the county no later than July 12, 2009 pursuant to N.J.S.A. 18A:7F-57. The purpose of the study shall be to determine ways to provide pupil transportation services in a more cost-effective and efficient manner. The study shall be transmitted upon completion to the Commissioner and to the Legislature pursuant to N.J.S.A. 52:14-19.1. ...]”

The Department and State Board should eliminate this subsection, which required the executive county superintendent to complete a study of pupil transportation services in the county no later than July 12, 2009. The proposed change would eliminate this provision since the statutory timeline expired on that date.

6A:23A-2.7 Shared special education services

“[(a) The Executive County Superintendent shall promote and facilitate the sharing of special education services consistent with Individuals with Disabilities Education Act, P.L. 105-17, (IDEA) requirements as follows: ...]”

The Department and State Board should eliminate this subsection, which required the executive county superintendent to assess the needs of shared special education services within the consolidated districts established pursuant to N.J.S.A. § 18A:7-8. The proposed change would eliminate this provision since the statutory timeline expired on March 15, 2010.

SUBCHAPTER 3. ADMINISTRATOR AND BOARD MEMBER ACCOUNTABILITY

6A:23A-3.4 Noncompliance with GAAP, review of certification of a SBA

“The Commissioner, pursuant to N.J.S.A. 18A:6-38.3, [shall] may recommend to the State Board of Examiners that it review the certification of the school district's SBA when any school district's accounting system and financial reports are not in compliance with GAAP [within one year of March 15, 2007].”

The Department and State Board should amend this regulation, which currently provides a mandatory referral to the Board of Examiners to review the certification of any school business administrator whose financial reports are not GAAP compliant. The proposed change would replace a mandatory reporting requirement with a more permissive standard to provide flexibility to the Commissioner in addressing the potential for good-faith mistakes and errors while maintaining the option for more serious action if and when warranted. Additionally, the date provided in the original regulation is proposed for removal to establish a standard with an indefinite term.

SUBCHAPTER 4. SCHOOL DISTRICT FISCAL ACCOUNTABILITY

6A:23A-4.2 Compliance with requirements for income tax

“[SBAs or any other person designated by the board of education] The school district auditor shall certify to the Federal Department of the Treasury on a form provided by the Department of the Treasury that all documentation prepared for income-tax related purposes, in regard to superintendents, assistant superintendents[,] and SBAs, complies fully with the requirements of Federal and State laws and regulations regarding the types of compensation [which] that are required to be reported.”

The Department and State Board should revise this regulation, which addresses the certification requirement relating to IRS filings. The proposed amendment would place this obligation on outside auditors rather than district employees. This change would eliminate the potential for a conflict of interest if the business administrator reviewed his or her own information and the information for his or her supervisor. By eliminating the possibility of self-oversight, this change would promote accuracy and full disclosure while reducing the potential for conflicts of interest and minimizing the possibility of fraud.

SUBCHAPTER 5. ADDITIONAL MEASURES TO ENSURE EFFECTIVE AND EFFICIENT EXPENDITURES OF DISTRICT FUNDS

6A:23A-5.2(a)(3) Public relations and professional services; board policies; efficiency

“Districts with legal costs that exceed 130 percent of the Statewide average per pupil amount should establish the following procedures and, if not established, provide evidence that such procedures would not result in a reduction of costs.”

The Department and State Board should seek to codify this regulation. In light of the 2 percent property tax cap, which properly constrains increases in aggregate districts spending, district administrators should have greater flexibility with regard to the nature of their expenditures.

6A:23A-5.2(c) Public relations and professional services; board policies; efficiency

“[School district and county vocational school district publications shall be produced and distributed in the most cost-efficient manner possible that will enable the district to inform and educate the target community. The use of expensive materials or production techniques where

lower cost methods are available and appropriate, such as the use of multi-color glossy publications instead of suitable, less expensive alternatives, is prohibited.]”

The Department and State Board should eliminate this overly prescriptive regulation. The Department should not be in the business of determining what kinds of paper districts use. In light of the 2 percent property tax cap, which properly constrains increases in aggregate district spending, district administrators should have greater flexibility with regard to the nature of their expenditures.

6A:23A-5.3 Failure to maximize Special Education Medicaid Initiative (SEMI)

N.J.A.C. 6A:23A-5.3(b)(1) and (2)1

“[1. For the 2008-09 school year, the waiver request must be submitted to the Executive County Superintendent by September 1, 2008. The Executive County Superintendent shall promptly review the request and render a decision no later than September 30, 2008. 2. Beginning with the 2009-2010 school year, the] 1. The application for a waiver of the requirements of this section shall be made to the [Executive County Superintendent] executive county superintendent no less than 45 days prior to the submission of the school district’s proposed budget for the school year to which the waiver request applies. ...”

N.J.A.C. 6A:23A-5.3(c)1

This regulation establishes a waiver process regarding the Special Education Medicaid Initiative (SEMI) beginning in the 2008-09 school year. The Department and State Board should clarify and simplify this regulation to delete language regarding the initial timeline for implementation as the rule has been in place for more than two years.

“[Beginning with the 2009-2010 school year, the] The school district shall recognize as revenue in its annual district budget no less than 90 percent of said projection.”

This regulation defines what should be recognized as revenue for purposes of the SEMI beginning in the 2009-2010 school year. The Department and State Board should clarify and simplify the code by eliminating the initial timeline for implementation as the rule has been in place for more than two years.

N.J.A.C. 6A:23A-5.3(f)

“[Each district that has less than 90 percent participation of SEMI eligible students in the 2007-2008 school year or has failed to comply with all program requirements set forth in (e) above, shall demonstrate a good faith effort to achieve maximum participation and to maximize available SEMI revenue during the 2008-2009 school year by submitting a SEMI action plan to the Executive County Superintendent for review and approval by September 1, 2008. In subsequent years, each] Each school district that has less than 90 percent participation of SEMI-eligible students in the prebudget year or that has failed to comply with all program requirements set forth in (e) above shall submit a SEMI action plan to the [Executive County Superintendent] executive county superintendent for review and approval as part of the school district’s proposed budget submission.”

This regulation establishes guidance regarding acceptable participation rates for the SEMI beginning in the 2008-09 school year. The Department and State Board should modify this regulation to eliminate instructions regarding the initial implementation as the rule has been in place for more than two years.

6A:23A-5.4(a) Violation of public school contracts law

“Pursuant to the authority granted the Commissioner under N.J.S.A. 18A:55-2 and 18A:7F-60, the Commissioner [shall] may subject to review for the withholding of State funds any school district or county vocational school district [which] that fails to obey the provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq.”

The Department and State Board should amend this regulation, which requires the Commissioner to subject any district that violates the terms of the School Contract Law to a formal review as to whether State school aid should be withheld. This change would grant the Commissioner discretion in determining whether a failure to obey some provision of the Public School Contract Law escalates to the level that calls for a review of the district and possible withholding of State funds. This would provide flexibility to the Commissioner to ensure that resources are not wasted on unnecessary reviews or for trivial violations.

6A:23A-5.5(a) Expenditure and internal control auditing

“[Pursuant to a phase-in schedule to be determined by the Commissioner, a school district or county vocational school district board that receives 50 percent or more of its general fund budget in State aid during the 2008-2009 school year] Any school district that has been identified by the Commissioner as requiring increased state oversight due to fiscal or operational irregularities shall engage an independent certified public accountant or independent certified public accounting firm, other than the accountant or firm that performs the annual audit pursuant to N.J.S.A. 18A:23-1 et seq., to conduct a valid sampling of expenditures made during the most recently completed school year [that the district received 50 percent or more of its general fund budget in State aid].” 133

This regulation requires that certain troubled school districts go through a secondary review of internal controls. The Department and State Board should modify this regulation to reduce the burden on operationally and fiscally efficient districts. Although the State has a great interest in ensuring that taxpayer dollars are used in a responsible, efficient and effective manner, it should design a system that is not overbroad in its reach. This change would save taxpayer dollars and district resources.

N.J.A.C. § 6A:23A-5.6(a) District response to Office of Fiscal Accountability and Compliance (OFAC) investigation report

“Any school district or county vocational school district that has been subject to an audit or investigation by the Department’s Office of Fiscal Accountability and Compliance (OFAC) [shall] may choose to discuss the findings [of the audit or investigation] at a public meeting of

the district board of education if said findings clear the school district, district board of education members, employees or contractors of any wrongdoing. All other findings shall be discussed at a public meeting of the district board of education no later than 30 days after receipt of the findings.”

This regulation requires that whenever the Department’s Office of Fiscal Accountability and Compliance (OFAC) conducts an investigation in a district, the finding must be reported and discussed at a public meeting of the board of education. Districts subject to an OFAC investigation where no negative findings were reported have expressed great frustration that this requirement wastes time and requires the school administrator to convince the public that the district did nothing wrong. The Department and State Board should modify this regulation to require district boards to discuss the results of the OFAC audit at a public meeting only if the audit reveals a violation or possible violation of administrative code or law. The change would reduce a burden on school districts as it is unnecessary to dedicate time at public board meetings to discuss the results of an investigation that requires no corrective action.

N.J.A.C. § 6A:23A-5.6(b) District response to Office of Fiscal Accountability and Compliance (OFAC) investigation report

“Within 30 days of the public meeting required in (a) above, the district board of education shall adopt a resolution certifying that the findings of wrongdoing were discussed in a public board meeting and approving a corrective action plan to address the issues raised in the findings.”

The Department and State Board should modify this regulation to require district boards to adopt a resolution and approve a corrective plan in response to an OFAC audit only if the investigation reveals a violation or possible violation of administrative code or law. Currently, whenever OFAC conducts an investigation in a district, the finding must be reported and discussed at a public meeting of the board of education and a resolution be adopted certifying that this requirement has been met and sent to OFAC. Districts where there were no negative findings regarding the OFAC investigation have expressed great frustration regarding this requirement as it wastes time and resources. When the audit reveals no need for correction, it is unnecessary to expend resources on a meeting, a plan of corrective action, and submission of such a plan for approval by the board of education.

N.J.A.C. § 6A:23A-5.6(c) District response to Office of Fiscal Accountability and Compliance (OFAC) investigation report

“The findings of wrongdoing of the OFAC audit or investigation and the board of education’s corrective action plan shall be posted on the district’s web[]site[, if one exists].”

The Department and State Board should amend this regulation, which provides that a district must post on its website a corrective action plan regarding any OFAC investigation report. School districts indicate the requirement wastes time and resources when the OFAC investigation yields no negative findings. The above addition would limit the publishing requirement to OFAC audits that reveal negative results to ensure the public is made aware of the

findings. This would prevent the waste of time and resources on enforcing the reporting of a positive or neutral result of an investigation.

6A:23A-5.7(a) Verification of payroll check distribution

“Beginning with the [2008-2009] 2012-13 school year, at least once every three years[,] between the months of September through May, [school districts and county vocational school districts] each school district identified by the Commissioner as requiring increased State oversight due to fiscal or operational irregularities shall require each school district employee to report to a central location(s) and produce picture identification and sign for release of his or her paycheck or direct deposit voucher. The school district may exclude per diem substitutes from the required verification. Other school districts are recommended but not required to undertake this procedure.”

The Department and State Board should alter this regulation, which requires certain operationally and fiscally troubled districts to conduct a payroll verification at least once every three years. Regulations such as this one have their etiology in a departmental response to an isolated example of poor district decision-making, and the departmental response should not be generalized systemwide.

Under the amendments, all non-targeted districts would be given the opportunity to have their employees report and re-verify their identification triennially, but would not be required to do so. This change also would establish a new start date for this subsection because the code has been altered to reduce its scope, as discussed below. The regulatory changes would ease burdens on school districts that are running efficiently.

SUBCHAPTER 6. CONDITIONS FOR THE RECEIPT OF STATE AID

6A:23A-6.2 Nepotism policy

N.J.A.C. 6A:23A-6.2(a)2i

“A person employed by the school district on the effective date of the policy or the date a relative becomes a school board member or chief school administrator shall not be prohibited from continuing to be employed or to be promoted in the school district. However, this provision will not pertain to extending an employment contract to allow for an increase in annual pay directly related to an extension of the work year; and”

The Department and State Board should amend this regulation, which allows an existing school district employee to continue to serve in his or her position upon a relative’s election as a school board member or appointment as the chief school administrator of the same district. The regulation furthers the objective of this subsection, which is to avoid preferential treatment for employed relatives.

The proposed change would clarify that an extension of the work year (for example, from 10 to 12 months) is allowed under this regulation as long as the new annual pay is prorated based on the rate prior to the extension. This change would ensure that the related school board member or

chief school administrator does not have the opportunity to increase their relative's rate of pay through a work-year extension.

6A:23A-6.6 Standard operating procedures for business functions

N.J.A.C. 6A:23A-6.6(a)

"[By December 31, 2009, each] Each school district and county vocational school district shall [establish] have SOPs for each task or function of the business operations of the school district."

The Department and State Board should adopt the proposed changes, which would delete the date for implementation of the standard operating procedures (SOPs) since it has passed. This change would be in line with the assumption that districts already have implemented SOPs. The use of "have" would clarify that the requirement of district SOPs would be a continuous requirement.

N.J.A.C. § 6A:23A-6.7(a) Financial and human resource management systems; access controls

"School districts and county vocational school districts [with budgets in excess of \$25,000,000 or with more than 300 employees] that have been identified by the Commissioner as requiring increased State oversight due to fiscal or operational irregularities shall maintain an enterprise resource planning (ERP) system [which] that integrates into a unified system all data and processes of an organization[into a unified system]. All other school districts are encouraged to implement similar systems. An ERP system uses multiple components of computer software and hardware and a unified database to store data for the various system modules to achieve the integration."

The Department and State Board should adopt the above changes to limit the regulation only to districts that have been identified by the Commissioner as operationally or fiscally troubled as necessitating the data and process integration systems. Although larger districts have a greater need for integration to ensure efficiency and effective decision-making at the top levels, and to facilitate efficient auditing and oversight by the State, the application of this requirement to all large districts would be overbroad.

The above modification would better identify districts that will benefit from the systems and not prescribe them for districts that already operate efficiently and effectively. This change would lead to savings of taxpayer dollars and district resources.

N.J.A.C. 6A:23A-6.7(b)

"[Districts] School districts affected by (a) above that do not currently maintain an ERP system shall fully implement one by the [2010-2011]2014-15 school year and maintain both the existing system(s) and run a beta test ERP system during the [2009-2010]2013-14 school year. A statement of assurance verifying the acquisition and full implementation of the system must be filed by the superintendent with the county office of education. Failure to purchase and/or implement the system shall require a review by the county office of education, which may result

in further sanctions including the possible loss of State aid. In addition, false assurances by the superintendent may result in disciplinary action by the Commissioner.”

The Department and State Board should adopt the above changes, which would modify the date for implementation of an ERP integration system where required and not yet implemented. The amendments would remove confusion and allow districts sufficient time to prepare for implementation. This change also would modify the date for a test run of the ERP integration system while maintaining the existing system. Finally, monitoring of the implementation would occur through a statement of assurance.

6A:23A-6.8 Personnel tracking and accounting

N.J.A.C. 6A:23A-6.8(a)

“A school district and county vocational school district shall maintain an accurate, complete[,] and up-to-date automated position control roster to track the actual number and category of employees and the detailed information for each. [Districts that do not currently maintain a position control roster as defined, or were not previously required to maintain a position control roster, shall fully implement one by December 31, 2009.] The position control roster shall: ...”

The Department and State Board should clarify the code by removing a past deadline that required districts not maintaining control rosters to have a complete roster by the stipulated date. It is assumed that all districts now have fully implemented control rosters, and a new deadline is unnecessary.

6A:23A-6.12 District vehicle assignment and use policy

“[Vehicle use logs shall be maintained for all individual and pool assignments in order to accurately record all usage of each vehicle, including the driver, mileage, and starting and destination points.]”

The Department and State Board should eliminate the requirement that districts maintain use logs for all district-owned vehicles, including the driver, mileage, and starting and destination points. Districts should exercise careful oversight of district-owned property such as vehicles, but use logs are a cumbersome, burdensome, and minimally effective control mechanism.

SUBCHAPTER 7. SCHOOL DISTRICT TRAVEL POLICIES AND PROCEDURES

N.J.A.C. § 6A:23A-7 School district travel policies and procedures – Overview

The regulations in this subchapter present a confusing and complex level of regulation through constant reference to and even enhancement of the N. J. Department of the Treasury, Office of Management and Budget Circulars 08-19-OMB and 06-14-OMB (OMB Circulars). School districts are well aware of the need to comply with OMB directives, and building a regulatory system on top of the circulars creates confusion leading to poor decision-making. In addition, it is impossible to update the regulatory code to reflect changes in OMB Circulars, leading districts into possible non-compliance in relying solely on Department regulations. Confusion also exists

between the statutes and OMB Circulars. *N.J.S.A. § 18A:11-12(c)3* clarifies that any OMB guidelines that conflict with *N.J.S.A. § 18A* are not applicable. The code references to OMB Circulars may have unintentionally given the impression that OMB Circulars are the ultimate authority in determining this policy, whereas the statute ultimately governs.

The Task Force recommends deleting from the Department's code all reference to OMB Circulars.

6A:23A-7.3 Maximum travel budget

N.J.A.C. § 6A:23A-7.3(b)2 Maximum travel budget

“Regular school district business travel as defined in N.J.A.C. 6A:23A-1.2 includes attendance at regularly scheduled in-state county meetings and Department sponsored or association sponsored events provided free of charge. It also includes regularly scheduled in-State professional development activities for which the registration fee does not exceed \$[150.00]300.00 per employee or board member.”

The Department and State Board should amend this regulation, which establishes a limit on registration fees for State professional development activities. The above revisions would change the maximum per-employee per-event allowance from \$150 to \$300 to account for price changes over time. The change would more accurately reflect the original intent of the rule.

N.J.A.C. § 6A:23A-7.3(b)3 Maximum travel budget

“Regular school district business travel as authorized in the board's travel policy requires approval of the superintendent or his or her designee prior to obligating the school district to pay related expenses and prior to attendance at the travel event.”

The Department and State Board should amend this regulation, which requires a superintendent to approve travel prior to attendance or incurring costs for travel. This revision would streamline the approval process by allowing a superintendent to designate personnel to approve travel requests.

N.J.A.C. § 6A:23A-7.4(a) Travel approval procedures

“All travel requests for employees of the school district shall be approved in writing by the superintendent or his or her designee and approved by a majority of the full voting membership of the district board of education, except where the board has excluded regular business travel from prior approval pursuant to N.J.A.C. 6A:23A-7.3(b), prior to obligating the school district to pay related expenses and prior to attendance at the travel event.”

The Department and State Board should amend this regulation, which requires a superintendent to approve in writing travel expenses prior to attendance or incurring costs for travel. This revision would streamline the approval process by allowing a superintendent to designate personnel to approve travel requests.

N.J.A.C. § 6A:23A-7.5 Required documentation for travel

“(a) The board in its policy shall specify the [type of] minimum documentation required to justify [the number of employees attending an event and the benefits to be derived from their] attendance at the event; [(b) Neither the superintendent, or designee, nor the board shall approve a travel request unless it includes the following information ... (c) Detailed documentation shall be maintained on file in the school district which demonstrates compliance ...]”

The Department and State Board should amend this regulation, which prescribes minimum documentation and information required to support each travel request. The current mandates exceed statutory requirements without meaningfully adding to the protections against wasteful spending. Worse, districts must expend resources to comply with the mandate. The proposed changes would provide the board of education with flexibility in determining the information required and would streamline the approval process. It also would eliminate requirements that account numbers and funding sources be disclosed, as well as the requirement that the previous year’s event cost be documented. The changes would set forth the minimum required information and give local boards flexibility to add additional requirements as they see fit.

N.J.A.C. § 6A:23A-7.6(f) SBA responsibilities regarding accounting for travel

“The SBA shall sign an annual travel statement of assurance in the format prescribed by the assistant commissioner of the Division of Administration and Finance.”

The Department and State Board should adopt this new subsection, which the Task Force believes would provide an added level of protection given the greater flexibility proposed elsewhere in this subchapter. The addition of the travel statement of assurance requirement merely would ensure that the school business administrator is held accountable for adhering to the policies and procedures prescribed above. This change would establish an extra safeguard to ensure that policies are followed without creating additional substantive requirements.

N.J.A.C. § 6A:23A-7.7(d) Sanctions for violations of travel requirements

“[The board policy shall include procedures to monitor compliance and application of the penalty upon determination a violation has occurred after board payment of the event. If a violation is determined prior to payment or reimbursement of the travel event, the board policy may exclude application of any additional penalties.]”

The Department and State Board should delete N.J.A.C. § 6A:23A-7.7(d) and the requirement that districts include in their travel policy both compliance-monitoring and punishment-monitoring procedures (when there is a violation). The current provision is unnecessarily prescriptive given the approval process established elsewhere in law and code.

N.J.A.C. § 6A:23A-7.12(f)5 Meal allowance – special conditions – and allowable incidental travel expenditures

“The school district shall purchase or prepare food that [are] is sufficient to provide each board member, dignitary, non-employee speaker or allowable staff member one meal. Meals should be carefully ordered to avoid left-overs. [Unintended left-over food should be donated to a charitable shelter or similar facility, if at all possible.]”

This subsection provides unnecessary recommendations that school districts make provisions to donate any excess catered food to charitable organizations. While the intention of supporting charitable organizations is certainly laudable, it is frequently impractical for school districts to arrange such small donations or for charitable organizations to accept donations of food that may no longer be suitable for consumption. Existing rules provide sufficient controls on the ability of school districts to order excessive catering.

SUBCHAPTER 9. EXECUTIVE COUNTY SUPERINTENDENT BUDGET REVIEW PROCEDURES

N.J.A.C. § 6A:23A-9.3(c)3 Efficiency standards for review of administrative and non-instructional expenditures and efficient business practices

“[Custodians and janitors on a ratio of one for every 17,500 square feet of building space calculated on a district-wide basis;]”

The Department and State Board should eliminate this subsection, which requires executive county superintendents to review district budgets for administrative and non-instructional expenditures. One of the indicators includes the deployment of custodians and janitors. The criteria concerning custodial and maintenance staff is overly prescriptive and an unnecessary restriction on school district discretion. Although the restriction technically applies to the budget review process by executive county superintendents, it has come to establish an unintended norm for all districts. In light of the 2 percent property tax cap, which properly constrains increases in aggregate district spending, district administrators should have greater flexibility with regard to the nature of their expenditures.

N.J.A.C. § 6A:23A-9.3(c)8 Efficiency standards for review of administrative and non-instructional expenditures and efficient business practices

“[Vacant positions budgeted at no more than step one of the salary guide unless justification for the additional amount has been approved by the Department.]”

The Department and State Board should delete this regulation, which provides criteria to be used during the budget review process to determine efficient administrative and non-instructional costs. The proposed changes would delete language concerning the salary guide. Currently, regulations impede districts from compensating new employees at levels beyond the initial step of the salary guide, regardless of their prior experience and other qualifications. Although this restriction technically applies to the budget review process by executive county superintendents, it has come to establish an unintended norm for all districts. In light of the 2 percent property tax cap, which properly constrains increases in aggregate district spending, district administrators and educators should have the flexibility to attract and hire the best educators.

N.J.A.C. § 6A:23A-9.3(c)9 Efficiency standards for review of administrative and non-instructional expenditures and efficient business practices

“[Aides that are not mandated by law or required by an IEP employed only when supported by independent research-based evidence that demonstrates the use of aides is an effective and efficient way of addressing the needs of the particular student population served.]”

The Department and State Board should delete this regulation, which provides criteria to be used during the budget review process to determine efficient administrative and non-instructional costs. The proposed change would delete language limiting the use of aides who are not mandated by law or an IEP. There are valid justifications for use of aides beyond the requirements of law and IEPs. In light of the 2 percent property tax cap, which properly constrains increases in aggregate district spending, district administrators should have greater flexibility to determine staffing within their schools.

N.J.A.C. § 6A:23A-9.3(c)14 Efficiency standards for review of administrative and non-instructional expenditures and efficient business practices

“[Public relations services that are incorporated into the duties of the superintendent, business administrator and/or other staff position or positions and not provided by a dedicated public relations staff position or contracted service provider. Public relations functions as defined in (c)14i and ii below should not comprise more than 50 percent of the duties of any one staff position.]”

The Department and State Board should delete this regulation, which provides criteria to be used during the budget review process to determine efficient administrative and non-instructional costs. The proposed change would delete language limiting public relations services. The Task Force believes that decisions about how to best keep families and the community informed and empowered should be left to districts. In light of the 2 percent property tax cap, which properly constrains increases in aggregate district spending, district administrators should have greater flexibility with regard to the nature of their expenditures.

N.J.A.C. § 6A:23A-9.5(a) Commissioner to ensure achievement of the Core Curriculum Content Standards; corrective actions

“(a) A district board of education shall be subject to action by the Commissioner, as part of the budget approval process, upon the failure of one or more schools within the district to achieve the Core Curriculum Content Standards as evidenced by existing Statewide assessment methods or other statutory or regulatory methods of evaluation. At the mid-term assessment of expenditures, the county office of education may make recommendations regarding the budget development by the school district for the upcoming year.”

The Department and State Board should amend this regulation, which provides for a budget review based on achievement of the Core Curriculum Content Standards for poor-performing districts. The proposed change would provide for a mid-term review.

SUBCHAPTER 16. DOUBLE-ENTRY BOOKKEEPING AND GAAP ACCOUNTING

N.J.A.C. § 6A:23A-16.1(b) Prescribed system of double-entry bookkeeping and GAAP accounting

“Each district board of education and charter school board of trustees shall ensure that the uniform system is fully consistent with [the "generally accepted accounting principles" (henceforth referred to as] GAAP[)] as set forth in the Governmental Accounting and Financial Reporting Standards Original Pronouncements, published annually by the Governmental

Accounting Standards Board (GASB; 401 Merritt 7, P.O. Box 5116, Norwalk CT), incorporated herein by reference as amended and supplemented, and is compatible with the financial accounting terminology and classifications established in the Federal accounting manual, Financial Accounting for Local and State School Systems, [2003] 2009 Edition by the National Center for Education Statistics (NCES[;], K Street NW, Washington, DC 20006), incorporated herein by reference, as amended and supplemented as prepared, published and distributed by the Commissioner, as required by N.J.S.A. 18A:4-14.”

The Department and State Board should amend this regulation, which would require school district accounts to conform to GAAP. This proposed change would update the edition of the federal accounting manual that districts reference.

N.J.A.C. § 6A:23A-16.2(f)1 Principles and directives for accounting and reporting

“Each district board of education and charter school board of trustees shall use, for financial reporting to the Department [of Education], a uniform minimum chart of accounts published and distributed by the Commissioner consistent with Financial Accounting for Local and State School Systems, [2003] 2009 Edition, developed by the National Center for Education Statistics (NCES[;], K Street NW, Washington DC 20006), incorporated herein by reference, as amended and supplemented.”

The Department and State Board should amend this regulation, which requires school district accounts to conform to GAAP. The proposed change would update the edition of the federal accounting manual that districts reference.

N.J.A.C. § 6A:23A-16.4(d) Minimum bond requirements for treasurer of school moneys

“If a school district eliminates the position of treasurer, the person assuming the duties must have a bond or have their bond increased by the amount of the treasurer’s bond.”

N.J.A.C. § 6A:23A-16.4 concerns bonding requirements for the treasurer of school moneys. The Department and State Board should add the proposed language to ensure that any individual assuming the duties of a treasurer in districts that opt to eliminate the position is bonded to the same degree as the former treasurer. The new language would maintain the security associated with bonding while providing districts with the opportunity to eliminate a potentially superfluous, obsolete or otherwise unnecessary position.

6A:23A-16.5 Supplies and equipment

“... [Quotations for fresh or frozen fruits, vegetables and meats need not be solicited more than once in any two-week period.]” 140

The Department and State Board should remove this subsection, which concerns quotations for food supplies from vendors. The proposed amendment would delete the requirement that quotations for certain foods not be solicited more than once every two weeks. This regulation is overly prescriptive.

6A:23A-16.14 Dismissal or re-assignment of a school business administrator

“[(a) In order to protect the integrity of the school business administrator office, a district board of education shall submit to the executive county superintendent a written justification for the non-renewal, dismissal for cause, re-assignment or elimination of the position of a school business administrator, or the individual duly certified and performing the duties of a school business administrator, within 48 hours of said notification by the district board of education to the affected employee. ...]”

The Department and State Board should delete this regulation, which requires notice to the executive county superintendent regarding transfer or dismissal of the school business administrator. The proposed change would eliminate an unnecessary step in the transfer or dismissal process.

SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

N.J.A.C. § 6A:23A-18 Tuition for Private Schools for Students with Disabilities - Overview

The Department and State Board should revise this section to change the methodology for determining the tuition rate at private schools for students with disabilities (“PSSD”). Under the current rate-setting method, the Department establishes a tentative payment rate at the beginning of a school year for each disability classification and then makes a comparison between the amount paid at the tentative rate and the certified actual cost per student. If the certified actual cost per student is less than the tentative rate, then the PSSD must refund the overpayment to the sending districts. But if the certified actual cost per student is more than the tentative rate, the sending district must pay the PSSD an amount equal to the difference between the two amounts. As part of this process, the Department is charged with conducting a rigorous review of the accounting and expenditures at PSSDs, even to the point of having to review every dollar spent to determine whether it was for legitimate educational purposes. The ultimate goal of the process is to reconcile the rate so the actual amount paid is equal to the actual cost to educate the student. Therefore, the costs should be contained and controlled as a result.

However, there have been several problematic issues in practice. The very rules intended to control costs have facilitated growth of spending in some cases. For instance, current regulations stipulate that no PSSD administrator may be paid more than the highest paid public school employee in the State with the same administrative job title. As the below chart shows, the resulting maximum salaries far exceed comparable salaries at traditional public schools. Further, under the current system for determining PSSD tuition, PSSDs have little incentive to contain the growth of employee salaries so long as they remain below maximum levels. As a result, salaries have become targets rather than controls on PSSD spending.

This procedure appears to have been ineffective at controlling costs, as the rates for PSSD tuition have increased substantially since the inception of this regulation. It is worthwhile to note that the certified actual cost of tuition is almost always determined to be higher than the tentative

rate, even after the Department conducts its review. Second, the demands of an effective review and reconciliation of rates for every PSSD strains the capacity of the Department's finance staff. Finally, this process has led to ill-will among the parties involved. Taxpayers are suspicious that PSSDs are deliberately and artificially increasing their costs; PSSDs are suspicious that they have been targeted for extreme scrutiny and have been given an automatic presumption of dishonesty; and school districts are made party to a payment system over which they have little control and that almost always results in districts ultimately having to pay large amounts to PSSDs for underpayment of tuition.

It should also be noted that throughout the current subchapter there are numerous references to the tentative tuition rate and the certified actual cost per student that would also require revising to bring the subchapter in accord with the proposed changes. Generally, this revision would consist of removing such references and, where appropriate, replacing them with references to the maximum tuition rate set under the proposed process.

The intention embodied in this entire proposal would allow for a flexible process that would encourage more robust negotiations between the parties with the expectation that costs would be reasonably controlled through such negotiations. The proposal also has a few simple measures for stabilizing and containing costs, as well as ensuring that certain minimum standards are met in the allocation of expenses. It is recommended that the Department and State Board periodically review and revise this regulation as described herein to achieve simplicity in the process and to effectuate results that are realistically more obtainable than those pursued currently.

N.J.A.C. § 6A:23A-18.2(a) Tuition rate procedures

“[The board of directors of an approved private school for students with disabilities located in New Jersey shall determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department pursuant to N.J.A.C. 6A:23A-18.9. ...] The maximum tuition rate charged by the approved private schools for students with disabilities shall be determined by the assistant commissioner of the Division of Administration and Finance in consultation with a committee appointed by the Commissioner. The committee shall be comprised of two representatives from private schools for students with disabilities, one from a for-profit school and one from a nonprofit school, and five members appointed by the Commissioner. In determining the maximum tuition rate, the assistant commissioner shall consider prior years' certified audited tuition rates and other relevant factors. 1. Extraordinary services required by the student's Individualized Education Plan (IEP) shall be paid by the sending school district and are not included in the tuition rate. 2. Transportation from home to school is the responsibility of the school district of residence when the student's IEP assigns them to the private school and either the student meets the distance requirements of the law governing transportation or the student's IEP says that they need transportation. Such transportation costs shall be paid by the sending school district and is not included in the tuition rate. 3. Costs for the program shall include instructional costs and administrative costs, as defined in the chart of accounts, as follows:

i. For the 2006-2007 school year and thereafter, minimum instructional costs of [55] 60 percent

and maximum administrative costs of [25] 20 percent. 4. Unless otherwise determined pursuant to (b) below, the approved private school for students with disabilities shall charge one [tentative] tuition rate [, charge one final tuition rate, and calculate one certified actual cost] per student for the school year. ...”

The Department and State Board should revise this regulation to change the methodology for determining the tuition rate at PSSDs. Currently, the Department sets a tentative payment rate for PSSDs and then adjusts the rate based on a reconciliation of the allowable spending of each PSSD. For the reasons explained previously, the Department should set a maximum tuition rate for each disability classification and allow PSSDs to spend the funds as they see fit, so long as spending on instructional costs exceeds 60 percent and spending on administrative costs falls below 20 percent of tuition. Additionally, two categories of expenses would be excluded from the new tuition rate amount: extraordinary expenses for an individual student as required by that student’s IEP, and student-specific transportation expenses.

N.J.A.C. § 6A:23A-18.2(b) Tuition rate procedures

“An approved private school for students with disabilities may charge one tuition rate per school location for the school year, or separate tuition rates by class type and by school location for the school year. Approved private schools for students with disabilities that choose to charge by class type shall: 1. Maintain bookkeeping and accounting records by class type and school location for the school year; and 2. Charge a separate tuition rate for each class type served; [3. Prepare in the Department-prescribed format the audited costs by class type for the first two years that tuition is charged by class type in order for the Commissioner to determine the tentative tuition rates in accordance with (i) below; and 4. Determine on a pro rata basis the individual share of a particular allowable cost item for a class type, when it is not possible to charge the actual amount expended, in accordance with the following ratios or an alternative method as approved by the Commissioner: i. Ratio of average daily enrollment in each class type to the total average daily enrollment; ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; and iii. Direct costs.]”

The Department and State Board should revise this regulation to eliminate the burdensome requirements under the current system for PSSDs that charge separate tuition rates for different class types and school locations. Specifically, a PSSD that charges separate tuition rates would have to maintain records for only the different class types or school locations and actually charge a separate tuition rate for each class type served, both of which are current requirements. Such a PSSD would no longer have to prepare a document that details the audited costs by class type for the first two years, which is currently required for the determination of the tentative tuition rate. The same PSSD would also no longer have to determine the individual share of each cost item on a pro rata basis in accordance with attendance, floor space ratios and direct costs, which currently are required for the purpose of determining the certified actual cost per student. The revisions would change how tuition payments are determined and would also alleviate a regulatory burden for PSSDs and the Department.

N.J.A.C. § 6A:23A-18.2(i) Tuition rate procedures

“(i) The [Commissioner] assistant commissioner of the Division of Administration and Finance will issue notification of the maximum [tentative] tuition rate for approved private schools for

students with disabilities no later than January 1 for the ensuing school year, [calculated as follows:] determined in accordance with N.J.A.C. 6A:23A-18.2. [1. The maximum tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year inflated by twice the spending growth limitation of 2.5 percent and any applicable change to this percentage identified in N.J.S.A. 18A:7F-5d or the CPI, whichever is greater ...]”

The Department and State Board should revise this regulation to eliminate the requirement that the tentative tuition rate be calculated pursuant to a formula based on the actual cost from the prior school year as inflated by either a spending growth limitation or by the rate of inflation indicated by the Consumer Price Index. Additionally, language incorporating a for-profit surcharge or a non-profit capital fund contribution into the tuition rate should be eliminated, because both concepts embodied in N.J.A.C. § 6A:23A-8.6 and 8.7, respectively, would be eliminated through the adoption of this proposal. The only remaining requirement would be for the Department to give notice of the determination for the maximum tuition rate by January 1 in the prior school year. The changes would comport with the overall process as proposed for amendment and generally would simplify and reduce the regulatory requirements on the Department and PSSDs.

N.J.A.C. § 6A:23A-18.2(j) to (m) Tuition rate procedures

“(j) The Commissioner may approve a higher tentative tuition rate for any year in which the approved private school for students with disabilities can prove to the satisfaction of the Commissioner that the maximum tentative tuition rate for the year is not adequate and would cause an undue financial hardship on the private school. ... (m) If the tentative tuition rate for the school year established by written contractual agreement pursuant to (h) above is less than the final tuition rate charged for the school year, the approved private school for students with disabilities may charge each sending district board of education all or part of the difference owed, but the same final tuition rate shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date during the second school year following the year for which the actual cost per student is certified.]”

The Department and State Board should revise the regulations to completely eliminate items (j), (k), (l) and (m), as all deal with the process by which the tentative tuition rates currently are established and subsequently paid. The current process would not be required under the proposed system. The primary goals reflected by the changes would be to achieve simplicity and to reduce regulatory burdens on the parties.

N.J.A.C. § 6A:23A-18.2(o), (p) and (q) Tuition rate procedures

“(o) An approved private school for students with disabilities shall reference as guidance the list of maximum allowable salaries by job title and county according to the job titles contained in N.J.A.C. 6A:9 which pertain to approved private schools for students with disabilities that is published by the Commissioner. Except for administrative job titles referenced in (p) below, maximum allowable salaries are based on the highest contracted salaries (not including payment of unused sick and vacation days and severance pay) of certified staff by job title in a district

board of education for any prior year indexed by the average increase in salary between the two preceding school years for each job title. ... (p) An approved private school for students with disabilities shall reference as guidance a list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9 and 6A:23A-18.1 which pertain to approved private schools for students with disabilities that is published by the Commissioner. Maximum allowable salaries are based on the highest contracted salary (not including payment of unused sick and vacation days and severance pay) by administrative job title for the entire State in a district board of education, special services district board of education and educational services commissions with comparable average daily enrollments for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. ...]”

The Department and State Board should eliminate the regulations, which stipulate that no PSSD administrator may be paid more than the highest paid public school employee in the State with the same administrative job title. The resulting maximum salaries far exceed comparable salaries at traditional public schools. Further, under the current system for determining PSSD tuition, PSSDs have little incentive to contain the growth of employee salaries so long as they remain below maximum levels. As a result, salaries have become targets rather than controls on PSSD spending.

Instead, salaries should be determined through robust negotiations as long as overall spending conforms to the maximum tuition amounts set by the Department, instructional spending constitutes at least 60 percent of overall spending and administrative spending equals no more than another 20 percent.

N.J.A.C. § 6A:23A-18.2[(r)](k) Tuition rate procedures

“An approved private school for students with disabilities shall employ staff pursuant to the list of the recognized job titles in accordance with N.J.A.C. 6A:9 that require certification [and N.J.A.C. 6A:23A-18.1 that require a bachelor's degree, which is published by the Commissioner]. An approved private school for students with disabilities shall only hire staff or consultants in job titles that require certification or a bachelor's degree if such titles are included on this list, or if such titles are unrecognized job titles that are approved annually in accordance with N.J.A.C. 6A:9-5.5. [The approved private school for students with disabilities may use unrecognized administrative job titles, but maximum salaries of these titles are restricted in accordance with N.J.A.C. 6A:23A-18.5(a)9. If an approved private school for students with disabilities hires staff in administrative or support job titles such as but not limited to Chief Executive Officer or Chief Financial Officer, the maximum salaries of such job titles shall be limited to the maximum salary of a director in accordance with N.J.A.C. 6A:23A-18.2(p).]”

The Department and State Board should remove requirements regarding which job titles PSSDs may assign their employees. In addition, the reference to the applicability of maximum salary amounts should also be removed, as such salary maximums will no longer be applicable for any positions. The requirement therein for staff to be properly certificated and licensed, as needed, should be maintained.

N.J.A.C. § 6A:23A-18.3(d), (e), (f) and (g) New approved private schools for students with disabilities

“(d) An approved private school for students with disabilities shall amortize start-up costs, if any, over a 60-month period. (e) For the first two years of operation of an approved private school for students with disabilities, the tentative tuition rate charged at each site shall be established annually and be based on budgeted allowable costs. An approved private school for students with disabilities shall submit such estimated cost(s) to the Assistant Commissioner, Division of Finance for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form prepared by the Assistant Commissioner, Division of Finance which provides for, but is not limited to, the following: 1. Fiscal and programmatic data; 2. Projected allowable cost items and projected enrollments; 3. A projected budget that reflects administrative costs not in excess of, and instructional costs not less than, the percentages identified in N.J.A.C. 6A:23A-18.2(a)3 and as defined in the chart of accounts; 4. A report of all funding resources; 5. An affidavit of compliance; and 6. A statement of assurance. ...”

The Department and State Board should eliminate the regulations, which all deal primarily with how newly approved schools are to be treated for the purposes of establishing the tentative tuition rate and certified actual cost per student, neither of which is part of this proposal. Future PSSDs would still have to apply to the Department for approval, which would depend on the school’s ability to demonstrate that a need exists for the program(s) offered by the school and on the provision of a minimum of 24 slots for students.

N.J.A.C. § 6A:23A-18.4 Bookkeeping and accounting

“(a) An approved private school for students with disabilities shall maintain accounting and bookkeeping systems as prescribed in Financial Accounting for New Jersey Private Schools for students with disabilities issued by the Department in accordance with the following standards: 1. An approved private school for students with disabilities shall maintain accounts in accordance with generally accepted accounting principles (GAAP) as [defined] codified by the [American Institute of Certified Public Accountants] Financial Accounting Standards Board (FASB), except as already modified in this chapter. 2. [At a minimum, an] An approved private school for students with disabilities shall use accrual accounting [on a quarterly basis]. 3. An approved private school for students with disabilities shall capitalize fixed asset expenditures of \$2,000 or more and depreciate such expenditures using the straight line depreciation method and using a useful life consistent with current Federal tax law as defined in Internal Revenue Code Section 168 and class lives as defined in that section (also see IRS Publication 946)[, except for real property which may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater. 4. An approved private school for students with disabilities shall capitalize leasehold improvements and depreciate such improvements using the straight-line method and a useful life equal to that of the lease, but not less than five years].”

The Department and State Board should revise the regulations. PSSDs should maintain financial accounts largely in accordance with generally accepted accounting principles (GAAP) as codified by the Financial Accounting Standards Board (FASB). The requirement for accrual

accounting on a quarterly basis is unnecessarily burdensome; annual accounting is sufficient for fiscal monitoring purposes. The specific rules governing capitalization of fixed asset expenditures and leasehold improvements similarly are unnecessary, as GAAP accounting provides a clear set of rules. Rather than prescribe additional rules for how PSSDs should spend tuition funds, the Department should instead set rules regarding the maximum allowable tuition rate and the portion of tuition spent on instructional and administrative expenses.

N.J.A.C. § 6A:23A-18.4(a)11 Bookkeeping and accounting

“[An approved private school for students with disabilities shall prepare a financial report in a format prescribed or approved by the Commissioner each quarter at a minimum for the school year program. This report shall be submitted to the school's governing body and its acceptance shall be documented in the minutes of the meetings.]”

The Department and State Board should eliminate this regulation. The Department should not require PSSDs to submit every 90 days a financial report approved by the school's governing body. Rather than prescribe rules for how PSSDs specifically should spend tuition funds, the Department should set rules regarding the maximum allowable tuition rate and the portion of tuition spent on instructional and administrative expenses.

N.J.A.C. § 6A:23A-18.4(a)14 and 15 Bookkeeping and accounting

“[14. An approved private school for students with disabilities that incurs contingent pay increases shall have in place an employee contract that contains the criteria by which the increase will be paid. The plan shall be submitted to the Commissioner for approval prior to implementation. The private school shall make payment of such increase upon achievement of the contractual contingencies as set forth in the approved plan. Such payment shall not be at the discretion of management. The employee contract shall contain the following: i. The date and signature of both the staff member and authorized school representative; ii. The average daily enrollment contingency the approved private school for students with disabilities must achieve in order to generate the increase; and iii. The specific dollar amount or percentage of original contracted salary to be paid pursuant to (a)14ii above. 15. An approved private school for students with disabilities that incurs merit pay increases shall have adopted a formal board policy that outlines the criteria of the merit pay plan(s). ...]”

The Department and State Board should eliminate this regulation. The Department should not set specific rules prescribing when PSSDs may provide merit- or contingent-pay increases. Rather than set specific rules for how PSSDs specifically should spend tuition funds, the Department should instead set rules regarding the maximum allowable tuition rate and the portion of tuition spent on instructional and administrative expenses.

N.J.A.C. § 6A:23A-18.4(a)18 Bookkeeping and accounting

“[A mileage record shall be maintained for each school-owned vehicle, leased vehicle or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner. The mileage record shall be maintained on a trip by trip basis and include any personal use including to/from work commutation. At the end of the fiscal year, the percentage determined by the total personal miles to total miles shall be applied to all

costs associated with the vehicle(s) and those costs shall be excluded from the actual allowable costs. Vehicle costs may include, but not be limited to, the following: depreciation, lease costs, gas, oil, repairs and maintenance, insurance and car phone.]”

The Department and State Board should eliminate this regulation. The Department should not require PSSDs to maintain mileage records for any vehicles required for school purposes. Rather than prescribe specific rules for how PSSDs should spend tuition funds, the Department should instead set rules regarding the maximum allowable tuition rate and the portion of tuition spent on instructional and administrative expenses.

N.J.A.C. § 6A:23A-18.4(f) Bookkeeping and accounting

“An approved private school for students with disabilities shall establish, maintain and distribute an employee handbook to all staff. [The approved private school for students with disabilities shall include in the employee handbook an outline of all employee fringe benefits. All employee fringe benefits shall be adopted in a board of directors meeting and documented in the board minutes prior to implementing the fringe benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23A-18.5(a)23 for which costs are deemed allowable are as follows: 1. Health insurance coverage (including dental and vision); 2. Life insurance; 3. Type(s) and qualification for retirement plan(s); 4. Severance pay; 5. Vacation; 6. Long term disability; 7. Sick day and personal day benefits; 8. Premium-only plans; 9. Cafeteria plans; 10. Section 125 plans; 11. Tuition reimbursement; and 12. Other benefits for which an approved private school for students with disabilities has applied and received written approval from the Commissioner.]”

The Department and State Board should eliminate this regulation to be consistent with the process embodied in this proposal. In negotiations with their employees, PSSDs would have the flexibility to decide what fringe benefits to provide. Rather than prescribe specific rules for how PSSDs should spend tuition funds, the Department should instead set rules regarding the maximum allowable tuition rate and the portion of tuition spent on instructional and administrative expenses.

N.J.A.C. § 6A:23A-18.4(k), (m), (o) and (p) Bookkeeping and accounting

“[(k) An approved private school for students with disabilities shall issue compensation increases after the start of the fiscal year only in accordance with N.J.A.C. 6A:23A-18.2(q), and when the increase: 1. Is due to a staff member(s) promotion that results in additional job responsibilities; 2. Is due to a staff member(s) attaining a higher degree or certification; 3. Is due to a staff member(s) additional job responsibilities such as a coach, class or school advisor or mentor; 4. Is in accordance with (a)14 or 15 above; or 5. Has been approved by the Department after review of a formal written request to the Assistant Commissioner, Division of Finance documenting the facts supporting the increase, if none of the above applies.] [(m) An approved private school for students with disabilities that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-18.5(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-18.5(a)56 shall include these costs in the certified actual cost per student on the cash basis of accounting.] [(o) An approved private school for students with disabilities shall comply with the maximum salaries determined in accordance with N.J.A.C.

6A:23A-18.2(o) and (p) and restricted in accordance with N.J.A.C. 6A:23A-18.5(a) 6, 8 and 9 regardless of the job titles used and whether these job titles comply with the list of job titles published by the Commissioner. (p) An approved private school for students with disabilities shall under no circumstances other than in accordance with N.J.A.C. 6A:23A-18.4(k), provide compensation increases after the start of the fiscal year.]”

The Department and State Board should eliminate the regulations to be consistent with the process embodied in this proposal. The Department no longer would set rules on how PSSDs account for the costs of retirement plans or the timing of compensation increases, but instead would set rules on the maximum allowable tuition rate and the portion of tuition spent on instructional and administrative expenses.

N.J.A.C. § 6A:23A-18.5 Non-allowable costs

“(a) [Costs that are not allowable in the calculation of the certified actual cost per student include the following: ...] Non-allowable costs shall be limited to costs found to be patently unreasonable by the Commissioner or his or her representative(s) or the independent auditor/accountant. Costs shall be consistent with the individualized education program of a disabled student. They also shall be reasonable; that is, ordinary, necessary and not in excess of the cost incurred by an ordinarily prudent person in the administration of public funds. Costs shall be consistent with Federal guidelines issued as “Cost Principles for Non-Profit Organizations (OMB Circular A-122)” published as Title 2 in the Code of Federal Regulations (CFR) Subtitle A, chapter II, part 230 effective August 21, 2005, as amended and supplemented. (b) A cost found to be non-allowable shall be returned to the public school district of residence by the approved private school upon order of the Commissioner. (c) Failure to comply with this section may result in the Commissioner placing the approved private school for students with disabilities on conditional approval status.”

The Department and State Board should eliminate the lengthy, yet non-exhaustive, list of 68 types of non-allowable costs and replace it with the proposed language above. As non-allowable costs play a crucial part in the current reconciliation process between the tentative tuition rate and the certified actual cost per student, the need for such a detailed list would be eliminated along with the reconciliation process under the proposed new methodology for determining the tuition rate at PSSDs. The simpler mechanism described in this revised regulation would enable the Department to identify non-allowable costs that are unreasonable in nature and not incurred as part of the normal operation of a PSSD, thereby facilitating the prevention and addressing of possible fraud or any other suspect activity.

N.J.A.C. § 6A:23A-18.6 Surcharge

“[(a) For profit-making schools, the school's tuition rate may include an annual surcharge up to 2.5 percent of the private school's allowable actual costs. (b) For profit-making schools, interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is an unrestricted revenue and is not part of the school's surcharge computation. (c) For profit-making schools, the allowable Federal, State and local income tax liability in N.J.A.C. 6A:23A-18.5(a)³⁹ is computed using only the public school placement tuition income and all allowable and non-allowable approved private school for students with disabilities expenses that are allowable tax deductions on the school's Federal,

State and local income tax returns. (d) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added to the total allowable costs to determine the certified actual cost per student.]”

The Department and State Board should eliminate this section in its entirety. “Profit-making schools” currently are allowed to charge a 2.5 percent surcharge, which serves as a restricted profit. Under this proposal, nonprofit and for-profit PSSDs would face the same maximum tuition rates.

N.J.A.C. § 6A:23A-18.7 Public school placement restricted working capital fund

“(a) For approved non-profit private schools for students with disabilities, the school's tuition rate may include an amount that will permit the school to establish a public school placement restricted working capital fund of up to 15 percent of the private school's allowable actual costs, for the 2006-2007 through 2007-2008 school year, but the private school shall not include an amount in excess of 2.5 percent of the private school's allowable actual costs per year. (b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the school's total allowable costs incurred in account numbers classified as undistributed expenditures -- business and other support services when calculating the certified actual cost per student. (c) Any gain or loss on the sale of fixed assets (except for buildings and/or land) or items originally purchased through funds charged in the certified actual cost per student shall be netted against or if applicable added the total allowable costs to determine the certified actual cost per student. (d) Interest earned in accordance with N.J.A.C. 6A:23A-18.2(h) is unrestricted revenue and is not part of the school's public school placement restricted working capital fund computation.]”

The Department and State Board should eliminate this section in its entirety. This section allows non-profit PSSDs to contribute into a working capital fund an amount in excess of the school's actual allowable costs, and is workable only as part of the current reconciliation process. As this proposal would eliminate that process, the requirements of this section would no longer be applicable.

N.J.A.C. § 6A:23A-18.9(c) Audit requirements

“The approved private school for students with disabilities shall ensure that the audited financial statements reflect [the certified actual cost(s) per student as determined by the independent auditor and final tuition rate(s) charged at the end of the school year as determined by the school's management.] tuition revenue based upon the rate not to exceed the maximum established by the assistant commissioner pursuant to N.J.A.C. 6A:23A-18.2.”

The Department and State Board should eliminate the regulations referring to the current reconciliation process as part of the annual audit. As this proposal would eliminate that process, the requirements of this section would no longer be applicable. Instead, this code should be replaced with language reflective of the proposed process and the maximum tuition rate established therein.

N.J.A.C. § 6A:23A-18.9(d) Audit requirements

“[The approved private school for students with disabilities management representative(s) shall discuss with the auditor the results of the auditor's determination of the certified actual cost per student in order for management to determine the final tuition rate charged as a result of the audit. 1. The approved private school for students with disabilities shall charge as the final tuition rate an amount equal to or less than the certified actual cost per student. 2. The approved private school for students with disabilities shall ensure that the audit report contains a letter signed by both the school auditor and an authorized school representative indicating that both parties have met and discussed the audit, and that the determination of the final tuition rate charged was a management decision.] The audited data shall be submitted electronically to the Department in a format provided by the assistant commissioner.”

The Department and State Board should also include a new subsection (d) to allow for the electronic submission to the Department of the documents related to the annual audit of PSSDs.

N.J.A.C. § 6A:23A-18.9(f) and (h) Audit requirements

“[(f) The approved private school for students with disabilities shall not amend the final tuition rate charged after certification by the Commissioner.] ... (h) An approved private school for students with disabilities that files an audit postmarked after November 1 [shall cause the tentative tuition rate per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and N.J.A.C. 6A:23A-18.2(j) will not apply.] may be subject to a fine, which will reduce the tuition rate for the subsequent year. Such fine shall be determined by the assistant commissioner of the Division of Administration and Finance.”

The Department and State Board should eliminate (f) and amend (h) as the regulations currently refer to the reconciliation process as part of the annual audit. As this proposal eliminates the process, the requirements of this section would no longer be applicable.

N.J.A.C. § 6A:23A-18.10 Appeals

“(a) The decision of the [Assistant Commissioner] assistant commissioner, Division of Administration and Finance regarding the calculation of the [tentative] tuition [rate] revenue pursuant to N.J.A.C. 6A:23A-18.2[(j)], regarding the approval of [a tentative] tuition [rate] revenue pursuant to N.J.A.C. 6A:23A-18.3 and regarding conditional approval status pursuant to N.J.A.C. 6A:23A-18.9(i), may be appealed in accordance with N.J.A.C. 6A:3. (b) The decision of the [Assistant Commissioner] assistant commissioner, Division of Administration and Finance in regard to certification may be appealed in accordance with N.J.A.C. 6A:3. (c) The decision of the Commissioner in regard to N.J.A.C. 6A:23A-18.3, New private schools for students with disabilities, may be appealed [to the State Board of Education] in accordance with [N.J.S.A. 18A:6-27 and] N.J.A.C. 6A:4.”

The Department and State Board should revise this regulation. The appellate jurisdiction of the State Board was removed in 2008 by the Legislature and should be deleted from this regulation. Additionally, references to the tentative tuition rate should be replaced.

N.J.A.C. § 6A:23A-18.13(f) Fiscal monitoring of approved private schools for students with disabilities and corrective action plans

“When an approved private school for students with disabilities is determined to be in noncompliance, the Commissioner may: 1. Issue a conditional approval status when noncompliance with State rules and/or implementation of the corrective action plan is demonstrated; or 2. Immediately remove program approval when it is documented that the health, safety or welfare of the students is in danger. 3. Require that the private school for students with disabilities refund excess tuition charged to the sending school districts if it is determined that the amount charged was noncompliant with N.J.A.C. 6A:23A-18.2. 4. If the audited expenditures for instruction are below 60 percent of total expenditures or the administrative costs exceed 20 percent of total expenditures, the per-pupil tuition rate charged shall be reduced by the costs that are noncompliant and refunded to the sending school districts. Income taxes of a for-profit private school for students with disabilities, claims and judgments shall not be included in total expenditures for purposes of this section.”

The Department and State Board should revise this regulation to change how non-allowable costs are to be refunded to sending districts, as well as to include a mechanism to address instances where a PSSD does not comply with the allowable percentages for instructional and administrative costs as detailed in the proposed N.J.A.C. 6A:23A-18.2.

SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

N.J.A.C. § 6A:23A-[22.5]22.4(c) Public school contract law

“Charter schools are prohibited from contracting with legal counsel or using in-house legal counsel to pursue any affirmative claim or cause of action on behalf of charter school administrators and/or any individual board members for any claim or cause of action in which the damages to be awarded would benefit an individual rather than the charter school as a whole.”

The Department and State Board should adopt this regulation to prohibit charter schools from pursuing certain legal actions that would benefit individuals rather than the charter school as a whole. The addition of this language would make the code consistent with statutory requirements placed on other public schools.

6A:23A-22.7 Charter school response to Office of Fiscal Accountability and Compliance (OFAC) investigation report

“The findings of violations or possible violations of the OFAC audit or investigation and the board of trustees’ corrective action plan shall be posted on the charter school’s website.”

The Department and State Board should adopt this regulation, which would provide an additional requirement regarding OFAC investigations. Charter schools should be required to post an OFAC audit or investigation on their website only if there are negative findings. The addition of this language is consistent with another proposal in this chapter to ease requirements placed on other public schools.

6A:23A-22.8 Verification of payroll check distribution

“Beginning with the [2009-2010]2012-13 school year, each charter school identified by the Commissioner as requiring increased State oversight due to fiscal or operational irregularities shall, at least once every three years[,] between the months of September through May, [charter schools shall] require each charter school employee to report to a central location(s) and produce picture identification and sign for release of his or her paycheck or direct deposit voucher. The [district] charter school may exclude per diem substitutes from the required verification. Other charter schools are recommended but not required to undertake this procedure.”

The Department and State Board should amend this regulation, which requires all charter schools to verify payroll at least once every three years. The change would target the requirement only to charter schools identified by the Commissioner as requiring increased State oversight due to fiscal or operational irregularities. All non-targeted charter schools would be given the opportunity to have their employees report and re-verify their identification triennially, but would not be required to do so. This change also would establish a new start date for this subsection because the code has been altered to reduce its scope.

The regulatory changes would ease burdens on charter schools that are running efficiently and are consistent with requirements in this chapter proposed for other public schools.

N.J.A.C. § 6A:23A-[22.10]22.8(a)[2]1 Nepotism policy

“A provision prohibiting any relative of a board member, lead person or chief school administrator from being employed in an office or position in that charter school except that a person employed [or to be promoted] by the charter school on the effective date of the policy or the date a relative becomes a board member or chief school administrator shall not be prohibited from continuing to be employed or to be promoted in the school[, and a]. This allowance does not pertain to extending an employment contract to allow for an increase in pay related to the extension of the work year. A charter school may employ a relative of a board member, lead person[,] or chief school administrator provided that the charter school has obtained approval from the executive county superintendent [of schools]. Such approval shall be granted only upon demonstration by the charter school [district] that it conducted a thorough search for candidates and [that] the proposed candidate is the only qualified and available person for the position;”

The Department and State Board should amend this regulation, which clarifies that an extension of the work year (for example, from 10 to 12 months) is allowed under this regulation as long as the new annual pay is prorated based on the rate prior to the extension. This change would ensure that the related school board member or chief school administrator does not have the opportunity to increase their relative’s rate of pay through a work-year extension.