

## **EDUCATION**

### **STATE BOARD OF EDUCATION**

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

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

#### **Proposed Amendment: N.J.A.C. 6A:23A-18.6**

Authorized By: New Jersey State Board of Education, Lamont O. Repollet, Commissioner,  
Department of Education, Secretary, State Board of Education.

Authority: N.J.S.A. 18A:46-21.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-120.

Submit written comments by February 15, 2019, to:

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The agency proposal follows:

#### **Summary**

The Department of Education (Department) proposes to amend Subchapter 18 of N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency, and Budgeting Procedures to comply with the Paid Sick Leave Act, P.L. 2018, c. 10 (N.J.S.A. 34:11D-1 et seq.). This new law requires private

employers to provide sick time to certain employees and also permits employers to pay employees for earned unused sick leave. Under the new law, “[t]he employer shall not be required to permit the employee to accrue or use in any benefit year, or carry forward from one benefit year to the next, more than 40 hours of earned sick leave.” N.J.S.A. 34:11D-2.a. In other words, the employer’s obligations under the law are limited to a maximum of 40 hours of paid sick leave per year. The new law became effective October 29, 2018.

N.J.A.C. 6A:23A-18, Tuition for Private Schools for Students with Disabilities, provides the methodology for calculation of tuition charged by approved private schools for students with disabilities (APSSDs). The rules also establish non-allowable costs, audit and budgeting requirements, new school application information, and additional fiscal requirements.

N.J.A.C. 6A:23A-18.6, Non-allowable costs, provides a lengthy, yet non-exhaustive, list of 73 types of non-allowable costs that can be included in the tuition rate charged by APSSDs to school districts. Non-allowable costs play a crucial part in the current reconciliation process between the tentative tuition rate and the certified actual cost per student. If a cost is deemed non-allowable, an APSSD cannot include the cost in its expenditures, which forms the basis for the certified actual cost per student and, therefore, is directly related to the tuition rates paid by the sending district boards of education.

The Department proposes to amend N.J.A.C. 6A:23A-18.6(a)66 to increase the flexibility of APSSD employers to pay earned unused sick time under P.L. 2018, c. 10. To ensure efficient expenditure of public funds, N.J.A.C. 6A:23A-18.6(a)66 currently limits the amount of earned unused sick leave payments that can be treated as allowable costs by APSSDs. Under the current regulation, payments for unused sick leave in excess of one percent of the individual employee’s contracted salary amount during the fiscal year in which the payments are made are deemed non-

allowable costs. Based on a 35-hour workweek, one percent of current salary equates to 18.2 hours of earned unused sick time, so the current rule does not provide the same level of flexibility to employers as P.L. 2018, c. 10. Therefore, the Department proposes to amend the percent set forth in the regulation to 2.2 percent of the individual employee's contracted salary amount, which equates to approximately 40 hours for an employee working a 35-hour workweek.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The Department anticipates the proposed amendment will have no social impact. The proposed amendment concerns a single non-allowable cost in the calculation of tuition charged by APSSDs.

### **Economic Impact**

The proposed amendment will promote the purposes of the Paid Sick Leave Act, P.L. 2018, c. 10 (N.J.S.A. 34:11D-1 et seq.), by permitting APSSD employers to increase the amount of paid earned unused sick time provided to employees and include the costs in the tuition rate charged to school districts. The proposed amendment may result in a minor increase in the overall costs of an APSSD's program above the costs for the 2017-2018 school year. The Department anticipates the resulting negligible increase in tuition will not create an undue burden to school districts.

### **Federal Standards Statement**

There are no Federal standards or requirements applicable to the proposed amendment; therefore, a Federal standards analysis is not required.

### **Jobs Impact**

The Department anticipates the proposed amendment will have no impact upon the

generation or loss of jobs in the State. The proposed amendment concerns the calculation of tuition charged by APSSDs.

### **Agriculture Industry Impact**

The proposed amendment will have no impact upon the agriculture industry in the State. The proposed amendment concerns the calculation of tuition charged by APSSDs.

### **Regulatory Flexibility Analysis**

APSSDs meet the definition of small business, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are currently approximately 160 approved APSSDs in New Jersey.

The proposed amendment does not impose additional reporting, recordkeeping, or other compliance requirements on APSSDs. The proposed amendment will ease a current compliance requirement by allowing APSSDs more flexibility to provide payments of earned unused sick time to employees in a manner that is less restrictive than the current regulation.

Since the proposed amendment provides APSSDs with more regulatory flexibility and allows them to include a higher amount in the tuition charged to school districts, the proposed amendment does not impose a financial burden on APSSDs.

### **Housing Affordability Impact Analysis**

The proposed amendment will have no impact on the affordability of housing or the average cost of housing in this State. The proposed amendment pertains to the calculation of tuition charged by APSSDs.

### **Smart Growth Development Impact Analysis**

The proposed amendment will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The

proposed amendment pertains to the calculation of tuition charged by APSSDs.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact Statement**

There is an extreme unlikelihood that the proposed amendment would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendment solely concern the calculation of tuition charged by APSSDs.

**Full text** of the proposal follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

#### SUBCHAPTER 18. TUITION FOR PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

##### 6A:23A-18.6 Non-allowable costs

(a) Costs that are not allowable in the calculation of the certified actual cost per student shall include the following:

1. – 65. (No change.)

66. Cost(s) of payments made to an individual employee(s) for earned unused sick benefit that is in excess of [one] **2.2** percent of the individual employee's contracted salary amount during the fiscal year in which the payment is made;

67. – 73. (No change.)