

Education

Higher Education

Commissioner of Education

Secretary of Higher Education

Securing Our Children's Future Bond Act Grants

Jointly Adopted New Rules: N.J.A.C. 6A:26A

Proposed: December 16, 2019, at 51 N.J.R. 1819(a).

Adopted: March 13, 2020, by Lamont O. Repollet, Ed.D., Commissioner, Department of Education; and Zakiya Smith Ellis, Secretary of Higher Education.

Filed: March 13, 2020, as R.2020 d.043, **without change**.

Authority: P.L. 2018, c. 119.

Effective Date: April 6, 2020.

Expiration Date: April 6, 2027.

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received from members of the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. Richard D. Alderiso, DI Group Architecture
2. Kathleen M. Allen, School Business Administrator, Cape May County Special Services School District
3. Caryn Anderson, Assistant Business Administrator, Howell Township Board of Education

4. Joseph Borchard, Director of Technology, Wayne Township Public Schools
5. Gary Brune, New Jersey Future
6. Stephen Burns, Business Administrator/Board Secretary, Haddon Heights School District
7. James Carifi, Director of Security, Mt. Olive School District
8. Elizabeth A. Curry, Assistant Superintendent, Gloucester City School District
9. Rosemary Della Sala, Assistant Business Administrator, East Windsor Regional School District
10. Anne Erickson
11. Don Gemeinhardt, EDT Project Manager
12. Lauren J. Granate, Business Administrator/Board Secretary, Elsinboro Board of Education and Assistant Business Administrator, Alloway and Lower Alloways Creek Boards of Education
13. John Griffin, School Business Administrator/Board Secretary, Waldwick Public Schools
14. Philip Guenther, Superintendent, Atlantic County Vocational School District
15. Maureen Guilfoyle, Director of Instruction and Funded Programs, Township of Union Schools
16. William H. Hurley Jr., Buildings and Grounds, Moorestown Public Schools
17. Martha J. Jamison, Business Administrator, Wildwood School District
18. John Jennings, Business Administrator, High Bridge School District
19. Derek Jess, School Business Administrator, Perth Amboy Public Schools
20. Michael Kenny, Coordinator of the Office of Grants and Communication, Toms River Regional Schools
21. Harry Lee, President and CEO, New Jersey Charter Schools Association

22. Christopher McCarrick, Operations Administrator/Board Secretary, Red Bank Charter School
23. Angela V. McKnight, New Jersey State Assemblywoman, District 31
24. Lawrence J. Merighi, Manders Merighi Portadin Farrell Architects LLC
25. Kamila Miazio, Director of Grant Planning, Research, and Evaluation, South River Public Schools
26. Samad Mobley, Buildings and Grounds Supervisor, Branchburg Township School District
27. James Nichols
28. Michael Nikola, Director of Facilities, Stafford Township School District
29. Molly Petty, Blairstown Township Board of Education
30. Randy Pratt, Executive Director, Warren Glen Academy
31. Todd D. Reitzel, School Business Administrator/Board Secretary, Deptford Township Board of Education
32. James Repka, Spiegle Architectural Group
33. Judy Savage, Executive Director, New Jersey Council of County Vocational-Technical Schools
34. Rob Scharle, School Business Administrator, Harrison Township School District
35. Troy Singleton, New Jersey State Senator, District 7
36. Frank Summers, Technology Coordinator, Evesham Township School District
37. Valerie Ulrich, Grant Writer and Coordinator of Special Programs, Princeton Public Schools
38. Yas Usami, Business Administrator/Board Secretary, Tenafly Public Schools

39. Michael A. Vrancik, Director of Government Relations, New Jersey School Boards Association
 40. Murat Yazici, Assistant Business Administrator, South Plainfield Board of Education
 41. Staci Berger, President and CEO, Housing and Community Development Network of New Jersey; Elyse Pivnick, Senior Director of Environmental Health, Isles Inc.; Ruth Ann Norton, President and CEO, Green and Health Homes Initiative; Marie Mascherin, Chief Operating Officer, New Jersey Community Capital; Michael Furry, Owner, Agra Environmental and Laboratory Services; Bill Kibler, Director of Policy, Raritan Headwaters; Drew Curtis, Senior Equitable Development Manager, Ironbound Community Cooperation; Phyllis Salowe-Kaye, Executive Director, New Jersey Citizen Action; David Sciarra, Executive Director, Education Law Center; Doug O'Malley, State Director, Environment New Jersey; Elena Peoples, Program Director, East Trenton Collaborative; Peter Kasabach, Executive Director, New Jersey Future
1. Comment: The commenter asked if school districts with comprehensive high schools that offer career and technical education (CTE) programs will be eligible to apply for the grants. (25)
 2. Comment: The commenter asked if only county vocational school districts (CVSD) are eligible to apply for the grants. (8)
- Response to Comments 1 and 2: The Securing Our Children's Future Bond Act (Act) provides for only county vocational school district career and technical education (CVSD CTE) grants. However, school security and water infrastructure improvement grants are open to all school districts, as defined in the Act and N.J.A.C. 6A:26A-1.2.

3. Comment: The commenter asked if grants under the Act are available to approved private schools for students with disabilities (APSSDs). (30)

RESPONSE: No, the Act provides for grants to school districts as defined in the Act and N.J.A.C. 6A:26A-1.2, which does not include APSSDs.

4. Comment: The commenter asked for confirmation that, under N.J.A.C. 6A:26A-1.7, grants can only be used to reimburse a school district for a project and that school districts are responsible for the initial financing of a project and payment to contractors and then the grants reimburse only for eligible costs. (39)

Response: Yes, grant funds are not prospective. The adopted new rules provide for three types of reimbursement. One is entirely backward-looking, as it provides a one-time reimbursement for an Alyssa's Law compliance or water infrastructure improvement project that already is complete. A second type is a one-time reimbursement for newly approved, smaller security or water infrastructure projects. The third, which is for approved CVSD CTE projects and some water infrastructure improvement and school security projects, will release grants on a percentage of completed construction basis over time, so that the school district does not have to fund the entire project upfront. The method for approval of those capital projects utilizes the Department's existing procedures at N.J.A.C. 6A:26-3.11 and is consistent with the New Jersey Schools Development Authority's (NJSDA) rules at N.J.A.C. 19:32 implementing regular operating district grants, pursuant to N.J.S.A. 18A:7G-15. Therefore, the Department's rules at N.J.A.C. 6A:26A-1.7 utilize a tested and proven way for schools to complete

projects funded in part by State grants from general obligation bonds. Because the funds for all grants pursuant to the Act are to be funded based on the issuance of general obligation bonds, similar to regular operating district grants, grant disbursements must be based on approved eligible costs to ensure the program's integrity.

Finally, N.J.A.C. 6A:26A-1.7(h) allows, in the case of special circumstances and/or extraordinary need, the school district to request a waiver from the schedule of disbursements set forth at N.J.A.C. 6A:26A-1.7 upon application to the Commissioner indicating the reason(s) for the request and a proposed schedule of disbursements. The adopted new rules will ensure that if school districts have immediate need of grant funds due to special circumstances or extraordinary need, the Commissioner may disburse funds in advance of the schedule set forth at N.J.A.C. 6A:26A-1.7 after evaluation and approval of the waiver.

5. Comment: The commenter asked if the criteria have been established regarding that alternative emergency mechanisms will be approved by the Department, as referenced at N.J.A.C. 6A:26A-1.7(b)5. (39)

Response: Because of the speed with which technology changes, the Department did not incorporate mechanical requirements into the new rules. Instead, the Department created broader criteria, which appear in the definition of alternative emergency mechanism and also utilized the NJSDA definition of school security emergency and the statutory requirement for a panic alarm, as further defined by the NJSDA's implementing rules at N.J.A.C. 19:32A. The New Jersey School Security Task Force Report of July 9, 2015, described the significant variations, capabilities, and costs of panic alarm systems, and

their different strengths and limitations, in essence making clear that a list of approved specific proprietary systems would be unduly burdensome on school districts that implemented panic alarm systems based on the unique needs of each school district and necessary collaboration with local law enforcement.

Finally, pursuant to the requirements for school security project grant applications at N.J.A.C. 6A:26A-4.2(b)3ii(1) and (b)3iii(6), any school district that does not meet any provision set forth at N.J.S.A. 18A:41-11.a through d must provide “a description of how the proposed project meets the spirit and intent of Alyssa’s Law and why it should be approved as an alternative emergency mechanism.” The adopted new rules clearly state that school districts installing systems to comply with Alyssa’s Law must make every attempt to ensure that their system complies with the requirements for an Alyssa’s Law panic alarm, as set forth in the law, and in NJSDA’s implementing rules at N.J.A.C. 19:32A, and that any deviation from those requirements must be justified with a description that explains how the proposed or existing system “meets the spirit and intent of Alyssa’s law.” This language mirrors the criteria at N.J.A.C. 6A:5-1.3 for a school district’s request for an equivalency or waiver to a specific rule in Title 6A of the New Jersey Administrative Code to demonstrate that the spirit and intent of State and Federal laws, rules, and regulations are served by granting the equivalency or waiver. However, to help school districts plan, the Department published preliminary guidance that provided school districts with examples of systems that may be approved as alternative emergency mechanisms. The guidance, which is available at <https://www.nj.gov/education/facilities/>, provides some general information that school districts can use for planning purposes in advance of the opening of grant applications.

6. Comment: The commenter asked, in reference to N.J.A.C. 6A:26A-1.7(c)4, if the final disbursement of the grant can be an amount other than 15 percent of the total grant award. (39)

Response: While it is true that N.J.A.C. 6A:26A-1.7(c) can be read as a four-part payment schedule of 30 percent, 40 percent, 15 percent, and 15 percent, how much is paid in the last installment depends on how much the project actually costs. N.J.A.C. 6A:26A-1.7(c)4 actually provides for a disbursement of the remaining funds as set forth in the grant agreement, which may be less than 15 percent of the original total grant award if the total cost of the project falls below the grant application cost estimate after the award of a grant and the Commissioner adjusts the total grant award in accordance with the matching funds requirement, pursuant to N.J.A.C. 6A:26A-2.2(a)3. In that circumstance, the first three grant disbursements may have been based on proven costs and the originally approved grant amount, so that the final disbursement will be based on the adjusted grant award related to actual project cost.

7. Comment: The commenter asked what is a high demand sector referenced at N.J.A.C. 6A:26A-2.1(b)3 and how is this designation determined. (39)

Response: High demand sector means a sector that is within the industries of focus as set forth at N.J.A.C. 6A:26A-2.1(a)3ii.

8. Comment: The commenter stated that the notice of proposal for funding for community college and CVSD projects requires executive county superintendent (ECS) approval but

does not take into account the school districts from which the CVSDs draw their students. The commenter also stated that the ballot question for the Act was not approved by the majority of voters in the Atlantic County region and that several sending districts have passed resolutions asking that consideration of the impact on the region's school districts be considered before providing opportunities for a CVSD to expand. The commenter further stated that the CVSD in the Atlantic County region developed and expanded its magnet programs and prioritized them over the CTE programs.

The commenter stated that many school districts in Atlantic County were significantly underfunded. The commenter also stated the two percent cap placed on school districts does not apply to CVSDs, so they are able to increase their budgets to meet their needs and expand the number of students served, which increases the tuition and charges to sending school districts, which have no say in approving the tuition charged by CVSDs. The commenter stated that the Atlantic County Board of Chosen Freeholders voted to approve a statement of support for the CVSD's application and stated that the county has no means to fund the local portion. The commenter expressed concern about the costs being passed on to area school districts. The commenter asked if all of these issues will be considered in the application process. (10)

Response: The adopted new rules do not require ECS approval for the approval of a grant application for the CVSD CTE grants, and also do not contain a provision for input from sending school districts. The Department recognizes that sending school districts pay the tuition costs for resident students enrolled at CVSDs. The cost of the CVSD CTE projects, pursuant to the Act and the adopted new rules, will be paid solely through CVSD CTE project grants and the matching funds provided by the CVSD.

N.J.A.C. 6A:26A-2.2(a)1 further provides that no amount of the cost of an approved CVSD CTE program project can be included in the cost of tuition charged to sending school districts, pursuant to N.J.A.C. 6A:23A-17.3 and 17.4.

9. Comment: The commenter opposed the ineligibility of building addition projects in which the net square footage of CTE classrooms, including adjacent support spaces serving the classroom, are less than 75 percent of the total net square footage of the proposed project. The commenter stated the Atlantic County Vocational School District plans to submit a grant application to increase enrollment by 425 students or 25 percent, which will most likely cause a need for non-CTE capacity-generating spaces and specialized spaces such as a new satellite cafeteria, a nurse suite, and physical education spaces. The commenter further stated the Department's model for high schools assumes all capacity-generating spaces will be only 35 percent of the total net area of a building, with 60 percent allocated to specialized spaces and 5 percent to administrative spaces. The commenter also argued that some of the capacity-generating spaces would need to be regular education classrooms to provide for a thorough and efficient education. The commenter suggested that the 75 percent requirement be reviewed and significantly adjusted downward to a more reasonable percentage that recognizes the varied needs of vocational students and that encompasses more than just CTE classrooms to advance the large projects allowed under the CVSD CTE grant program. (24)

Response: The Department disagrees. The requirement at N.J.A.C. 6A:26A-2.1(d)3 for 75 percent of the total proposed net square footage of proposed building additions to be comprised of CTE classrooms, including adjacent support spaces serving the classroom,

is consistent with section 4, paragraph d of the Act, which states that applicants for CVSD CTE grants must demonstrate how the proposed project will “increase the capacity of the county vocational school district to ... offer career and technical education programs.” The facilities efficiency standards referred to by the commenter are not applicable to the adopted new rules or to construction for CVSDs, as the standards apply only to the construction of comprehensive high schools in regular operating school districts. For the purposes of the Department’s review of projects for CVSDs, “specialized spaces” (see <https://www.nj.gov/education/facilities/lrfp/fes.pdf>) are considered capacity-generating. Therefore, the Department has determined that the construction of sufficient space to increase CTE program capacity, as measured by the net square footage of CTE classrooms including adjacent support spaces serving the classroom, will generate sufficient square footage within 25 percent of the project for any needed cafeterias or general education classrooms for the students served.

10. Comment: The commenter opposed the provision at N.J.A.C. 6A:26A-2.1(d)3, that ineligible projects include “[b]uilding additions in which the total proposed net square footage of CTE classrooms, including adjacent support spaces serving the classroom, is less than 75 percent of the total net square footage of proposed construction.” The commenter stated that the requirement does not apply to a new standalone building and appears to severely limit CVSDs that are seeking to significantly increase enrollment through a large project in the form of an addition. The commenter stated that a substantial increase in enrollment through an addition would require additional academic classrooms and support spaces needed to provide students with a thorough and efficient

education. The commenter requested that the 75 percent requirement be reviewed as it will discourage applications and severely impact project design, efficiency, and cost. (14)

Response: The Department disagrees. The requirement at N.J.A.C. 6A:26A-2.1(d)3 for 75 percent of the total proposed net square footage of proposed building additions to be comprised of CTE classrooms, including adjacent support spaces serving the classroom, is consistent with section 4, paragraph d of the Act, which states that applicants for CVSD CTE grants must demonstrate how the proposed project will “increase the capacity of the county vocational school district to ... offer career and technical education programs.” For the purposes of the Department’s review of CVSD projects, “specialized spaces” are considered capacity-generating. Therefore, the Department has determined that the construction of sufficient space to increase CTE program capacity, as measured by the net square footage of CTE classrooms including adjacent support spaces serving the classroom, will generate sufficient square footage within 25 percent of the project for any needed cafeterias or general education classrooms for the students served.

11. Comment: The commenter expressed support for the proposed rules and stated that the process put forward by the Department to determine the allocation of funding is thoughtful and reasonable. The commenter agreed that establishing separate funding streams for small and large CVSD CTE projects will ensure that a mix of expansion plans will be funded, and that the geographic diversity parameters will allow expansion and greater access throughout the State. The commenter expressed appreciation for the increased weight given to the programmatic scoring over construction efficiency in the rubric provided in the Department’s guidance. The commenter stated that evaluating and

scoring applications for consideration based upon how each proposed project aligns to Act will ensure that the intent of the Legislature and New Jersey residents is met. (33)

Response: The Department thanks the commenter for the support.

12. Comment: The commenter stated that the adopted new rules should be consistent with the following language in the Act, “the county which established the county vocational school district or county college shall support 25% of the project.” The commenter stated that, pursuant to N.J.A.C. 6A:26A-2.2, the CVSD CTE grants shall be approved for 75 percent of the total eligible project costs, and the remaining costs of the project shall be borne by the CVSD. The commenter stated that the intent of the adopted new rules is clear, especially when considering the requirement at N.J.A.C. 6A:26A-2.4(a)8 for the county board of chosen freeholders to pass a resolution approving the application and committing the county contribution. However, the commenter suggested that the Department amend the rule to align with the statutory language. (33)

Response: The Department agrees with the commenter that the intent of N.J.A.C. 6A:26A-2.2 and 2.4(a)8 is for the county that established the CVSD to support 25 percent of the CVSD CTE project. However, the Act and this chapter provide for grants to CVSDs, so it is the CVSD that will be the grant applicant, the entity that will execute the grant agreement, and the entity submitting requests for grant disbursement for eligible costs. Therefore, the CVSD will ultimately be responsible for ensuring compliance with the grant agreement, the expenditure of the grant funds, and the remaining costs of the project’s construction. As a result, the adopted new rules are consistent with both sets of language in the Act by requiring the remaining project costs to be borne by the CVSD,

which must secure a resolution from the county board of chosen freeholders approving the total amount of the county contribution to ensure the availability of sufficient funds to meet the obligation.

13. Comment: The commenter asked whether the provision at N.J.A.C. 6A:26A-2.4(b) that a CVSD may submit only one project per campus will preclude a CVSD that has only one campus from submitting both a small project and a large project application for that campus. The commenter stated that smaller CVSDs, or those with multiple schools on a single campus, have commented that this provision unfairly penalizes a CVSD that is located on a single campus. The commenter stated that smaller CVSDs would like the opportunity to submit a project for the small project application pool, as well as for a larger project since competition for large projects will be greater. (33)

Response: N.J.A.C. 6A:26A-2.4(b) will prevent a CVSD with a single campus from submitting both a small project application and a large project application. However, the Department disagrees that the limitation on the submission of one grant application per school campus penalizes smaller CVSDs. Rather, N.J.A.C. 6A:26A-2.4(b) will incentivize CVSDs to focus on submitting a single, thorough, competitive application for each school campus that demonstrates the criteria at N.J.A.C. 6A:26A-2.1, rather than the submission of multiple possible scenarios. The Department anticipates that this focus will result in high-quality, competitive applications that meet the Act's goals and will be able to compete for grant funding on equal footing without regard to the current size of the CVSD. Moreover, the use of geographic location groups at N.J.A.C. 6A:26A-2.3(b) and the allocation of grants into small and large projects at N.J.A.C. 6A:26A-2.3(c) will

ensure that the expansion of CTE program capacity is distributed throughout the State and among a variety of CVSDs, including both small and large districts.

14. Comment: The commenter stated the adopted new rules need to be clarified to define the method by which the additional number of students served will be calculated for shared-time programs converting to full-time programs. The commenter stated that CVSDs seeking to expand and offer full-time opportunities need clarification as to the method by which additional students served will be calculated for purposes of the grant application. The commenter asked if the Department will use full-time equivalent (FTE) enrollment or total headcount to calculate “new CTE program capacity,” and if the number of additional students to be served will be calculated at a fully enrolled four-year projection or a two-year projection. The commenter stated that the timeframe for full implementation of various projects may vary and it is important to evaluate projects in an equitable comparison. (33)

15. Comment: The commenter asked if a project that is designed to support the conversion of a shared-time CTE program to a full-time program that doubles FTE enrollment would be considered a “program expansion” and an increase in the CVSD’s capacity to offer CTE programs to meet the eligibility criteria under the Act and N.J.A.C. 6A:26A-1.6. (27)

Response to Comments 14 and 15: As the conversion of an existing part-time program to a full-time program merely changes where existing students receive their general education instruction, such a proposal would not demonstrate that the application will “increase the capacity of the county vocational school district ... to offer career and technical education programs,” pursuant to section 4, paragraph d of the Act or N.J.A.C.

6A:26A-1.4(b)1i. To meet this requirement, an applicant must demonstrate how the proposed project will increase the number of students in CTE programs and target new student seats for CTE programs, as set forth in N.J.A.C. 6A:26A-2.1(a).

16. Comment: The commenters expressed support for the following provisions at N.J.A.C. 6A:26A-3 regarding water infrastructure improvements: (1) the criteria for the distribution of funds, prioritizing elementary schools, and the type and level of contamination as important factors; (2) installation of building-wide automated flushing systems as a cost efficient response; (3) prohibition of major renovations that remove indoor lead plumbing, which is very expensive, as well as work on drinking water outlets not cited in the most recent water quality testing reports and installation of new water outlets at new locations; and (4) avoidance of the broad application of water filters as an expedient solution to water contamination. (5 and 41)

Response: The Department thanks the commenter for the support. However, the adopted new rules at N.J.A.C. 6A:26A-3 do not favor one allowable cost over any other but provide multiple options for school districts to address water infrastructure improvements based on local need.

17. Comment: The commenter asked how the \$100 million for the school district water infrastructure improvement grants will be prioritized. The commenter asked what will occur if the total dollar amount of the submitted projects exceeds \$100 million. (39)

Response: If the \$100 million allocated to water infrastructure improvements in the Act is not sufficient to fully fund every submitted project, N.J.A.C. 6A:26A-3.3(b) will ensure

the disbursed funds will be prioritized based on health and safety considerations, such as the type of contaminant and levels of contaminants detected, grade levels served by the school, and the school's existing construction age. N.J.A.C. 6A:26A-3.3(b) also will ensure that the environmental justice priorities outlined in Executive Order No. 23 (2018) are considered in prioritizing water infrastructure improvement projects. Finally, N.J.A.C. 6A:26A-3.3(b) will ensure that the Commissioner has sufficient discretion to consider other relevant criteria in the prioritization of water infrastructure improvement projects, including, for example, the testing data submitted with project applications or a real-time public health emergency.

18. Comment: In reference to N.J.A.C. 6A:26A-3.3(b), the commenter asked if school districts will be notified if the \$100 million allocated to water infrastructure improvements is exceeded and applications are prioritized or capped and whether notification will be prior to application submission or to award of the grants. The commenter asked if the Department recommends that school districts not undertake any water infrastructure project until being informed about the grant amount that has been awarded. (39)

Response: The Department will not be aware of whether the total amount of funds are exceeded until after the deadline for submission of school district water infrastructure improvement grant applications because the total dollar amount of all grant applications submitted must be calculated. Moreover, the Department's communication with grant applicants will be limited while applications are evaluated and until the Department awards grants because the school district water infrastructure improvement grant program

will be a competitive grant program. N.J.A.C. 6A:26A-3.2(a) limits water infrastructure improvement projects to safe and proven remediation methods that are the most efficient means to address water contamination for as many drinking water outlets as possible, given the total amount of funding available for water infrastructure improvements under the Act. The Department is optimistic that this limitation will decrease the likelihood that school district water infrastructure improvement grants will need to be capped and prioritized.

19. Comment: The commenters stated that fiscally distressed communities with high percentages of children who have elevated blood lead levels should receive top priority for funding. The commenters also stated that the school buildings in many of New Jersey's urban school districts are very old and often contain extensive lead plumbing. The commenters further stated that the same school districts typically have severe budget constraints and are likely to rely on the State to adequately fund the work required to address lead in drinking water. (5 and 41)
20. Comment: The commenter stated that the Department should clarify the relative weight that will be given to Executive Order 23 (2018) as one of the funding criteria. The commenter stated that, absent the commenter's suggested amendment, it is difficult to see how the proposed funding distribution will consistently ensure that a significant, permanent, and timely reduction in the percentage of children facing the greatest exposure is achieved and the needs of fiscally distressed communities are completely addressed to the degree that, when State funds are exhausted, there are not children who

continue to be significantly exposed to lead in drinking water simply due to the lack of resources. (5)

Response to Comment 19 and 20: The Department disagrees that the adopted new rules at N.J.A.C. 6A:26A-3.2 and 3.3 do not address the commenters' concerns. First, N.J.A.C. 6A:26A-3.2(a) limits water infrastructure improvement projects to safe and proven remediation methods that are the most efficient means to address water contamination for as many drinking water outlets as possible, given the total amount of funding available for water infrastructure improvements under the Act. The Department is optimistic that this limitation will decrease the likelihood that school district water infrastructure improvement grants will need to be capped and prioritized pursuant to N.J.A.C. 6A:26A-3.3(b). N.J.A.C. 6A:26A-3.3(b)4 requires the consideration of Executive Order No. 23 (2018), which speaks directly to "low-income communities and communities of color, and recommends that all agencies in the Executive Branch consider environmental justice in implementing their statutory and regulatory responsibilities, and defines "environmental justice" as "ensuring that all residents and communities receive fair and equitable treatment in decision-making that affects their environment, communities, homes, and health." N.J.A.C. 6A:26A-3.3(b)3 requires the consideration of the school's construction age, which will likely capture school districts that face increased financial challenges when updating older buildings, rather than newly constructed facilities. The Department disagrees that any one of the factors listed at N.J.A.C. 6A:26A-3.3(b)1 through 5 should be given more weight than the others in isolation without specific information from each school district's water infrastructure improvement grant application. The risk based on the other prioritization categories, which include the type

of contaminant and levels of contaminants detected, grade levels served by the school, and the construction age of the school, may feasibly outweigh the concerns outlined in Executive Order No. 23 (2018), based on the individualized information provided in each school district's application. Finally, the Department disagrees that it is appropriate to prioritize distribution of the water infrastructure improvement grants to school districts based on criteria that is not directly tied to the documented testing of water quality at school district buildings. Instead, N.J.A.C. 6A:26A-3.2(a) includes projects that address water contamination as eligible for grants and refers directly to the testing required and conducted, pursuant to N.J.A.C. 6A:26-12.4. N.J.A.C. 6A:26A-3.4(b)6 requires submission of a copy of the most recent districtwide water quality testing results for all buildings completed by a certified laboratory. N.J.A.C. 6A:26A-3.3(b)1 prioritizes the type of contaminant and levels of contaminants detected. Therefore, the application requirements directly connect to testing conducted by and at the school district and include information that is readily available to a school district as it completes its grant application.

21. Comment: The commenter asked what is meant by other relevant criteria at N.J.A.C.

6A:26A-3.3(b)5. (39)

Response: N.J.A.C. 6A:26A-3.3(b)5 will ensure that the Commissioner has sufficient discretion to consider other relevant criteria in the prioritization of water infrastructure improvement projects, including, for example, the testing data submitted with project applications or a real-time public health emergency.

22. Comment: The commenters stated that school districts that spent local funds after January 1, 2016, to remediate lead/water contamination should not be eligible for reimbursement until the Department verifies that the existing needs of school districts (and particularly fiscally distressed school districts) are adequately addressed. The commenters also stated that the reimbursements would be eligible under the adopted new rules regardless of the school district's financial condition or whether it serves high numbers of children suffering from lead poisoning. (5 and 41)

Response: The Department disagrees that the rules, at N.J.A.C. 6A:26A-3.2 and 3.3, do not address the commenter's concerns. First, N.J.A.C. 6A:26A-3.2(a) limits water infrastructure improvement projects to safe and proven remediation methods that are the most efficient means to address water contamination for as many drinking water outlets as possible, given the total amount of funding available for water infrastructure improvements under the Act. The Department is optimistic that this limitation will decrease the likelihood that school district water infrastructure improvement grants will need to be capped and prioritized pursuant to N.J.A.C. 6A:26A-3.3(b). If the total dollar amount requested for water infrastructure improvement grants exceed \$100 million, applications will be prioritized based on: the type of contaminant and levels of contaminants detected; grade levels served by the school, with highest priority to the earliest grade levels; existing construction age of the school; Executive Order No. 23 (2018); and other relevant criteria as determined by the Commissioner. Finally, the retroactive reimbursement of water infrastructure improvement projects completed after January 1, 2016, will encompass projects that were completed within the time period for reimbursement of water quality testing in accordance with P.L. 2017, c. 86 and N.J.A.C.

6A:26-12.4 and will ensure that funding is provided to school districts based on that testing.

23. Comment: The commenter asked what is the significance of the January 1, 2016, cutoff date for eligible projects at N.J.A.C. 6A:26A-3.2(b)1. (39)

Response: The retroactive reimbursement of water infrastructure improvement projects completed after January 1, 2016, will encompass projects that were completed within the time period for reimbursement of water quality testing in accordance with P.L. 2017, c. 86 and N.J.A.C. 6A:26-12.4.

24. Comment: The commenters stated that water infrastructure improvement grants for high-cost, individual school buildings should not be capped in fiscally distressed school districts unless an alternative plan for the buildings is established between the school district and the Department, or the Department clarifies how the remaining costs of remediation will be addressed. The commenters stated that the proposed rules do not specify the size of the cap or how it would be applied. The commenters also argued that a relatively small cap could mean that a large, old school building with significant lead plumbing could receive the same amount of grant funds as a small school with just a few drinking water outlets with a detectable level of lead or other contaminants. (5 and 41)

Response: The goal of the Act and the rules at N.J.A.C. 6A:26A-3 is not limited to funding the cost of water infrastructure improvements in “fiscally distressed school districts,” which are undefined by State statute, rule, or Executive Order No. 23 (2018). N.J.A.C. 6A:26A-3.2(a) will limit water infrastructure improvement projects to safe and

proven remediation methods that are the most efficient means to address water contamination for as many drinking water outlets as possible, given the total amount of funding available for water infrastructure improvements under the Act. The Department is optimistic that this limitation will decrease the likelihood that school district water infrastructure improvement grants will need to be capped and prioritized, pursuant to N.J.A.C. 6A:26A-3.3(b) and will ensure the improvement of water quality in public schools. The Department cannot provide an estimate of a cap until it reviews the applications and has a list of all eligible work because the use of a cap or prioritization, pursuant to N.J.A.C. 6A:26A-3.3(b), depends on the total dollar amount of grant applications submitted. As long as eligible work addresses at least trace contamination and is supported by testing, it will be considered according to the prioritization factors. Therefore, a school district planning to apply for the school district water infrastructure improvement grant should choose the most efficient method to remediate water quality in schools based on the school district's individual needs and ensure the availability of local funds if the school district chooses to proceed with the improvement even if the grant will not fund the project's full cost.

25. Comment: The commenters stated that the proposed rules consider "upgrades to water system piping" to be an ineligible cost. The commenters suggested that the Department clarify whether "upgrades to water system piping" confirms that capital spending to upgrade internal plumbing will not be eligible and, if so, the commenters supported this provision, as the cost of remediating all indoor lead plumbing in New Jersey schools is clearly cost prohibitive. (5 and 41)

Response: The commenters are correct that upgrades to water system piping will be an ineligible cost for the water infrastructure improvement grants because such work is not specifically listed at N.J.A.C. 6A:26A-3.2(a). Furthermore, N.J.A.C. 6A:26A-3.2(b)3 makes ineligible any water infrastructure improvement work not specifically listed at N.J.A.C. 6A:26A-3.2(a). As upgrades to water system piping are also not listed at N.J.A.C. 6A:26A-3.2(a), capital spending to upgrade internal plumbing, which is a more narrow category than upgrades to water system piping, would also not be eligible school district water infrastructure improvement grants.

26. Comment: The commenter stated that water testing that is not related to post-remediation testing is considered ineligible under N.J.A.C. 6A:26A-3.2, but it is not clear whether the cost of diagnostic “sequential” testing used to locate the source of lead within school plumbing systems is ineligible. (5)

27. Comment: The commenters stated that sequential testing is a key element in identifying cost-effective solutions and should be an eligible cost. (5 and 41)

Response to Comments 26 and 27: Pursuant to N.J.A.C. 6A:26A-3.2(b)3, any water infrastructure improvement work not specifically listed at N.J.A.C. 6A:26A-3.2(a) is ineligible for a school district water infrastructure improvement grant. N.J.A.C. 6A:26A-3.2(b)6 also renders ineligible whole-school plumbing assessments, or any service not authorized by N.J.A.C. 6A:26A-3. Diagnostic sequential testing is not included in the list of eligible costs or specifically authorized by the subchapter and, therefore, is not considered an eligible cost. The adopted new rules require proof of school district compliance with N.J.A.C. 6A:26A-12.4 and 3.2(a) limits water infrastructure

improvements to whole system remediation or improvements to drinking water outlets with a detectable level of lead or other contaminants, as demonstrated by testing conducted pursuant to N.J.A.C. 6A:26A-12.4. Therefore, school districts will have information from the testing conducted pursuant to N.J.A.C. 6A:26-12.4 to inform the improvements or will address the whole system through eligible whole system remediation. As a result, diagnostic sequential testing will not be necessary or relevant to the eligible work under N.J.A.C. 6A:26A-3.2 and will remain an ineligible cost.

28. Comment: The commenter stated that N.J.A.C. 6A:26A-3.4(b) requires the submission of a resolution adopted by the district board of education and affirming the availability of local funds and asked if this is also a requirement for school security grants and CVSD CTE grants. (39)

Response: No, a district board of education resolution affirming availability of local funds is not required for school security grants and CVSD CTE grants. A district board of education resolution is not required for school security grants because N.J.A.C. 6A:26A-4.3(b) establishes a maximum school district allowance. In the case of CVSD CTE applications, a board of chosen freeholders resolution approving the project and the county's total contribution is required. The district board of education resolution is required for water infrastructure improvements grants, due to the possibility that the total actual project costs will exceed the grant allocation and the additional funding will be needed to complete the project.

29. Comment: The commenter asked what are “other terms as determined by the Commissioner” as referenced at N.J.A.C. 6A:26A-3.4(e)4. (39)
- Response: The rule means all necessary information to evaluate and prioritize school district water infrastructure projects pursuant to N.J.A.C. 6A:26A-3.3(b), even if the information is not included in the school district’s original application.
30. Comment: The commenter inquired whether a consortium may apply for a school security project grant or if every school district must submit its own application through the Electronic Web Enabled Grants (EWEG) system after certification of compliance with Alyssa’s Law. (11)
- Response: The requirements for school security grant applications set forth at N.J.A.C. 6A:26A-4 require submission by each school district.
31. Comment: The commenters asked when the Alyssa’s Law compliance application will open. (15, 31, 34, and 37)
- Response: The comment is outside the scope of the Department’s rulemaking and should be directed to the NJSDA.
32. Comment: The commenter asked where to find the Alyssa’s Law certification application. (26)
- Response: The comment is outside the scope of the Department’s rulemaking and should be directed to the NJSDA.

33. Comment: Referring to the definition of “school district” at N.J.A.C. 6A:26A-1.2, the commenter sought confirmation that nonpublic schools are not required to comply with Alyssa’s Law and are not eligible for funding under the Act. (39)

Response: The comment regarding Alyssa’s Law compliance is outside the scope of the Department’s rulemaking and should be directed to NJSDA. The commenter is correct that nonpublic schools do not qualify for grants under the Act, as a nonpublic school does not fall within the definition of “school district” pursuant to the Act and N.J.A.C.

6A:26A-1.2.

34. Comment: Referring to the definition of “school district” at N.J.A.C. 6A:26A-1.2, the commenter stated that Alyssa’s Law requires panic alarms in each “public elementary and secondary school building” and would seemingly apply to charter schools, yet subsection e of Alyssa’s Law refers only to “school districts” and the proposed rules specifically exclude charter schools. The commenter asked the Department to clarify the definition of school district. (39)

Response: The comments regarding Alyssa’s Law compliance are outside the scope of the Department’s rulemaking and should be directed to NJSDA. The Act provides for the issuance of general obligation bonds to fund “school security project grants” to schools. The definition of school district in the Act does not include charter schools or renaissance school projects, and the definition of school district at N.J.A.C. 6A:26A-1.2 is consistent with the definition in the Act. The definitions of project and school security project in the Act and at N.J.A.C. 6A:26A-1.2 specifically refer to projects “in school districts” and not in all public schools.

35. Comment: The commenter expressed opposition to charter and renaissance schools being ineligible for grants under the Act. The commenter stated that the Governor's conditional veto of Alyssa's Law referred to the Act for funding for school security system improvements, like panic alarms, and that a portion of the bonds approved by the voters shall be used to fund panic alarms in public schools. The commenter also stated that the Governor approved a supplemental appropriation that doubled the level of State funding for security at nonpublic schools. The commenter further stated that charter schools serve 54,000 public school children, and that the proposed rules prioritize certain students over others, even through the State has an obligation to ensure all students are safe. Referring to a shooting incident in Jersey City that caused a lockdown of area schools, the commenter argued that the safety of all students and teachers was a priority, regardless of their school's classification. The commenter asked the Department to amend the proposed rules to include all public schools, including charter and renaissance schools. (23)

Response: The Department agrees that all public school students should be safe and secure in their school environment. Because the Act does not allow the Department to provide school security grants to charter schools and renaissance school projects, the Governor's Fiscal Year 2021 Budget recommendations include funding for school security projects in charter schools and renaissance school projects at an amount equal to the maximum grant allowance for school districts set forth at N.J.A.C. 6A:26A-4.3(b). Subject to final approval of the Governor's budget proposal, the final maximum grant allowance for charter schools and renaissance school projects will be available following

the enactment of the Fiscal Year 2021 Appropriations Act. While the Governor has proposed budget language, the establishment of such a grant program in Fiscal Year 2021 is contingent upon approval of funding and any grant parameters in the Fiscal Year 2021 Appropriations Act.

The Act provides for the issuance of general obligation bonds to fund “school security project grants” to schools. The definition of school district in the Act does not include charter schools or renaissance school projects, and the definition of school district at N.J.A.C. 6A:26A-1.2 is consistent with the definition in the Act. The definitions of project and school security project in the Act and at N.J.A.C. 6A:26A-1.2 specifically refer to projects “in school districts” and not in all public schools. Therefore, the Department cannot accommodate the commenter’s request to change the rules to include charter schools and renaissance school projects as eligible for funding under the Act.

36. Comment: The commenter stated that the Act’s purpose was to expand vocational and technical education opportunities, to improve drinking water in schools, and to enhance public school security. The commenter stated that charter schools and renaissance schools are not eligible for school security funding under the proposed rules, which, the commenter contended will put the safety of 54,000 charter school students in jeopardy. The commenter expressed concern that the State is choosing which public school students are deemed eligible for security funding. The commenter urged the Department to reconsider the proposed rules and to include charter schools in the eligibility pool for security funding. (35)

Response: The Department agrees that all public school students should be safe and secure in their school environment. Because the Act does not allow the Department to provide school security grants to charter schools and renaissance school projects, the Governor's Fiscal Year 2021 Budget recommendations include funding for school security projects in charter schools and renaissance school projects at an amount equal to the maximum grant allowance for school districts set forth at N.J.A.C. 6A:26A-4.3(b). Subject to final approval of the Governor's budget proposal, the final maximum grant allowance for charter schools and renaissance school projects will be available following the enactment of the Fiscal Year 2021 Appropriations Act.

The adopted rules concern school security project grants under the Act and not State aid for school security funding. Payments by school districts to charter schools, pursuant to N.J.S.A. 18A:36A-7, and to renaissance school projects, pursuant to N.J.S.A. 18A:36C-7.e, include the security categorical State aid attributable to each student.

The Act provides for the issuance of general obligation bonds to fund "school security project grants" to schools. The definition of school district in the Act does not include charter schools or renaissance school projects, and the definition of school district at N.J.A.C. 6A:26A-1.2 is consistent with the definition in the Act. The definitions of project and school security project in the Act and at N.J.A.C. 6A:26A-1.2 specifically refer to projects "in school districts" and not in all public schools. Therefore, the Department cannot accommodate the commenter's request to change the adopted new rules to include charter schools and renaissance school projects as eligible for funding under the Act.

To the extent the commenter is regarding Alyssa’s Law and its implementing rules, the comments are outside the scope of the Department’s rulemaking and should be directed to NJSDA.

37. Comment: The commenter stated that the Act was adopted to enhance funding for public school security, and that the proposed rules make public charter schools ineligible for school security grants. The commenter also stated that the proposed rules are inconsistent with the plain terms of the Act, as well as the public referendum question incorporated therein, and violate the underlying legislative intent of the Act and its companion statute, Alyssa’s Law, P.L. 2019, c. 33. (21)

Response: The Department disagrees. The Act provides for the issuance of general obligation bonds to fund “school security project grants” to schools. The definition of school district in the Act does not include charter schools or renaissance school projects, and the definition of school district at N.J.A.C. 6A:26A-1.2 is consistent with the definition in the Act. The definitions of project and school security project in the Act and at N.J.A.C. 6A:26A-1.2 specifically refer to projects “in school districts” and not in all public schools.

Because the Act does not allow the Department to provide school security grants to charter schools and renaissance school projects, the Governor’s Fiscal Year 2021 Budget recommendations include funding for school security projects in charter schools and renaissance school projects at an amount equal to the maximum grant allowance for school districts set forth at N.J.A.C. 6A:26A-4.3(b). Subject to final approval of the Governor’s budget proposal, the final maximum grant allowance for charter schools and

renaissance school projects will be available following the enactment of the Fiscal Year 2021 Appropriations Act.

38. Comment: The commenter stated that the proposed rules do not address whether public charter schools are required to implement State-mandated security systems and, if so, fail to address the significant economic impact that such a mandate will have on charter schools and what financial mechanism will fund the security improvements. The commenter claimed that the rules have not been proposed in conformity with the Administrative Procedure Act at N.J.S.A. 52:14B-4(a)(2), which requires rules proposed by an agency to set forth the true costs of the rules' implementation. (21)

Response: The Department disagrees. The Department's adopted rules do not impose any requirements or conditions on charter schools.

To the extent that the comment opposes rules adopted by NJSDA pursuant to Alyssa's Law, the comment is outside of the scope of the Department's rulemaking and should be directed to the NJSDA.

39. Comment: The commenter stated that the public question that was passed by the Legislature, signed into law by the Governor, and approved by State voters at the November 6, 2018, general election provides, in relevant part, as follows: "Do you approve the Securing our Children's Future Bond Act? This bond act authorizes the State to issue bonds in the aggregate principal amount of \$500 million. The money from the sale of the bonds would be used to provide grants to schools, school districts, county vocational school districts and county colleges ... Money would also be used for school

security upgrades and school district water infrastructure improvement projects.” The commenter stated that the plain language of this statutory provision requires the State to provide grants to “schools” and “school districts” for school security upgrades. The commenter also stated that the Act’s preamble declares the reasons for its enactment include authorization for the “creation of debt of the State of New Jersey ... for the purpose of school security upgrades.” The commenter further stated that the Act defines “schools” to mean “an educational institution that includes any of the grades kindergarten through 12,” which is inclusive of public charter schools. The commenter stated that, in many respects, public charter schools are included in the definition of “school district” under State law. The commenter further referenced N.J.S.A. 18A:36A-11 (“A charter school shall operate in accordance with its charter and the provisions of law and regulation which govern other public schools;”) and N.J.A.C. 6A:23A-7.1(b)1 (“References to ‘school districts’ shall also mean charter schools”). (21)

Response: The Department disagrees. Every definition or explanation of “school district” or “board of education” in Title 18A of the New Jersey Statutes or Title 6A of the New Jersey Administrative Code, including N.J.A.C. 6A:23A, that includes “charter schools” does so specifically. Even if the statutes and rules cited by the commenter included charter school in the definition of “school district,” those laws and rules are not the Act and cannot override the definitions found in the Act, which do not include charter schools.

The Act provides for the issuance of general obligation bonds to fund “school security project grants” to schools. The definition of school district in the Act does not include charter schools or renaissance school projects, and the definition of school district

at N.J.A.C. 6A:26A-1.2 is consistent with the definition in the Act. The definitions of project and school security project in the Act and at N.J.A.C. 6A:26A-1.2 specifically refer to projects “in school districts” and not in all public schools. While the definition of school in the Act includes “an educational institution that includes any of the grades kindergarten through 12,” that language cannot be read to include schools that are not a part of “school districts,” as defined by the Act in light of the restriction of the allowable projects under the grant to those “in school districts.”

Because the Act does not allow the Department to provide school security grants to charter schools and renaissance school projects, the Governor’s Fiscal Year 2021 Budget recommendations include funding for school security projects in charter schools and renaissance school projects at an amount equal to the maximum grant allowance for school districts set forth at N.J.A.C. 6A:26A-4.3(b). Subject to final approval of the Governor’s budget proposal, the final maximum grant allowance for charter schools and renaissance school projects will be available following the enactment of the Fiscal Year 2021 Appropriations Act.

40. Comment: The commenter stated that N.J.A.C. 19:3-6 provides that “[a]ny public question voted upon at an election shall be presented in simple language that can be easily understood by the voter. The printed phrasing of said question on the ballots shall clearly set forth the true purpose of the matter being voted upon. Where the question concerns any amendment to the State Constitution or any act or statute or other legal titles of any nature, the printed phrasing on the ballots shall include a brief statement interpreting same.” The commenter also stated that interpretative statements must be

designed in such a way as to “help the voter understand more about the [issue] than disclosed in the [public question] for purposes of aiding the voter in his or her decision, and referenced *City of Orange Tp. Bd. of Educ. v. City of Orange Tp.*, 451 N.J. Super. 310, 324 (Ch.Div. 2017). The commenter further stated that the interpretative statement is to be added to help the voter understand more about the amendment than the public question tells [them] for the purpose of aiding [them] in [their] decision, and referenced *DeSanctis v. Borough of Belmar*, 455 N.J. Super. 316, 330 (App.Div. 2018), quoting *Gormley v. Lan*, 88 N.J. 26 (1981). The commenter stated that interpretative statements must also be fair.

The commenter also stated that the referendum question in the Act is very clear and, according to its plain meaning, informed voters that if they approve the question, bonds will be sold to fund grants to schools and school districts for security upgrades. The commenter further stated that there is no reference in the referendum question to carving out a significant segment of the public school community as ineligible for these State grants, and the interpretative statement fails to mention the disenfranchisement of public charter schools. The commenter cited *City of Orange Tp. Bd. of Educ.* again and stated that, in that case, the court entered an injunction enjoining certification of the results of a referendum question changing the school board from an appointed school board (Type I) to an elected school board (Type II), and the court agreed with the plaintiffs that the referendum’s failure to inform city residents about how the change from a Type I to a Type II school board would impact the school district’s financial process, including funding of school improvements, and violated its citizens’ rights. The commenter stated that the public was not informed that charter schools, although public

in nature, would not be eligible for school security upgrades under the Act, and that such information would have influenced voters, and most certainly the public charter school community.

The commenter also stated that if an individual reads the proposed rules as drafted, the public referendum did not provide adequate details so as to allow voters to be sufficiently informed. The commenter requested that the proposed rules be amended to conform to plain language of the referendum question, which promised the public that all public schools would be entitled to security grants. (21)

Response: The Department disagrees. The Act provides for the issuance of general obligation bonds to fund “school security project grants” to schools. The definition of school district in the Act does not include charter schools or renaissance school projects, and the definition of school district at N.J.A.C. 6A:26A-1.2 is consistent with the definition in the Act. The definitions of project and school security project in the Act and at N.J.A.C. 6A:26A-1.2 specifically refer to projects “in school districts” and not in all public schools. While the definition of school in the Act includes “an educational institution that includes any of the grades kindergarten through 12,” that language cannot be read to include schools that are not a part of “school districts” as defined by the balance of the Act in light of the restriction of the allowable projects under the grant to those “in school districts.”

The referendum question must be viewed also within the context of the Act, which as stated above, does not include school security project grants in charter schools or renaissance schools.

41. Comment: The commenter stated that administrative agencies have discretion when selecting methods to implement a statute, and an agency may not adopt regulatory methods inconsistent with statutory goals, and cited *In re Adoption of N.J.A.C. 5:96*, 215 N.J. 578, 614 (2013), *In re Freshwater Wetlands Prot. Act Rules*, 180 N.J. 478 (2004) (invalidating Department of Environmental Protection regulations concerning construction near wetlands transition areas as inconsistent with enabling statute and ultra vires.); and *Kingsley v. Hawthorne Fabrics, Inc.*, 41 N.J. 521, 529-30 (1964) (invalidating Division of Taxation regulation defining “immediate family” as inconsistent with enabling statute, noting that “if the regulation attempts to add to the statute something which is not there, it can furnish no sustenance to the statute.”) The commenter stated that the Supreme Court of New Jersey determined that administrative regulations imposing an age limit of “before age 22” upon applicants with developmental disabilities was inconsistent with the enabling statute, which did not include an express age limitation, and stated “although we recognize the deference that an administrative agency regulation is ordinarily accorded, we repeat here the well-established principle that deference is not warranted where the agency alters the terms of a legislative enactment. This is not a case in which an agency simply filled in the interstices of an act or provided details specifically left to it by the Legislature. Rather, in adopting [its regulations the agency] added an eligibility standard that does not exist in [the enabling statute]. That regulation, therefore, is not entitled to deference,” in *T.H. v. Div. of Developmental Disabilities*, 189 N.J. 478, 492 (2007).

The commenter stated that the Act does not designate a subset of public schools to be ineligible for State grants, but the Department has rewritten the Act’s broad public

safety language in the proposed rules to exclude charter schools from the entire scope of the law. The commenter also stated that N.J.A.C. 6A:26A-1.2 defines school district to mean “a local or regional school district, a county special services school district, a county vocational school district, and a district under partial or full State intervention. For purposes of this chapter, school district does not include charter or renaissance schools.” The commenter further stated that N.J.A.C. 6A:26A-1.3(a)1 provides for school security project grants to school districts and, the definition of school district” in the proposed rules excludes charter schools, they would be foreclosed from eligibility for the potentially life-saving security alarm systems.

The commenter stated that statutes must be read in their entirety, each part or section should be construed in connection with every other part or section to provide a harmonious whole and cites to *Borough of Pitman v. Monroe Sav. Bank, SLA, 425 N.J. Super 245, 251* (App. Div. 2012), quoting, *Bedford v. Riello, 195 N.J. 210, 224* (2008). The commenter stated that if the Act intended grant funding only for schools within traditional resident school districts, then the language in the Act providing for grant funding to “schools,” in addition to “school districts,” is superfluous. The commenter further stated that, in various contexts, charter schools are included in the definition of “school district.” The commenter requested that the proposed rules be revised to include charter schools. (21)

Response: The Act provides for the provision of “school security project grants to schools,” defines “project” and “school security project” as “in school districts,” and defines “school district” as “a local or regional school district, a county special services school district, a county vocational school district, and a district under partial or full State

intervention pursuant to P.L. 1987, c. 399 (C.18A:7A-34 et al.).” A charter school is clearly neither a local or regional school district, a county special services school district, a CVSD, or a school district under partial or full State intervention, and the plain language of the Act allows for grants for school security projects that are to be “in school districts.”

The Department seeks to provide clear and simple information to potential applicants for grants under the Act and to ensure that applicants do not expend time or funds preparing for grant applications for which the applicant will never qualify. For this reason and because every definition or explanation of “school district” or “board of education” in Title 6A of the New Jersey Administrative Code specifically sets forth whether “charter schools” are included, the Department included “[f]or the purpose of this chapter, school district does not include charter or renaissance schools” to ensure that the adopted rules are consistent with the Act and the balance of Title 6A of New Jersey Administrative Code, and include no ambiguity whatsoever about whether charter schools qualify for grants pursuant to this chapter.

42. Comment: The commenter stated that, in assessing the scope of a Commissioner’s administrative authority, courts look beyond the specific terms of the enabling act to the statutory policy sought to be achieved by examining the entire statute in light of its surroundings and objectives and cited to *Hearing Aid Dispensers*, 75 N.J. 544 (1978). The commenter stated that the letters to the Commissioner from the Act’s legislative sponsors state that “the intent of the legislation as it pertains to security project funding was to protect all public school students, including those who attend public charter

schools,” and cited an attached letter co-signed by State Senators Steven Oroho and Anthony Bucco.

The commenter contended that one of the stated purposes of the proposed rules is to create a funding mechanism to implement the mandate under Alyssa’s Law, P.L. 2019, c. 33, that “each public elementary and secondary school building shall be equipped with at least one panic alarm.” The commenter stated that the Governor’s veto of Alyssa’s Law, Assembly Bill No. 764, specifically identified the Act as the anticipated funding source for the required school security system improvements. The commenter also stated that Alyssa’s Law does not differentiate between public charter schools and resident district public schools but requires panic buttons in every school building. The commenter further stated that Alyssa’s Law’s purpose is to protect all school children in the event of an emergency, such as an active shooter situation. The commenter stated that the proposed rules single out public charter and renaissance schools for ineligibility for funding of security safeguards, which frustrates one of the Act’s underlying purposes, and the primary intent of Alyssa’s Law, that all public school students benefit from potentially life-saving police alert systems. The commenter stated that regulations frustrate a statute when they are inconsistent with the statute, extend the statute beyond the Legislature’s intent or violate express or implied legislative policies and cited to *Education Law Center ex rel. Burke v. New Jersey State Bd. of Educ.*, 438 N.J. Super 108, 116, quoting, *In re Petitions for Rulemaking N.J.A.C. 10:82-1.2 & 10:82-4.1*, 117 N.J. 311 (1989). The commenter stated that the general legislative intent influences the interpretation of a statute’s component parts and that statutes must be read sensibly rather than literally and cited to *N.J. State League of Municipalities v. Dep’t of Cmty. Affairs*,

158 *N.J.* 211, 224 (1999). The commenter stated that legislation on cognate subjects must be construed in *pari materia* and cites *Board of Education v. Hackensack*, 63 *N.J. Super.* 560 (App. Div. 1960).

The commenter stated that the Legislative intent of the Act and Alyssa’s Law is the protection of public school students from dangerous, possibly deadly attacks, when they attend school and that neither of the laws expressly excludes charter schools from their protective ambit. The commenter stated that a correct reading of the Act, consistent with its underlying intent, should have led the Department to propose rules that include all public schools, resident school districts and charter schools alike. The commenter also stated that the proposed rules should be amended to enable charter schools to apply for and receive grants from the Department for security systems. (21)

Response: The Department disagrees. In accordance with *N.J. Guild Hearing Aid Disp. v. Long*, 75 *N.J.* 544, 561 (1978), administrative rules are afforded a rebuttable presumption of validity in New Jersey and a finding that a rule is *ultra vires* is disfavored.

The Act provides for the provision of “school security project grants to schools,” defines “project” and “school security project” as “in school districts,” and defines “school district” as “a local or regional school district, a county special services school district, a county vocational school district, and a district under partial or full State intervention pursuant to P.L. 1987, c. 399 (C.18A:7A-34 et al.)” The definitions at N.J.A.C. 6A:26A-1.2 are consistent with the Act’s plain language because they copy the same language and do not include entities not specifically listed in the Act’s definition of “school district.” The proposed rules are consistent with the plain language of the Act and

they are reasonable; therefore, it is unnecessary to conduct an inquiry into legislative intent.

43. Comment: The commenter stated that public charter schools disproportionately operate in low income communities and that depriving their students and staff of the security enhancements under the Act is arbitrary, capricious, and unreasonable. (21)

Response: The Department agrees that some public charter schools serve students in communities with a high percentage of low-income students, but school districts also serve low income students. The Act provides for the provision of “school security project grants to schools,” defines “project” and “school security project” as “in school districts,” and defines “school district” as “a local or regional school district, a county special services school district, a county vocational school district, and a district under partial or full State intervention pursuant to P.L. 1987, c. 399 (C.18A:7A-34 et al.),” which are unambiguous, reasonable, and content-neutral terms. A charter school, which is “a public school operated under a charter granted by the commissioner, which is operated independently of a local board of education,” is not any of the following: a local (N.J.S.A. 18A:8-1 through -51) or regional school district (N.J.S.A. 18A:13-1 through -81, a county special services school district (N.J.S.A. 18A:46-29 through -53), a CVSD (N.J.S.A. 18A:54-11 through -31.2, or a school district under partial or full State intervention (N.J.S.A. 18A:7A-34 through -53.1). The definitions at N.J.A.C. 6A:26A-1.2 are consistent with the Act and are reasonable.

44. Comment: The commenter stated that the proposed rules should be withdrawn because they fail to include an adequate Economic Impact statement. The commenter stated that N.J.S.A. 52:14B-4(a)(2) provides that a State agency must issue, in a notice of a proposed rule, a statement containing various information, including “a description of the expected socio-economic impact of the rule” and that the Office of Administrative Law’s (OAL) rules at N.J.A.C. 1:30-5.1(c)3 require an agency proposing adoption of a rule to provide “[a]n economic impact statement which describes the expected costs, revenues, and other economic impacts upon governmental bodies of the State, and particularly any segment of the public proposed to be regulated.” The commenter stated that the Economic Impact statement for the proposed rules discusses the economic benefits of grant funding involved in school construction, but does not discuss the economic impact on public charter schools, which are public local education agencies. The commenter stated that public charter schools are funded primarily through resident school districts at a fraction of the per pupil funding rate. The commenter also stated that the proposed rules seek to remove security aid from charter school funding, but burden charter schools with the cost mandates.

The commenter stated that the Economic Impact statement for the proposed rules does not set forth the true costs of implementation the rules, because it ignores the cost of excluding public charter schools from eligibility for State security grants. The commenter also stated that the proposed rules provide a mechanism for funding the mandate under Alyssa’s Law that all public school buildings in New Jersey be equipped with at least one silent panic alarm directly linked to local law enforcement for use in the event of a school security emergency. The commenter further stated that if this mandate

is determined to apply to charter schools, they will have no means by which to fund the required security projects. The commenter stated that leaving charter schools with a significant unfunded mandate is inconsistent with the strong public policy under Alyssa's Law to keep public school children safe while attending schools, as well as the stated goals of N.J.S.A. 18A:36A-2, "the establishment of a charter school program is in the best interests of the students of this State and it is therefore the public policy of the State to encourage and facilitate the development of charter schools."

The commenter asked the Commissioner to withdraw the proposed rules and amend them to provide for security grants to charter schools. (21)

Response: The Department disagrees as the adopted new rules impose no mandates or requirements whatsoever on charter schools and, therefore, do not require an evaluation of the economic impact on charter schools. The adopted new rules cannot constitute an unfunded mandate to charter schools within the meaning of Article VIII, Section II, paragraph 5 of the New Jersey Constitution, as charter schools are not a district board of education, county, or municipality. The Department further disagrees that the Economic Impact statement contained in the notice of proposal does not meet OAL's requirements, as the OAL reviewed and published the notice. The adopted new rules govern the provision of school security project grants pursuant to the Act and do not impact security aid to charter schools pursuant to N.J.S.A. 18A:36A-7.

To the extent that this comment is regarding the requirements for Alyssa's Law compliance set forth in rules proposed by the NJSDA, the comment is outside the scope of the proposed rulemaking and should be directed to the NJSDA.

45. Comment: The commenter asked what the maximum grant award is for the Red Bank Charter School. (22)

Response: The Act provides for school security grants only to “school districts” as defined in the Bond Act and N.J.A.C. 6A:26A-1.2, which does not include charter schools. Please also see the Responses to Comments 33 and 35.

46. Comment: The commenter stated a project with panic buttons was completed in a school district in the 2018-2019 school year and inquired what the school district needs to provide the Department for compliance with Alyssa’s Law. (38)

Response: If the commenter wishes to know what is needed to secure a certificate of compliance, the commenter should address that question to the NJSDA. To the extent that the commenter seeks guidance on the approval of an alternative emergency mechanism by the Commissioner, please see the Response to Comment 5.

47. Comment: The commenter asked if a school district is required to install a panic alarm in a facility it leases from a local church for the school district’s preschool and kindergarten program. (17)

Response: The comment is outside the scope of the proposed rulemaking and should be directed to the NJSDA.

48. Comment: The commenters asked where they can access or obtain the “certification form” that is provided by NJSDA to confirm that a building is equipped with a panic alarm system and to be completed by law enforcement. (7, 18, and 40)

Response: The comment is outside the scope of the Department's rulemaking and should be directed to the NJSDA.

49. Comment: The commenter asked if a system that has panic buttons and calls directly to the municipality's police department but also triggers an audio lockdown announcement in the building would meet the certification requirements. (26)
50. Comment: The commenter asked whether it is acceptable under Alyssa's Law for the system to call a central call station first and then have the call station contact the local police department, or if the button must go directly to the police department. (28)
51. Comment: The commenter asked if it is acceptable to have a panic button alert students and staff over the interior public announcement system when the button is pressed. (28)
52. Comment: The commenter asked if, to be eligible for the school security program grant, panic buttons must go directly to the police department or county dispatch or first to the monitoring company. (16)
53. Comment: The commenter stated that the school district's panic systems go to a central county dispatcher, and that it appears the panic system must go to the local police to comply with Alyssa's Law. The commenter asked if panic systems may go through the central dispatcher. (6)
54. Comment: The commenter referred to the definition for "panic alarm" in P.L. 2019, c. 3, and stated that the guideline offers instruction that the "panic alarm" is to be a silent security system signal to law enforcement but does not address the notification of building occupants in an emergent situation. The commenter stated that there needs to be a brief audible notification to ensure all occupants (staff, students, contractors, vendors,

and visitors) are alerted to effectively initiate an emergency protocol within a school.

The commenter stated that the activation of the “silent alarm” to law enforcement should occur simultaneously with the audible notification. (3)

Response to Comments 49 through 54: Pursuant to N.J.A.C. 6A:26A-4.4(a), school security grants awarded to comply with Alyssa’s Law must meet the requirements set forth at N.J.A.C. 19:32A. To the extent that this comment is regarding the rules to comply with Alyssa’s Law, the comment is outside of the scope of the Department’s rulemaking and should be directed to the NJSDA. The comment is outside of the scope of the Department’s rulemaking and should be directed to the NJSDA. To the extent that the commenter seeks guidance on the approval of an alternative emergency mechanism by the Commissioner, please see the response to Comment 5.

55. Comment: The commenter stated that the guideline offers as an example the integration of smart phone and computer applications. The commenter stated that these applications normally mandate a per-building annual service fee that can be a substantial burden on the budget depending on the school district’s size. The commenter asked how Alyssa’s Law will address the funding of the annual costs for services rendered to remain compliant since such a system is a recommendation within the guidelines. (3)

Response: To the extent that this comment is regarding the rules to implement Alyssa’s Law, it is outside of the scope of the Department’s rulemaking and should be directed to the NJSDA. The Act provides for grants to school districts for school security projects, which consists of “the construction, improvement, alteration, or modernization of all or any part of a school in a district for school security purposes, including alarms and silent

security systems,” and “shall not include routine maintenance.” The definition does not include annual service costs for a panic alarm system; therefore, a school district should consider long-term costs when deciding how to implement a system for which the school district is seeking school security grant funding.

56. Comment: The commenter stated that Alyssa’s Law was first proposed in 2012, the State School Security Task Force was mandated in 2013, and the task force’s final report was issued in October 2014. The commenter also stated that the Howell Township Public School installed an emergency alert system in 2013 to be in compliance with State law. The commenter argued that school districts that were proactive in complying with State law should be entitled to retroactive reimbursement for the cost of emergency notification system prior to January 1, 2016, since 2012 was the year the law was proposed. (3)

Response: To the extent that this comment is regarding the regulations to implement Alyssa’s Law, it is outside of the scope of the Department’s rulemaking and should be directed to the NJSDA. A school district that proactively installed a panic alarm in 2013 is to be commended for its commitment to school security; however, the installation of a panic alarm was not a requirement under State law in 2013 and was specifically left to the discretion of school districts by the New Jersey School Security Task Force Report.

Alyssa’s Law, N.J.S.A. 18A:41-10 through 13, was enacted on February 6, 2019, and first took effect on the first day of the 10th month following voter approval of P.L. 2018, c. 119, which was on September 1, 2019. The New Jersey School Security Task Force Report, which made recommendations, but did not institute requirements, was issued on July 9, 2015. Relying on the strengths and limitations of the various types of available

systems, the number of different types of alarms available, the array of capabilities and functions that they offer, and the significant cost variations, that Task Force Report concluded, on pages 26 and 27, that “we do not think it is prudent at this time to recommend that the State require that panic alarms be installed in every school building,” and that “the decision to purchase and install panic alarm systems that meet their needs should be left to the discretion of school districts.” Therefore, the four-year period for retroactive reimbursement for school security projects to comply with Alyssa’s Law (after January 1, 2016) ensures that school security projects to comply with Alyssa’s Law encompass any project that was required to be installed after the effective date of that law, and also make allowances for the majority of time following the issuance of the Task Force Report. Finally, the adopted new rules institute the same retroactive reimbursement period as the school district water infrastructure grants to ensure consistency among the grant applications implemented by this chapter.

57. Comment: The commenter asked how to proceed with processing a grant application for Alyssa’s Law. (9)

Response: N.J.A.C. 6A:26A-4 sets forth the requirements for a school security grant application.

58. Comment: The commenter asked if the school security grant application will open April 2020, and be due in May 2020 or in May 2021. (32)

Response: The application for school security grants will open after the new rules are effective and finalized deadlines for application submission will also be announced at that time.

59. Comment: The commenter asked if the grant application is available for the new school security grant program and where to find it. (29)

Response: The application for school security grants will open after the new rules are effective, along with instructions that direct applicants where and how to apply.

60. Comment: The commenter asked if a school district will be required to refund a portion of the grant amount if it uses grant funds to install a panic alarm in a facility leased from a church for its preschool and kindergarten program. (17)

Response: A school district would not be permitted to use its school security grant funds for installation of a panic alarm at a facility leased from a church. N.J.A.C. 6A:26A-4.4(d)2i permits the use of school security grant funds for leased facilities only when the lessor is a public entity, such as a school district or county college, and a church does not fall into that category.

61. Comment: The commenter asked about the requirements for leased facilities provisions for the school security grants in a county special services school district housed in a building owned by the county. (2)

Response: To ensure that the grant funds projects for the long-term and lasting benefit of the student population served by the school district, expenditures at leased facilities for

school security projects are ineligible costs pursuant to N.J.A.C. 6A:26A-4.4(d), except where the lessor is a public entity, such as a school district or county college. Therefore, a building owned by a county is potentially eligible. However, public ownership is not the sole criterion. Under N.J.A.C. 6A:26A-4.4(d), there must be a lease agreement for a minimum of five years, with an end date no earlier than June 30, 2024, and the school district must be authorized under the lease agreement to make the improvements represented in the grant application. Further, pursuant to N.J.A.C. 6A:26A-4.2(b)5, the grant application for such a school district must include an executed lease agreement or an memorandum of understanding (MOU) between the school district and the lessor that memorializes the requirements at N.J.A.C. 6A:26A-4.4(d)2, as well as a resolution adopted by the district board of education that includes an acknowledgment that, upon termination of the lease by either party prior to June 30, 2024, the school district shall be required to return a pro rata share of the school security project grant to the Department.

62. Comment: The commenter asked whether retroactive reimbursement for costs incurred in association with a security vestibule (less than 300 square feet) installed between January 1, 2016, and December 31, 2019, would be eligible for funding under the school security project grant program, assuming that Alyssa's Law compliance is currently in effect and ready for certification in accordance with the funding guidelines. (1)
63. Comment: The commenter asked if school districts can submit a reimbursement for security vestibule projects that have already been completed. (36)
64. Comment: The commenter asked if school districts will be eligible for grants for school security projects that have already been completed, including projects that comply with

including Alyssa's Law. The commenter asked if school districts are eligible, what is the earliest date of project completion that the Department will accept for purposes of eligibility. (39)

65. Comment: The commenter referred to N.J.A.C. 6A:26A-4.1 and asked if there is a date for the cutoff for the eligibility of already completed projects. (39)

Response to Comments 62, 63, 64, and 65: Pursuant to N.J.A.C. 6A:26A-4.4(b), requests for reimbursement of costs to comply with Alyssa's Law shall be eligible for school security project grant funding, as long as the costs were incurred after January 1, 2016, and the projects comply with N.J.A.C. 6A:26A-4. Other school security projects are not eligible for retroactive reimbursement.

66. Comment: The commenter asked the Department to identify the cutoff date for eligibility under the school security project grants for planned or not-yet-completed projects. (39)

Response: Pursuant to N.J.A.C. 6A:26A-4.4(b), requests for reimbursement of costs to comply with Alyssa's Law shall be eligible for school security program grant funding, as long as the costs were incurred after January 1, 2016, and the projects comply with N.J.A.C. 6A:26A-4. Other school security projects are not eligible for retroactive reimbursement. School districts seeking school security project grants for planned or not-yet-completed projects must submit an application by the deadline that will be announced by the Department upon release of the grant applications.

67. Comment: The commenter asked whether a school district that is currently positioned to receive debt service aid for eligible school security grant work will be eligible for funding for that same work under the school security project grant program, assuming that

Alyssa's Law compliance is currently in effect and ready for certification in accordance with the funding guidelines. (1)

Response: No. Pursuant to N.J.A.C. 6A:26A-4.1(g), school security project grants may not be used to fund projects funded by debt service aid, as those projects have already been funded in part by State aid, and/or approved by voters based on the funding description set forth in a referendum. School districts that previously planned to fund an eligible school security project pursuant to N.J.A.C. 6A:26A-4.1 using school bonds and debt service aid may choose, prior to the submission of a referendum to voters, to withdraw their school facilities project application and submit their school security project separately as an other capital project to qualify for school security project grants pursuant to this chapter. School districts must choose a single State funding source for their school security projects.

68. Comment: The commenter asked if the receipt of debt service aid from the State for the school district's referendum bonds renders the school district ineligible to apply for school security project grants. (20)

Response: Yes. Pursuant to N.J.A.C. 6A:26A-4.1(g), school security project grants may not be used to fund projects funded by debt service aid. Pursuant to N.J.A.C. 6A:26A-4.4(b), requests for reimbursement of costs to comply with Alyssa's Law shall be eligible for school security project grant funding, as long as the costs were incurred after January 1, 2016, and the projects comply with N.J.A.C. 6A:26A-4. Other school security projects are not eligible for retroactive reimbursement.

69. Comment: The commenter asked where to find the proposed amount of funding for the Waldwick School District under the Act. (13)

Response: N.J.A.C. 6A:26A-4.3(b) provides that the maximum school district allowance for school security project grants shall be based on the number of students in kindergarten through grade 12 in the school district, as reported on the Application for State School Aid (ASSA), and their grade levels, multiplied by the square feet per student factors prescribed in the Facilities Efficiency Standards (FES), multiplied by a funding multiplier as determined by the Commissioner based on the total funds for school security projects set forth in the Act. Under the adopted rules, approved school security project grants will be based on factors that ensure school districts have sufficient funds to comply with Alyssa's Law and to make school security improvements in accordance with the size of the school district and the amount of funds provided for by the Act. The Department has issued preliminary guidance to school districts at <https://www.nj.gov/education/facilities/docs/School%20Security%20Preliminary%20Guidelines.pdf> that provides an estimate of the amount of school security grant funding that will be available for school districts, including the Waldwick School District.

70. Comment: The commenter asked how the money for the school security project grant program will be prioritized. The commenter also asked how the Department will fund the projects if the total amount of school security projects exceeds \$75 million. (39)

Response: The total amount of school security projects will not exceed \$75 million since, pursuant to N.J.A.C. 6A:26A-4.3, the maximum school district allowance will be based on the number of students in kindergarten through grade 12 in the school district as

reported on the ASSA, and their grade levels, multiplied by the square feet per student factors prescribed in the FES, multiplied by a funding multiplier as determined by the Commissioner based on the total funds for school security projects set forth in the Act.

71. Comment: The commenter asked if the school security project grant funding can be received or utilized only upon the approval of the grant application. The commenter also asked whether school districts must submit a grant application and have it approved before any funding will be provided. (19)

Response: Yes. To receive or use school security grant funding, school districts will be required to submit a grant application in accordance with N.J.A.C. 6A:26A-4, and the application must be approved by the Department and by the Legislature pursuant to the Act and N.J.A.C. 6A:26A-1.5.

72. Comment: The commenter asked what is the deadline for the submission for all grant programs under the Act. (39)

Response: The applications for all grant programs under to this chapter will open after the rules are effective, and finalized deadlines for application submission will be announced at that time.

Federal Standards Statement

The adopted new rules are not inconsistent with, and do not exceed, Federal requirements or standards as there are no Federal requirements or standards related to the chapter.

Full text of the adopted new rules follows:

TEXT