

## **Education**

### **State Board of Education**

#### **Notice of Readoption**

#### **Educational Facilities**

#### **N.J.A.C. 6A:26**

Authority: N.J.S.A. 18A:4-15, 18A:7G-5.k, 18A:7G-13, and 18A:7G-26, and P.L. 2000 c. 72, P.L. 2007, c. 137, P.L. 2008, c. 39, P.L. 2016, c. 10, and P.L. 2017, c. 86.

Authorized by: New Jersey State Board of Education, Kevin Dehmer, Interim Commissioner, Department of Education, and Interim Secretary, State Board of Education.

Effective Date: August 20, 2020.

Expiration Date: August 20, 2027.

**Take notice** that pursuant to Executive Order No. 78 (2011), and N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 6A:26 were to expire on November 20, 2020. The Department of Education (Department) proposes to readopt the rules at N.J.A.C. 6A:26, Educational Facilities, without amendments through a notice of readoption. N.J.A.C. 6A:26 sets forth the rules for educational facilities in the State. The chapter primarily affects public school districts and to a lesser extent, charter schools (within the limitations of N.J.S.A. 18A:36A-10) and approved private schools for students with disabilities.

The facility needs of school districts have changed in meaningful ways since the last readoption, effective November 20, 2013, and continue to evolve as the Department proposes this readoption. Dynamic shifts in the location of school-aged populations and in the socioeconomic makeup of school districts have impacted facilities needs and the school districts' means to fund them. School districts have also confronted safety concerns over drinking water and the materials used in construction. The expansion of preschool programs in school districts has increased the facility needs for early childhood beyond that currently funded by the Educational Facilities and Construction Financing Act (EFCFA), N.J.S.A. 18A:7G-1 et seq.

Pending decisions regarding the strategic plan and funding of the New Jersey Schools Development Authority (NJSDA) will shape the facilities planning and projects of SDA districts as defined in N.J.A.C. 18A:7G-3.

The Department is in the midst of implementing the Securing Our Children's Future Bond Act, which will infuse millions of dollars into school facilities focused on career and technical education program expansion at county vocational school districts, and school security and water infrastructure improvements in all school districts. Finally, the current COVID-19 health emergency and the eventual reopening of school buildings for in-person instruction will pose further challenges to school districts as they work to ensure safe and educationally appropriate school facilities.

At the present time, the Department proposes to readopt Chapter 26 without amendments to ensure the chapter does not expire. The Department seeks to ensure that any amendments to the chapter reflect and align with the current needs of school districts, the improvements made by the Securing Our Children's Future Bond Act, including those to address safety, and the future projects and priorities of the NJSDA. The Department also seeks to allow for a review of preschool facilities needs in light of recent Statewide expansion efforts. Finally, the Department is mindful of evolving school facilities needs as school districts respond to the current COVID-19 public health emergency using the Department's [The Road Back: The Restart and Recovery Plan for Education](#) and the most recent science-based recommendations. Direct input and experiences from school district and public health officials will inform the Department's review of the rules as it considers long-term and forward-thinking ways to plan for, and react to, similar emergencies in the future. Drafting amendments to the chapter will require the Department to work with the NJSDA, school districts, and other stakeholders directly involved in the safety, construction and financing of school facilities. The Department anticipates presenting amendments to the State Board of Education (State Board) by the end of 2021.

The readoption of the chapter will be effective upon State Board approval of this notice of readoption and submission to the Office of Administrative Law. However, the Department invites stakeholders and the public to provide input regarding the existing rules in N.J.A.C. 6A:26 and possible amendments for the next rulemaking by emailing the Department at [chapter26@doe.nj.gov](mailto:chapter26@doe.nj.gov).

A summary of the readopted rules follows:

## **Subchapter 1. General Provisions**

### **N.J.A.C. 6A:26-1.1 Purpose and applicability of rules**

This section establishes the chapter's intent, which is to ensure that educational facilities in the State are safe, healthy, and educationally adequate to support the delivery of a thorough and efficient education to all students in New Jersey. The rules apply to all school districts in the State.

### **N.J.A.C. 6A:26-1.2 Definitions**

This section provides definitions for words and terms used in the chapter.

## **Subchapter 2. Long-Range Facilities Plans**

### **N.J.A.C. 6A:26-2.1 Responsibilities of school district**

This section requires every school district to amend, at least once every five years, its long-range facilities plan (LRFP) for meeting its school facilities needs pursuant to EFCFA. The school district must present its LRFP to the local planning board for review, pursuant to N.J.S.A. 40:55D-31b. The local planning board has 45 days from receipt of the LRFP to convey its findings to the Commissioner. The section also states that an LRFP is not considered complete until the local planning board's comments have been received or until 45 days have passed from the planning board's receipt of the LRFP. The section further requires sending and receiving

school districts to submit an LRFP to the Division of Administration and Finance (Division). The rules also provide that school facilities projects will not be considered approved unless the school district's LRFP has been submitted and approved by the Commissioner. The section also allows a school district to submit, at any time, an amendment to an approved LRFP for review and approval by the Commissioner. Under the section, an approved LRFP remains in effect until an amended LRFP is approved.

#### **N.J.A.C. 6A:26-2.2 Completion of long-range facilities plans**

This section sets forth the required elements of a school district's LRFP. The rules also require a school district to incorporate the facilities efficiency standards in the LRFP.

#### **N.J.A.C. 6A:26-2.3 Review and approval of long-range facilities plans**

This section delineates criteria and timeframes for the Division's review of LRFPs. The section requires the Division to determine within 90 days of receipt of an LRFP whether it is fully and accurately completed. Within 60 days of notification that a plan is complete, the Commissioner also notifies the school district of the final determination regarding the LRFP. The section also requires a school district to amend its approved LRFP whenever it seeks to undertake a capital project that is inconsistent with the approved LRFP in effect. The rules also set forth the procedures for the Division's approval of LRFP amendments for capital projects and capital maintenance.

#### **N.J.A.C. 6A:26-2.4 (Reserved)**

### **Subchapter 3. Capital Project Review**

#### **N.J.A.C. 6A:26-3.1 Initiation of a capital project**

This section describes the capital project review process and requires the Division's review of project documents. Capital projects are defined as school facilities projects, other

capital projects, and land acquisition projects. The section also requires the Division to review each capital project to determine whether it is consistent with the school districts' approved LRFP and whether it complies with the room inventory in the approved LRFP, if any.

### **N.J.A.C. 6A:26-3.2 School facilities projects**

This section describes the procedures for school districts to apply for approval for school facilities projects, including new construction, rehabilitation, acquisition of existing buildings, and certain furnishings, fixtures, or equipment. The rules preclude school districts from initiating school facilities projects without an approved LRFP, except for situations in which emergent conditions exist.

### **N.J.A.C. 6A:26-3.3 Review and approval of school facilities projects**

This section establishes procedures and timelines for the Division's review and approval of applications for school facilities projects. The rules require the Division to determine whether the school district's school facilities project conforms with the school district's LRFP. The section also requires the Division to determine if an application complies with the applicable programmatic model in the school district's approved LRFP, if any, or the facilities efficiency standards. The rules establish that the Division will notify the school district if there is inconsistency with the LRFP and the facilities efficiency standards and set forth the school district's options for addressing the inconsistency.

### **N.J.A.C. 6A:26-3.4 Calculation of preliminary eligible costs for school facilities projects**

This section sets forth the formulas for calculating preliminary eligible costs for school facilities projects that involve new construction, new construction in lieu of rehabilitation pursuant to N.J.A.C. 6A:26-3.3, or the purchase of an existing facility.

### **N.J.A.C. 6A:26-3.5 Determination of final eligible costs for Development Authority school facilities projects**

This section addresses the determination of the final eligible costs for a school facilities project for a school district either required (SDA districts) or electing to use the New Jersey Schools Development Authority (Development Authority) to construct the project. The procedures require a preliminary project report with project and cost information from the Department. If, after advancing the design of the project, the Development Authority determines that a school facilities project cannot be completed within the preliminary eligible costs, the Commissioner, in consultation with the Development Authority, may approve additional eligible costs that are not within a school district's control, or the project may be revised to eliminate excess costs, or excess costs may be funded locally.

If approval of the local share is not obtained within one year of the determination of final eligible costs, the Development Authority may elect to re-determine final eligible costs.

### **N.J.A.C. 6A:26-3.6 Determination of final eligible costs for ROD school facilities projects**

This section addresses how the Department determines final eligible costs for school facilities projects for regular operating districts (RODs). The section provides procedures for RODs to appeal the preliminary eligible costs determination. The rules also state that preliminary eligible costs will equal final eligible costs if there is no appeal or an unsuccessful appeal. The rules outline the cost items that appear in the final eligible costs determination issued to school districts. The rules also require that a school district not seek approval of local share or total costs for a school facilities project receiving State debt service aid until the determination of final eligible costs. A school district may seek approval of the estimated local share in its annual budget prior to a determination of final eligible costs.

### **N.J.A.C. 6A:26-3.7 Local support of school facilities projects**

This section sets forth procedures for funding the local support and other local revenue sources for school facilities projects utilizing school bonds, budget line items, separate voter or board of school estimate approval, or capital reserve. The section also details the requirements for the district board of education resolution for the amount necessary to be raised for a school facilities project and for the referendum question requesting voter approval for the local share of costs. A school district cannot undertake a school facilities project without voter or board of school estimate approval of local support.

Pursuant to EFCFA, the section also provides recourse for school districts (other than State-operated school districts) that fail to obtain authorization for the local share of a school facilities project without excess costs, after having failed to obtain authorization by voters for a similar project within the three prior years. Such school districts may request that the Commissioner approve the school facilities project and authorize the issuance of school bonds to fund the local share, if the Commissioner determines that the project is necessary for the school district to support the achievement of the New Jersey Student Learning Standards.

#### **N.J.A.C. 6A:26-3.8 Determination of State support for school facilities projects**

This section sets forth the formulas for calculation of State debt service aid and for determination of the grant amount for school districts that elect to apply for a grant.

#### **N.J.A.C. 6A:26-3.9 Design and construction of Development Authority school facilities projects**

This section sets forth the activities that the Department and the Development Authority engage in prior to the initiation of Development Authority school facilities projects. First, the section sets forth the procedure for the development of an educational facilities needs assessment (EFNA) by the Commissioner, the transmission of the EFNA to the Development Authority, and the establishment of educational priority rankings based on the determination of critical need in

accordance with priority project categories. Those activities then inform the SDA's Statewide strategic plan to be used in the sequencing of SDA school facilities projects, in consultation with the Commissioner, SDA districts, and the governing bodies of the municipalities in which SDA districts are situated.

The section also establishes procedures and conditions for acquisition of land for a Development Authority school facilities project, and mandates Department approval for design and contract changes affecting the project's educational adequacy (changes to the number, size, location, configuration or use of educational spaces). The rules also require school districts to submit a maintenance plan to the Development Authority upon completion of a Development Authority school facilities project.

#### **N.J.A.C. 6A:26-3.10 Design and construction of ROD school facilities projects**

This section addresses school district compliance with the Public School Contracts Law. The rules also require school districts to submit to the Department the final plans and specifications for final educational adequacy approval prior to Uniform Construction Code (UCC) approval. The section requires school districts to submit, upon completion of a school facilities project, a plan for school facility maintenance pursuant to N.J.A.C. 6A:26-20.

#### **N.J.A.C. 6A:26-3.11 Initiation of other capital projects**

This section provides standards and procedures for review of "other capital projects," which are defined as all projects, or portions thereof, that are 100 percent locally funded. The rules require the Division to review Other capital projects based on whether they are consistent with the school district's approved LRFP; the total amount of funds the school district intends to expend to complete the other capital project; the type of facility to be constructed; and whether the facility, if it is to house students, conforms to educational adequacy requirements at N.J.A.C.



6A:26-5.2. The section also sets forth procedures for obtaining voter approval, either through bond referendum, budget line items, separate questions, or capital reserve withdrawals.

**N.J.A.C. 6A:26-3.12 Acquisition of land by school districts**

This section sets forth the standards and procedures for land acquisition projects by school districts. Land acquisition projects can be either school facilities projects or other capital projects, depending on the type of project for which the land will be utilized. The section also requires the funding for all land acquisitions to be approved by voters or the board of school estimate.

**N.J.A.C. 6A:26-3.13 Review, approval, and use of temporary facilities**

This section includes specific instructions for the two types of school districts (that is, SDA districts and RODs) and for APSSDs regarding required temporary facilities approval. The rules establish the criteria for the Division's review and requires a temporary facility that is housing students to conform to the temporary facility standards set forth at N.J.A.C. 6A:26-8. The section also sets forth the information that school districts and APSSDs must include in temporary facility applications. The rules also allow the Division to approve a temporary facility for a term of two years, with three annual renewals, if satisfactory progress toward the provision of permanent facilities has been demonstrated.

**N.J.A.C. 6A:26-3.14 Emergency stabilization**

This section establishes procedures for school districts for emergency stabilization and emergent capital projects. Emergency stabilization, which does not require Division approval, is a project to repair a school facility on an immediate basis to eliminate an actual or imminent peril to the health and safety of students. The rules require emergency stabilization to qualify as emergency contracts under the Public Schools Contract Law and, therefore, are ineligible for

State support. Emergent capital projects are projects necessitating expedited review and approval by the Division to repair or address a condition that, if not corrected expeditiously, would render a building so potentially injurious or hazardous that it would cause an imminent peril to the health and safety of students and staff.

**N.J.A.C. 6A:26-3.15 Insurance, damages awards, gifts, grants, other private sources of funds, and municipal surplus**

This section reiterates the statutory requirement for school districts to insure all insurable real or personal property. This section sets forth procedures for applying insurance proceeds, damages awards, gifts, grants, other private sources of funds, and municipal surplus for purposes of determining the local share and State share of school facilities projects costs.

**N.J.A.C. 6A:26-3.16 (Reserved)**

**N.J.A.C. 6A:26-3.17 (Reserved)**

**Subchapter 4. Management of Capital Projects**

**N.J.A.C. 6A:26-4.1 Capital projects fund**

This section sets forth the rules governing a school district's capital projects fund. The rules require all expenditures for capital projects to be accounted for in the capital projects fund. The section also establishes that all revenue identified in a referenda or resolution for a school facilities project or other capital projects is transferred to the capital projects fund upon approval.

**N.J.A.C. 6A:26-4.2 Use of capital projects fund to account for a capital project funded in part or in whole by school bonds, short term notes, or pre-EFCFA lease purchase agreements of greater than five years' duration**

This section delineates the authorized expenditures from the capital projects fund supported by bonds, temporary notes, or lease-purchase agreements greater than five years of duration issued prior to the EFCFA. The rules prohibit school districts from transferring capital project cost overruns from the capital projects fund to general-fund expense or capital outlay capital-project cost overruns through general-fund appropriations or surplus unless the Commissioner determines that the transfer is in the best interest of both students and taxpayers. This section also establishes that interest earned on investments in the capital projects fund cannot be used to supplement the school bond authorization unless specifically approved by voters or the board of school estimate.

**N.J.A.C. 6A:26-4.3 Use of capital projects fund to account for a school facilities project not funded in part or in whole by school bonds or short-term notes**

This section regulates the utilization of a capital projects fund for school districts that choose to receive a grant pursuant to N.J.S.A. 18A:7G-15 and elect to pay for the entire local share with funds other than school bonds.

**N.J.A.C. 6A:26-4.4 Options where there are insufficient funds to complete a capital project**

This section delineates options for school districts when there are insufficient funds to complete a capital project. For referendum-authorized capital projects, the rules address sources of additional funds, approvals for the sale of additional bonds, and approvals for the transfers of other sources, such as general fund surplus, additional tax levy, and/or capital reserve. The section also sets forth options for a school district that elects to receive a grant pursuant to N.J.S.A. 18A:7G-15 or to fund the local share through a means other than school bonds.

**N.J.A.C. 6A:26-4.5 Over-expending a capital project**

This section states that it is a crime if a public official or employee knowingly over expends an appropriation or amount limited by law. The rules require the Department to notify the Office of Inspector General if a violation possibly has occurred. The section also subjects a district board of education to a reduction in State aid if its expenditures exceed its appropriation.

#### **N.J.A.C. 6A:26-4.6 Unexpended bond proceeds**

This section governs unexpended bond proceeds for school facility projects. Pursuant to N.J.S.A. 18A:24-47 et seq., school districts may keep unspent bond proceeds in the capital projects fund for six years after the date of issuance or sale of the bonds. If a school district determines to use unexpended bond proceeds for a new purpose, the section requires the school district to obtain voter or board of school estimate approval. If unexpended bonds mature, the section requires Commissioner approval of the ballot question requesting the change in use of the bond proceeds. The rules also allow a district board of education to transfer, via resolution, unspent bond proceeds to either the general or debt service fund.

#### **N.J.A.C. 6A:26-4.7 Oversight of ROD constructed school facilities projects**

This section sets forth the documentation and certifications required for school districts to receive State support for school facilities projects pursuant to EFCFA and this chapter. The section requires school business administrators to certify that all contracts awarded for a school facilities project conform with State laws related to: authorization to prepare plans and specifications; preparation and contents of bid specifications; advertising for bids; review and evaluation of proposals; award and execution of contracts; contract administration and the payment of claims; and change orders. The section also establishes the contents of the project files that school districts must maintain as part of the construction project.

#### **N.J.A.C. 6A:26-4.8 Bidding and awarding of contracts for ROD capital projects**

This section requires that bids be advertised and contracts are awarded after approval of final plans and specifications for ROD capital projects, and that contracts are awarded within 60 days after the approval. The rules also obligates school districts to encumber five percent of the contract cost for change orders. The section further requires school districts to award one or more contracts for the entire approved scope of the capital project, unless specific conditions apply.

#### **N.J.A.C. 6A:26-4.9 Submission of change orders for ROD projects**

This section allows district boards of education to approve change orders for emergency or unforeseeable conditions and for minor modifications to project scope. The rules prohibit all other change orders unless the school district obtains Division approval due to extraordinary circumstances. The section also requires a summary of change orders approved by a district board of education in an aggregate amount of more than 20 percent of the total contract award or project cost to be submitted to the Division, along with a justification for each change order and the change in the contract amount.

#### **N.J.A.C. 6A:26-4.10 Change orders for Development Authority school facilities projects**

This section requires change orders for Development Authority projects to be submitted to the Division for review and approval if the change orders affect the number, size, location, configuration, or use of an educational space.

### **Subchapter 5. Review of Capital Projects for Educational Adequacy**

#### **N.J.A.C. 6A:26-5.1 General provisions**

This section requires all capital projects that affect the number, configuration, size, location, and use of educational spaces within a school facility to be reviewed and approved by the Division for educational adequacy. The rules establish that the Division's review for educational adequacy occurs in conjunction with the review of applications for a school facilities

project. The section also requires the Division to review for education adequacy any other capital project that entails work to educational spaces.

#### **N.J.A.C. 6A:26-5.2 Educational specifications**

This section sets forth the required components of educational specifications submitted for educational-adequacy reviews. The mandated components include details of the educational program activities and requirements for each space; lists of furniture, equipment, and support spaces required to conduct the educational program specified for each space; specific technical and environmental criteria; and the number and net area in square feet of each space.

#### **N.J.A.C. 6A:26-5.3 Schematic plans and other related project documents**

This section sets forth the filing requirements for submission of schematic plans for educational adequacy reviews and the required components of schematic plans. The rules also establish the other project documents that must be submitted with the schematic plans, including cost estimates and project schedules.

#### **N.J.A.C. 6A:26-5.4 Detailed plans and specifications and final plans and specifications**

The section establishes the submission requirements for detailed and final plans and specifications for final approval of the project's educational adequacy. The rules address submissions for Development Authority projects, ROD projects, and temporary facilities.

#### **N.J.A.C. 6A:26-5.5 Fee schedule**

This section sets forth a fee schedule for the Division's review of school district's detailed, final plans, and specifications for educational adequacy. The fee schedule includes set amounts and a percentage of construction cost estimates. The section requires the Division to calculate the final educational-adequacy review fee for a school facilities project when it reviews

and approves the school facilities project application or reviews an other capital project application.

### **N.J.A.C. 6A:26-5.6 Capital projects not subject to educational adequacy review**

This section addresses the Division's review of capital projects that are not subject to educational adequacy review such as roof or locker replacements.

## **Subchapter 6. Planning and Construction Standards for School Facilities**

### **N.J.A.C. 6A:26-6.1 Application of the Uniform Construction Code**

This section affirms the application of the UCC, the UCC enhancements, and the Educational Facility Planning Standards at N.J.A.C. 6A:26-6.3 and 6.4 to public school construction projects. The section requires charter schools to comply with the UCC enhancements where the health and safety of building occupants are affected. The rules also state that charter schools are not required to comply with the educational facility planning standards except where the health and safety of the building occupants are affected.

### **N.J.A.C. 6A:26-6.2 Exceptions**

This section provides flexibility to school districts in implementing the planning and construction standards if strict compliance with any specific requirement would result in practical difficulty and if the exception will not jeopardize the health, safety, and welfare of occupants, intended occupants, and the public. The section also sets forth the Division's process for reviewing and granting an exception from the subchapter's planning and construction standards.

### **N.J.A.C. 6A:26-6.3 Educational facility planning standards**

This section delineates educational facility planning standards that form, in conjunction with the UCC, the requirements for public school facilities. The standards set the requirements in the following areas: general design and construction, entrance and exit, environment, safety, electrical power and communication, lighting, and plumbing.

**N.J.A.C. 6A:26-6.4 Educational facility planning standards for school facilities housing preschool students**

This section sets forth educational facility planning standards for school facilities housing preschool students. The standards address requirements in the following areas: general design and construction, entrance, egress and security, outdoor play areas, electric power and communication, lighting, and plumbing. The rules state that any standards not addressed in this section are in N.J.A.C. 6A:26-6.3, in conjunction with the UCC. For community providers under contract with a district board of education, the section's requirements supplement but do not supplant the manual of requirements mandated by the Office of Licensing in the Department of Human Services for community provider licensure; therefore, the section's requirements that exceed those in the Office of Licensing's manual apply to community providers. The section also establishes facilities efficiency standards for early childhood schools.

**N.J.A.C. 6A:26-6.5 Private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services**

This section governs the review of documentation for capital projects for APSSD facilities and Department of Human Services (DHS) facilities for disabled students.

**Subchapter 7. Land Acquisition, School Closing, and Land Disposal**

**N.J.A.C. 6A:26-7.1 Approval of the acquisition of land**



This section requires school districts to seek Division approval before taking any action to acquire land. The rules also set forth requirements for the submission and review of information and documents related to a land acquisition to ensure that sites proposed by school districts for school use are educationally adequate and feasible for development.

**N.J.A.C. 6A:26-7.2 Approval of the acquisition of land in certain districts under the auspices of the Authority**

This section establishes that the Development Authority may acquire land on behalf of a school district that is eligible for 100 percent State support. The Development Authority may submit to the Department the required information set forth at N.J.A.C. 6A:26-7.1(b).

**N.J.A.C. 6A:26-7.3 Approval for the acquisition of existing facilities**

The section sets forth requirements for approval of acquisition of school buildings by school districts. The rules require a district board of education planning to acquire an existing facility through purchase, gift, lease, or otherwise to comply with all procedures and rules pertaining to the appropriation and use of capital funds and to have the facility approved by the Division. The section further requires school districts to comply with N.J.A.C. 6A:26-8, Temporary school facilities, if facilities to be procured for temporary use will house students.

**N.J.A.C. 6A:26-7.4 Approval for the disposal of land, including rights or interest therein, or improvements thereon**

This section provides procedures and conditions for Division approval of land disposal by school districts. If school district-owned land is to be altered or disposed of through sale, transfer, or exchange of all or part of the total acreage, the section requires the school district to submit to the Division a written request for approval of the disposal. The rules require the

Division to determine whether the disposal is consistent with the school district's approved LRFP or has a negative impact on the educational adequacy of an individual site.

### **N.J.A.C. 6A:26-7.5 Approval for the closing of a school facility**

This section sets forth procedures for Division approval of closing school facilities. The procedures include the school district's submission to the Division and executive county superintendent of a statement that the closing is consistent with the school district's LRFP and that the re-assignment of students will not produce, sustain, or contribute to unlawful segregation of students.

## **Subchapter 8. Temporary School Facilities**

### **N.J.A.C. 6A:26-8.1 Temporary facilities standards**

This section sets forth the design and construction standards that apply to temporary facilities, whether included as part of a school facilities project, funded as an other capital project, or provided by an APSSD. The rules also address the applicability of the facilities efficiency standards to temporary facilities, compliance monitoring by the executive county superintendent, budgeting for deficiencies, and the construction and design standards for a variety of types of temporary facilities, such as leased buildings and pre-manufactured temporary classroom units. The subchapter further requires a temporary facility to be used as a school to comply with the applicable requirements of the UCC as evidenced by a valid certificate of occupancy.

## **Subchapter 9. (Reserved)**

## **Subchapter 10. Lease Purchase and Lease Agreements**

### **N.J.A.C. 6A:26-10.1 Use of lease-purchase agreements**

This section delineates the permitted uses of lease-purchase agreements. The rules permit school districts to acquire improvements or additions to school facilities or purchase equipment via a lease-purchase agreement of five years or less if the lease-purchase agreement provides for funding in full to the school district upon the commencement of the school facilities projects. Prior to July 18, 2000, school districts were permitted to utilize lease purchases of greater than five years' duration. The section allows school districts to enter into lease-purchase agreements of five years or less for equipment without Commissioner approval, but the agreements must meet specific requirements and be filed with the executive county superintendent.

**N.J.A.C. 6A:26-10.2 Costs of lease-purchase agreements of five years or less**

This section provides that all costs incurred by school districts for lease-purchase agreements constitute debt service not eligible for State debt service aid under EFCFA. Lease-purchase-agreement payments are recorded as an expenditure of the school district's general funds.

**N.J.A.C. 6A:26-10.3 Approval of lease purchase agreements for improvements or additions to school facilities**

This section requires Division approval of lease-purchase agreements to fund the local share or a portion of the total costs of a school facilities project for improvements or additions to a school facility that do not include excess costs, and sets forth the process of approval. The rules require voter or board of school estimate approval for all lease-purchase agreements that include excess costs and that, therefore, do not require Division approval. The applications for lease purchases for capital projects shall include a description of the project, the lease-purchase agreement, enrollment updates, and a project description. The section also sets forth procedures for public hearings, when required, and approval by the district board of education.

#### **N.J.A.C. 6A:26-10.4 Contents of lease-purchase agreement**

This section delineates the required provisions for a lease-purchase agreement. The rules state that provisions of the lease-purchase agreements must include that (i) payments are subject to the annual appropriation of funds that are sufficient to meet the required payments or contain a cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f); (ii) all construction contracts let by public school districts or developers or owners of property used for school purposes shall be competitively bid; and (iii) the district board of education may refinance the lease-purchase agreement or purchase the leased premises, by defeasance or otherwise, at any time during the lease period.

#### **N.J.A.C. 6A:26-10.5 Contents of ground lease**

This section establishes the required provisions for a ground lease, including a legal description of the land, a warranty of title, and a warranty that the land is properly zoned.

#### **N.J.A.C. 6A:26-10.6 Approval procedures to refinance a lease-purchase agreement**

This section sets forth the Division's approval procedures for a district board of education to refinance a lease-purchase agreement. The rules require a district board of education to submit to the Division an application for refinancing and a district board of education resolution, a list of persons or firms contacted with regard to the refinancing, and copies of the amended repayment schedule and all documents in final draft form.

#### **N.J.A.C. 6A:26-10.7 Approval procedures for a defeasance of lease-purchase agreements**

This section requires that a district board of education seeking voter or board of school estimate approval of the defeasance of any lease-purchase agreement must obtain approval from the Division. The rules require a district board of education to submit to the Division documentation, including a district board of education resolution, an opinion of legal counsel

stating that prepayment of the agreement conforms to law, a schedule of sources and uses of bond proceeds and a copy of all documents in final draft form. The division must approve all applications for defeasance of lease-purchase agreements based on a determination the defeasance is in the school district's best interest.

**N.J.A.C. 6A:26-10.8 Lease-purchase agreements entered into prior to July 18, 2000**

This section establishes procedures for lease-purchase agreements that were entered into prior to July 18, 2000. The rules requires a school district to enter into intercept agreements with the State and the lessor if the school district seeks to utilize the building or site subject to the builder's lien for a school facilities project for which funding pursuant to EFCFA and this chapter will be sought. Under intercept agreements, the State is entitled to withhold a portion of State support to the school district if the school district fails to make timely payment of amounts due under the lease-purchase agreement.

**N.J.A.C. 6A:26-10.9 Approval of lease agreements for facilities to be used for school purposes**

This section authorizes a school district to lease, on a year-to-year basis, facilities for school purposes. The rules also allow a school district to lease for a term not to exceed five years in the case of an emergency.

**N.J.A.C. 6A:26-10.10 Limitation on multiyear leases of facilities**

This section requires multiyear leases to contain a clause making them subject to the availability and appropriation of sufficient funds or to contain an annual cancellation clause.

**N.J.A.C. 6A:26-10.11 Public hearing for facility leases in excess of five years**

This section establishes the procedure that district boards of education must follow for public hearings about facility leases in excess of five years.

## **Subchapter 11. County Vocational School District Facilities Rehabilitation Fund**

### **N.J.A.C. 6A:26-11.1 County vocational district facilities rehabilitation fund**

This section allows for a county vocational school district to apply to the Commissioner for a grant up to \$500,000 to support health and safety school facilities rehabilitation projects. The rules require a county vocational school district to match, on a dollar-for-dollar basis, the State funding, which is subject to appropriation and availability of funds.

### **N.J.A.C. 6A:26-11.2 Application for funds**

This section requires a county vocational school district seeking a grant from the County Vocational School District Facilities Rehabilitation Fund to submit to the Commissioner an application that contains the following: a description of the school facilities project to be undertaken with the funds; a schematic drawing of the project or preliminary plans and specifications; a description of each of the project's functional components; the number of students and previously unhoused students to be housed in the project; and the estimated cost to complete the project. "Unhoused students" is a defined term, meaning "the number of students in excess of the functional capacity of a school facility calculated pursuant to N.J.A.C. 6A:26-2.2(c)." A county vocational school district that receives grant funding under this section is precluded from receiving State support pursuant to any other provision of EFCFA and this chapter for five years after receipt of the grant.

## **Subchapter 12. Safety Requirements for School Facilities**

### **N.J.A.C. 6A:26-12.1 Facilities maintenance requirements**

This section requires district boards of education to maintain facilities and structures in a safe, healthy, and energy efficient condition and in good working order.

### **N.J.A.C. 6A:26-12.2 Policies and procedures for school facility operation**

This section requires district boards of education to establish policies for the safe operation of school facilities, including policies concerning storage and use of hazardous materials, prevention of accidents and fires, and provision and maintenance of suitable and safe equipment.

#### **N.J.A.C. 6A:26-12.3 Health facilities, equipment, and supplies**

This section requires school districts to maintain the facilities, equipment, and supplies necessary for the provision of student health services.

#### **N.J.A.C. 6A:26-12.4 Safe drinking water**

This section requires district boards of education to test all drinking water outlets every three years. Under specially adopted rules authorized by the Fiscal Year 2017 State budget (P. L. 2016, c. 10), all district boards of education were required to conduct testing by July 13, 2017, and every six years thereafter. The section also allowed for a one-year extension for testing by district boards of education that provided written documentation that there was no certified laboratory available to conduct testing by the 2017 deadline. The rules further allowed district boards of education to apply to the Department for an exemption from the initial testing if the district board of education could demonstrate that it complied with or exceeded the new testing requirements, including required public notifications, by July 13, 2017. Under recently adopted amendments (see 52 N.J.R. ????(?)), the section now requires all district boards of education to test for lead in a Statewide required testing year, which will be every third school year beginning with the 2021-2022 school year and subsequently occurring in the 2024-2025 school year. The rules also set forth the standards for the required testing and for reporting the results and remediation actions to the Department and the public.

#### **N.J.A.C. 6A:26-12.5 Eye protection in schools**

This section specifies that a district board of education must require all students, staff members, and visitors to wear appropriate eye protection while participating in any educational activity that utilizes tools, involves exposure to hazardous materials, or is hazardous. The rules require an emergency eye wash fountain to be provided in shops, laboratories, or other areas where students or instructors are exposed to caustic materials that can damage the eye. The section also requires school districts to provide annual training and appropriate supplies and equipment to all school personnel responsible for implementing the eye-safety policies and program.

### **Subchapter 13. (Reserved.)**

### **Subchapter 14. Withholding of State Support for Non-Compliance**

#### **N.J.A.C. 6A:26-14.1 Withholding of State support for non-compliance**

This section sets forth provisions regarding withholding of State support due to non-compliance by school districts, or failure to obey the law, or rules or directions of the State Board and Commissioner.

### **Subchapter 15. (Reserved)**

### **Subchapter 16. Certified Educational Facilities Manager**

#### **N.J.A.C. 6A:26-16.1 Certified educational facilities manager**

This section sets forth provisions regarding the certification of educational facilities managers pursuant to N.J.S.A. 18A:17-49 et seq. The law requires educational facilities managers to meet certain professional experience, educational, and licensing requirements. The section requires applicants for certification as an educational facilities manager to submit to the Division documentation that demonstrates compliance with the statutory criteria. After verification of the submitted documentation, the rules stipulate that the Division will issue to the



applicant an authorization to serve as an educational facilities manager and add the applicant to the Division's master list of certified managers.

## **Subchapter 17. Appeals**

### **N.J.A.C. 6A:26-17.1 Appeals of Commissioner determinations**

This section states that all appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the New Jersey Superior Court Appellate Division. The rules also provide an opportunity for a school district to request an informal hearing before the assistant commissioner regarding Division decisions. A school district also can appeal a Division decision to the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

## **Subchapter 18. Section 15 Grants for Regular Operating Districts, Including County Vocational School Districts**

### **N.J.A.C. 6A:26-18.1 Eligibility for section 15 grants for RODs, not including county vocational school districts**

This section establishes procedures and requirements governing eligibility determination for a grant pursuant to N.J.S.A. 18A:7G-15 ("section 15 grant"). The rules set forth the priority project categories in which a school facilities project must fall to be eligible for a section 15 grant, which is subject to the availability of funds.

### **N.J.A.C. 6A:26-18.2 Funding options for school facilities project in RODs, other than county vocational school districts, that are not awarded a section 15 grant**

This section sets forth the funding options available to RODs that are not awarded a section 15 grant. Depending on the specific circumstances, the rules allow RODs to resubmit an application in a subsequent grant cycle, revise and resubmit an application, or instruct the Office

of School Facilities to consider the project an “other capital” project and fully fund the project without State support.

**N.J.A.C. 6A:26-18.3 Deadlines for submission of Section 15 grant applications for RODs, not including county vocational school**

This section sets forth the timetable for the Commissioner to notify school districts concerning the funding availability for an allocation and the deadline for school districts to apply. The rules also require school districts to obtain the local share within 18 months of notification by the Department of the final grant award.

**N.J.A.C. 6A:26-18.4 Section 15 grants for county vocational school district school facilities projects**

This section sets forth the requirements for county vocational school district school facilities projects to be eligible for section 15 grants, which are allocated separate from section 15 grants for RODs. The rules also provide the priority project categories that apply to county vocational school districts seeking section 15 grants.

**N.J.A.C. 6A:26-18.5 (Reserved)**

**N.J.A.C. 6A:26-18.6 (Reserved)**

**Subchapter 19. Management of a School Facilities Project by a Schools Development Authority (SDA) District**

**N.J.A.C. 6A:26-19.1 Purpose**

This section sets forth the subchapter’s purpose, which is to implement Subsection 13e(1) of the EFCFA. The rule also establishes the requirements that must be met for the Commissioner

to determine that an SDA school district can be considered eligible by the Development Authority to manage a school facilities project(s).

### **N.J.A.C. 6A:26-19.2 Determination of eligibility by the Commissioner**

This section provides that an SDA district, upon authorization by its district board of education, can request in writing that the Commissioner determine whether the school district has satisfied the requirements necessary to be considered eligible by the Development Authority to manage its own school facility project or projects. The rules also require the SDA district's written request to include a district board of education resolution or certified minutes authorizing the request, a description of the SDA district personnel who will manage the school facilities project(s), and a statement that the SDA district has not received an adverse opinion or a disclaimer of opinion by its independent auditor for the prior school year. This section further states that the Commissioner's determination is based upon review of the school district's submission and its performance in each of the five key components (instruction and program; personnel; fiscal management; operations; and governance) of school district effectiveness under the Quality Single Accountability Continuum (QSAC), and other relevant factors.

### **N.J.A.C. 6A:26-19.3 Notification of SDA districts**

This section provides that the Commissioner notifies SDA districts regarding the eligibility determination results, and if determined eligible, notifies the SDA. An SDA district determined to be ineligible for consideration can request that the Commissioner review its eligibility determination upon the SDA district satisfying the requirements of N.J.A.C. 6A:26-19.3. Further, the section provides that the Commissioner can rescind an SDA district's eligibility determination under certain circumstances. In that instance, the Commissioner notifies the SDA.

### **N.J.A.C. 6A:26-19.4 Limitation of the subchapter's applicability**

The section states the subchapter does not apply to any school facilities project in an SDA district under the provisions of N.J.S.A. 18:7G-13a.

**N.J.A.C. 6A:26-19.5 (Reserved)**

**Subchapter 20. Comprehensive Maintenance Plans**

**N.J.A.C. 6A:26-20.1 Purpose**

This section sets forth the subchapter's purpose to implement the provisions of EFCFA, specifically N.J.S.A. 18A:7G-3, 9.b(3) and 13.d. The statutes required the Commissioner to initially promulgate rules requiring school districts to have comprehensive maintenance plans for school facilities and to make the appropriate investment in the maintenance of school facilities. The rules were then adopted by the State Board of Education pursuant to N.J.A.C. 18A:7G-26.

**N.J.A.C. 6A:26-20.2 Scope**

This section sets forth that the subchapter applies to every school district that owns school facilities or operates school facilities owned by another party, when the operating school district is responsible for maintenance of the school facilities. The rules also require a school district that operates facilities owned by another school district(s) to include the school facilities in the operating school district's comprehensive maintenance plan. The section further requires the operating school district to forward copies of comprehensive maintenance plans to the school district(s) that owns the facilities.

**N.J.A.C. 6A:26-20.3 Required maintenance activities**

This section requires specific maintenance activities that address interior and exterior conditions, include preventive and corrective measures, and prevent premature breakdown or failure of the school facility and its building systems. The rules also require a school district's determination of required maintenance activities to be based on reasonable maintenance of each

school facility. The section further requires the maintenance activities to be reported annually in the school district's comprehensive maintenance plan.

#### **N.J.A.C. 6A:26-20.4 Required maintenance expenditures**

This section describes expenditures for required maintenance activities that qualify as investments in maintenance activities for purposes of calculating required maintenance expenditures, the annual required maintenance budget amount pursuant to N.J.S.A. 6A:26-20.8, and the maintenance factor (M) in N.J.S.A. 18A:7G-9. The section requires school districts to report the final expenditures by school facility in the school district's comprehensive annual financial report and to have expenditure records available for auditors.

#### **N.J.A.C. 6A:26-20.5 Requirements for comprehensive maintenance plans**

This section sets forth the required components of a school district's comprehensive maintenance plan, including maintenance activities and expenditures for the prior year, as well as activities and budgeted costs for the filing year and one subsequent year. The rules also state that the three-year comprehensive maintenance plan shall not include activities for capital maintenance or routine maintenance. The section requires each school facility in a school district to be included in the comprehensive maintenance plan.

#### **N.J.A.C. 6A:26-20.6 Submission and review of comprehensive maintenance plans**

This section requires comprehensive maintenance plans to be submitted to the executive county superintendent by district board of education resolution every school year. The rules also require the executive county superintendent to notify a school district if a comprehensive maintenance plan is found to be deficient based on the chapter's standards. School districts are required under the section to submit to the executive county superintendent a revised comprehensive maintenance plan addressing the deficiencies within 30 days from the

notification date. The section also states that a plan is deemed approved if a school district does not receive notification from executive county superintendent within 90 days of submission. The section also requires the executive county superintendent to review the comprehensive maintenance plan's implementation during a school district's monitoring under QSAC to ensure that the plan addresses the required maintenance activities and that the reported activities actually occurred.

#### **N.J.A.C. 6A:26-20.7 Requirements for a maintenance package for newly completed school facilities projects**

This section requires, as a condition for completion of a school facilities project, an architect or engineer to provide the school district with a certification that the contractor for the school facilities project has provided a maintenance package. The rules also require the maintenance package to contain manufacturer's warranties, owner's manuals, required maintenance and testing instructions, and a summary report. The section further requires the maintenance package to cover the useful life of the school facilities project and to be incorporated into the school district's comprehensive maintenance plan.

#### **N.J.A.C. 6A:26-20.8 Required maintenance budget amount**

This section requires a school district's annual maintenance budget amount to include the school district's annual budget certified for taxes in the required maintenance line-item accounts and/or as a deposit into the maintenance reserve in accordance with N.J.A.C. 6A:26A-4.2. The rules also set forth the calculation for the annual maintenance budget amount. The section further allows the school district to adjust, with the executive county superintendent's approval, the annual budget amount based on prior-year expenditures to ensure an overall expenditure of two percent on required maintenance per school facility over 10 years. The section is intended to ensure an overall expenditure of two percent on required maintenance per school facility rather

than per school. The rules allow a school district that cannot budget the required amount to submit to the executive county superintendent proof of its inability to budget the required amount and a plan to ensure that the required two percent will be expended over 10 years. Under the section, the school district can budget less than the full amount if the executive county superintendent concurs with the school district's explanation and plan. If the executive county superintendent does not concur with the school district's explanation or plan, the section requires the school district to budget the full amount.

**N.J.A.C. 6A:26-20.9 Maintenance factor in State debt service aid**

This section sets forth how the maintenance factor is calculated when determining State debt service aid for existing school facilities when a school district fails to demonstrate a net investment of at least two percent in maintenance for the related school facility during the 10 years preceding issuance of school bonds.