

**Chapter 23A,  
Fiscal Accountability, Efficiency and Budgeting Procedures**

**Subchapter 18. Tuition for Private Schools for Students with Disabilities**

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### **6A:23A-18.1 Scope and Purpose**

The rules in this subchapter establish requirements for accounting, financial reporting, and tuition rate setting by approved private schools for students with disabilities. The rules also set forth processes and procedures, including, but not limited to, new school applications, non-allowable costs, and audit requirements. The rules in this subchapter shall become effective immediately, unless otherwise indicated.

### **6A:23A-18.2 Definitions**

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

"Administrative costs" means the costs defined as administrative costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.

"Advertising costs" means the costs associated with promoting, marketing, or public relations for the APSSD's programs and/or services, as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.

"Approved private school for students with disabilities" or "APSSD" means an entity approved by the Department according to N.J.A.C. 6A:14-7.1 through 7.3 to provide special education and related services to a student with disabilities placed in the APSSD by a parent/guardian, sending district board of education, or State agency responsible for providing the student's education through implementation of his or her individualized education program (IEP).

“APSSD official” means a member of the board of directors or board of trustees of an APSSD; anyone holding an ownership interest in the APSSD; an officer, employee, administrator, or supervisor of an APSSD; or anyone responsible for making recommendations regarding hiring or the purchase or acquisition of any property or service(s) by the APSSD.

“Assistant director” means the same as “director.”

"Average daily enrollment (ADE)" means the sum of the days present and absent of all school students enrolled in the APSSD register(s) divided by the number of days the APSSD was actually in session for the entire school year rounded to the nearest four decimal places, except in no event shall the divisor be less than 180 days.

"Bonus" means payment to an employee that meets any of the following:

1. Is not part of the employee's executed contracted salary;
2. Is not part of the employee's base salary in the subsequent school year;
3. Is arbitrary and not based on any specific criteria or qualifications; or
4. Is paid solely at the discretion of management.

"Business manager" means an individual whose job function includes a majority of the following: financial budget planning and administration, insurance/risk administration, purchasing, financial accounting and reporting, facility planning, construction and maintenance; personnel administration; administration of transportation and food services; and data

processing. Prior to June 30, 2017, the holder of this job title shall hold a bachelor's degree in business, accounting, finance, or economics from an accredited institution or a standard school business administrator's certificate but shall not be required to hold a school certification. Effective July 1, 2017, all business managers, except those employed by the APSSD as a business manager or otherwise serving as business manager with the APSSD prior to July 1, 2017, shall hold a master's degree in business, accounting, finance, economics, or a related field from an accredited institution; a standard school business administrator's certificate issued pursuant to N.J.A.C. 6A:9B-12.7, as amended or supplemented; or a certified public accountant certificate.

"Certified actual cost per student" means the actual allowable cost for the entire school year plus the applicable maximum surcharge/public school placement restricted working capital fund divided by ADE for the school year as determined by an independent school auditor.

"Compensation increases" means any additional payment(s) made to an employee after the start of the fiscal year that would appear on the employee's W-2 and/or should result in a Form 1099 being issued to the employee.

"Conditional approval status" means the APSSD is precluded from accepting and/or enrolling new students from the date the Department placed the APSSD on conditional approval status.

"Contingent pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is paid to all staff if the APSSD attains the predetermined

ADE for the school year that was filed with and approved by the Commissioner, or his or her designee.

“Director” means an individual whose job function includes a majority of the following: formulation of school goals, plans, policies, and budgets and recommendation of their approval to the school's board of directors; recommendations to the school's board of directors for all staff appointments and other personnel actions, such as terminations, suspensions, and compensation, including the appointment of the business manager; responsibility for school operations and programs, including administration, supervision, and evaluation of administrators, supervisors, and all other school staff. Prior to June 30, 2017, all individuals employed by the APSSD as director, or serving as director of an APSSD, shall hold a bachelor’s degree from an accredited institution, but shall not be required to hold a professional school license/certification pursuant to N.J.A.C. 6A:9B. After July 1, 2017, all directors, except those employed as, or otherwise serving as director for the APSSD prior to July 1, 2017, shall hold a master’s degree from an accredited institution, but shall not be required to hold a certification pursuant to N.J.A.C. 6A:9B.

"Entertainment expenses" means the cost of providing any type of food/beverage to APSSD officers, APSSD directors/trustees, consultants, and/or individuals providing services to the APSSD at any time or to APSSD employees after school hours.

"Executive director" means the same as the “Director.”

"Extraordinary service" means the services of a one-to-one aide, or one-to-one nurse, for a student as required by the student's individualized education program (IEP).

"Final tuition rate" means an amount equal to or less than the certified actual cost per student calculated in accordance with N.J.A.C. 6A:23A-18.3(a).

"Full time" for the purposes of the maximum salaries in N.J.A.C. 6A:23A-18.3(o), (p), and (q), and full-time equivalent means 35 hours or more per week over the term outlined in the employment contract pursuant to N.J.A.C. 6A:23A-18.5(c).

"Full-time equivalent" or "FTE" means the ratio of the total number of paid hours during a period divided by the number of full-time working hours in that period; one FTE is equivalent to one employee working full time.

"Independent school auditor" means an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who holds a valid registration license as a public school accountant of New Jersey and conducts an APSSD's annual audit in accordance with N.J.A.C. 6A:23A-18.10.

"Instructional costs" means those costs defined as instructional costs as prescribed by the Commissioner in the chart of accounts required in accordance with N.J.A.C. 6A:23A-18.5(a)7.

"Internal Revenue Code" or "IRC" means any Federal tax code section indicated in this subchapter and as amended and supplemented.

"Keyman life insurance" means insurance on staff members for which the APSSD is the beneficiary of the life insurance policy.

"Meals" means the provision of breakfast and/or lunch to students.

"Merit pay increase" means a staff salary increase of either a certain dollar amount or percentage of contracted salary that is based on specific performance criteria previously submitted to and approved by the Commissioner or his or her designee.

"New approved private school for students with disabilities" or "new APSSD" means an APSSD during the initial two fiscal years of operation.

"Passenger vehicle" means a vehicle originally designed by the manufacturer with a seating capacity of 10 or fewer persons, including the driver.

"Private placement student" means a student placed in an APSSD by an entity or parent/guardian other than a New Jersey sending district board of education, charter school or renaissance school board of trustees, or a New Jersey State agency.

"Public school placement restricted working capital fund" means a nonprofit APSSD's total public school restricted assets less the total public school restricted liabilities.

"Public school placement student" means a student placed in an APSSD by a New Jersey sending district board of education, board of trustees of a charter or renaissance school, or a New Jersey State agency.

"Related services" means the type of services defined in N.J.A.C. 6A:14-1.3.

"School year" means the time period an APSSD is in session either from July through June, August through June, or September through June.

"Sending district board of education" or "sending school district" means the New Jersey public school district, charter school, renaissance school, or State agency sending a student to an APSSD.

"Severance pay" means compensation in addition to regular salaries and wages that is paid by an APSSD to an employee whose employment is being terminated by separation agreement or otherwise.

"Start-up costs" means costs such as, but not limited to, legal fees, filing fees, furniture, fixtures, equipment, and facility costs incurred by an APSSD for the nine-month period prior to receiving Department approval to operate as an APSSD. A salary is not an allowable start-up cost.



"Surcharge" means the amount of profit that for-profit APSSDs may include in the certified actual cost per student.

"Tentative tuition rate" means the original budgeted tuition rate charged to a sending district board of education or board of trustees for a charter or renaissance school for the school year.

### **N.J.A.C. 6A:23A-18.3 Tuition rate procedures**

- (a) The board of directors of an APSSD located in New Jersey shall determine the final tuition rate charged to be an amount less than or equal to the certified actual cost per student as determined by an independent school auditor. The board of directors shall identify the certified actual cost per student and final tuition rate charged in the audited financial statements submitted to the Department pursuant to N.J.A.C. 6A:23A-18.10.
1. When determining the actual allowable costs for the program, the board of directors shall ensure the costs are:
    - i. Based on all costs required for student instruction from July 1 through June 30;
    - ii. Consistent with the students' individualized education programs (IEP);
    - iii. Inclusive of all costs required to implement all students' IEPs and all related services, except as set forth in (a)5 below;

- iv. Reasonable, that is, ordinary and necessary and not in excess of the cost that would be incurred by an ordinarily prudent person in the administration of public funds; and
  - v. Based on goods actually received and placed in service and/or services rendered in the fiscal year expensed.
2. If any of the APSSD's quarterly financial reports, completed pursuant to N.J.A.C. 6A:23A-18.5(a)11, demonstrates the year-to-date per diem rate exceeds the tentative tuition rate for the year by more than 10 percent, the APSSD shall notify each sending district board of education and the Commissioner, or his or her designee, that such an increase will be charged and the reason for the increase on or before the following dates: December 15 for the first quarter, March 15 for the second quarter, June 15 for the third quarter, and September 15 for the fourth quarter, or the next business day when applicable. The determination of a final tuition rate in excess of 10 percent above the tentative tuition rate charged shall be based on the completion of the required quarterly financial report in accordance with N.J.A.C. 6A:23A-18.5(a)11.
- i. If the sending district board of education and the Commissioner, or his or her designee, are not notified on or before the dates noted in (a)2 above, the APSSD may charge an increase that shall not exceed 10 percent of the tentative tuition rate charged.
  - ii. The notification required in (a)2i above shall contain a detailed statement outlining changing costs and/or enrollment, the reasons for the changes, including management's response to same, and the reason(s) the changes are

not offset by decreases in costs. If the notification does not include this statement, the Commissioner, or his or her designee, may prohibit an APSSD from charging an increase above 10 percent.

3. Costs for the program shall include instructional costs and administrative costs, as defined in the chart of accounts, as follows:
  - i. For the 2016-2017 school year, minimum instructional costs of 55 percent and maximum administrative costs of 25 percent;
  - ii. For the 2017-2018 school year, minimum instructional costs of 55.5 percent and maximum administrative costs of 24.5 percent;
  - iii. For the 2018-2019 school year, minimum instructional costs of 56 percent and maximum administrative costs of 24 percent;
  - iv. For the 2019-2020 school year, minimum instructional costs of 56.5 percent and maximum administrative costs of 23.5 percent;
  - v. For the 2020-2021 school year, minimum instructional costs of 57 percent and maximum administrative costs of 23 percent; and
  - vi. For the 2021-2022 school year and thereafter, minimum instructional costs of 57.5 percent and maximum administrative costs of 22.5 percent.
4. Unless otherwise determined pursuant to (b) below, the APSSD shall charge one tentative tuition rate as published by the Department, charge one final tuition rate determined by the APSSD, and calculate one certified actual cost per student for the school year that must be approved by the Commissioner, or his or her designee.

- i. An APSSD shall report all tuition rates on a per diem and school-year basis, calculated as the number of enrolled days in the school year multiplied by the per diem rate.
  - ii. An APSSD that operates both a 10-month and an extended school year shall report tuition rates for both the July/August through June and September through June school years.
5. Except for extraordinary services, an APSSD shall provide required related services in the scope of services rendered pursuant to the tuition contract and may not bill the sending district board of education separately for related services that are required by a student's initial or any subsequent IEP with limited exception. If the related service required by an IEP is beyond what is typically provided during the school day, or the nature of the related services requires that it be provided beyond the school day/operating hours, the APSSD may address the costs and provision of such related services through a separate agreement with the sending district. However, if such related services beyond that typically provided during the school day or beyond the school day/operating hours are not in the scope of services rendered under the tuition contract, nothing in this section shall prevent a sending district board of education from providing those services itself or separately contracting for those services with an approved service provider other than the APSSD.
6. For programs in operation less than the minimum of 180 days of instruction (September 1 through June 30) the APSSD shall calculate total costs minus 1/180 for each day less than the 180-day requirement to determine actual allowable costs.

7. The ADE for students enrolled in an APSSD for a time period other than a full or half day shall be based on the total number of hours actually enrolled during the school year divided by the total possible number of hours in the school year.
  8. For fiscal reporting purposes, an extended school year program means a program in which activities commence on or after July 1 and end on or before August 31 of the same year. For program activities that begin prior to July 1, an APSSD shall report all costs and revenues in the prior fiscal year.
- (b) An APSSD may charge one tuition rate per school location for the school year. Prior to June 30, 2017, the Commissioner, or his or her designee, may approve APSSDs to charge separate tuition rates by class type and by school location for the school year. APSSDs that have not received written approval to charge separate tuition rates by class type and by school location prior to July 1, 2017, shall not be permitted to do so for the school year beginning July 1, 2017, and thereafter. APSSDs that are approved prior to June 30, 2017, to charge by class type shall:
1. Maintain bookkeeping and accounting records by class type and school location for the school year;
  2. Charge a separate tuition rate for each class type served;
  3. Prepare, in the Department-prescribed format, the audited costs by class type for the first two years that tuition is charged by class type, which will allow the Commissioner to determine the tentative tuition rates in accordance with (i) below; and
  4. Determine, on a pro rata basis and when it is not possible to charge the actual amount expended, the individual share of a particular allowable cost item for a class type, in

accordance with the following ratios or an alternative method approved by the Commissioner:

- i. Ratio of ADE in each class type to the total ADE;
  - ii. Ratio of square feet of floor space in each class type to the total square feet of floor space used; or
  - iii. Direct costs.
- (c) An APSSD shall record, in the prescribed bookkeeping and accounting system pursuant to N.J.A.C. 6A:23A-18.5(a)8, all direct costs that can be specifically attributed to a program and/or revenue source.
- (d) For indirect costs that are incurred for a common or joint purpose, but are not readily assignable to an APSSD and/or its program and/or a revenue source, an APSSD may establish indirect cost pools as appropriate for allocation to the APSSD at the end of the fiscal year as follows:
1. The expenditures included in the indirect cost pool shall be related to the APSSD's function(s), operation(s), and/or program(s); and
  2. Salary expenditures and associated fringe benefits included in an indirect cost pool shall be for individuals who are assigned, pursuant to a contract and/or job description, to perform work related to the APSSD's function(s), operation(s), and program(s).
- (e) An entity that operates only as an APSSD and operates one or more tuition programs at one or more locations shall charge costs as follows:
1. Direct costs for each program as determined pursuant to (c) above; and

2. Indirect costs, as defined in (d) above, are calculated in accordance with any of the following:
  - i. An equitable allocation plan approved in writing by the Commissioner, or his or her designee;
  - ii. Ratio of direct costs for each program determined pursuant to (c) above to total direct costs; or
  - iii. Ratio of ADE for each program to total ADE.
- (f) An entity that operates other programs in addition to an APSSD program(s) at one or more locations shall charge their costs as follows:
  1. Direct costs for each program as determined pursuant to (c) above;
  2. Indirect cost centers established as follows:
    - i. A cost center that shall include indirect costs that are allowable costs in accordance with this subchapter; and
    - ii. A cost center that shall include indirect non-allowable costs in accordance with this subchapter.
  3. Allowable indirect costs, charged pursuant to (f)2i above, may be included on a consistent basis in the respective actual cost per student in accordance with:
    - i. An equitable allocation plan approved by the Commissioner, or his or her designee;
    - ii. Ratio of direct costs for each program determined pursuant to (c) above to total direct costs; or
    - iii. Ratio of ADE for each APSSD to total ADE.

- (g) Whenever a facility used by an APSSD is also used for unrelated activities and/or enterprises by related or unrelated parties, all direct and indirect costs associated with the facility and operations shall be charged according to the ratio of the square footage of the portion of the facility used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the square footage of the total facility. Indirect costs for using the APSSD's facilities in any other manner shall not be included in the certified actual cost per student.
1. If any facility or portion thereof as set forth in (g) above are jointly used by the APSSD for the APSSD program(s), operation(s), and/or function(s), and for unrelated activities and/or enterprises by related or unrelated parties, the direct and indirect costs associated with the facility and operations shall be charged according to the ratio of the time used for activities associated with the APSSD program(s), operation(s), and/or function(s) to the total time the facility is used for any purpose.
- (h) A tentative tuition rate, calculated in accordance with (i) and (j) below, shall be established by written contractual agreement between the APSSD and the sending district board of education. The tentative tuition rate charged shall not exceed the maximum tentative tuition rate, calculated in accordance with (i) and (j) below, for the ensuing school year, and shall not be changed during the school year regardless of the APSSD's financial or other circumstances. The written contract shall be on the mandated tuition contract form prescribed by the Commissioner and shall be executed prior to a student's enrollment.
1. The contractual agreement shall require the sending district board of education to pay a tentative tuition charge based upon a per diem rate for the total number of days the student is enrolled during the month, for each month the student is enrolled. The



per diem rate is determined by dividing the tentative tuition rate for the school year by the estimated number of days school will be in session, but not less than 180 days, and rounding to the nearest two decimal places.

2. If applicable, the contractual agreement shall require the sending district board of education to pay the APSSD the tentative tuition charge for extraordinary services.
3. The contractual agreement shall require the sending district board of education to pay the APSSD the tentative tuition charge based on one of the following options as determined by the APSSD. The APSSD shall use the same option for all students enrolled in the APSSD:
  - i. Option 1: A sending district board of education shall pay the APSSD no later than the first day of each month prior to the services being rendered.
    - (1) For a student already enrolled in the APSSD, the sending district board of education shall pay the tentative tuition charge by the first day of the second month after services begin. A sending district board of education that fails to pay tuition by the 30<sup>th</sup> day after services begin may be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.
    - (2) For a student enrolled after the first day of the month, the sending district board of education shall pay the tentative tuition charge for the first two months of enrollment no later than 60 days after the first day services begin. Payment in subsequent months is due by the first of each month prior to the services being rendered. A sending district board of education that fails to pay tuition by the 30<sup>th</sup> day after services begin may

- be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.
- ii. Option 2: A sending district board of education shall pay the APSSD no later than 60 days after the last day of each month in which services were rendered. A sending district board of education that fails to pay tuition by the 60th day after the last day of a month in which services were rendered may be charged interest by the APSSD calculated at the rate of one percent per month on the unpaid balance.
- (i) The Commissioner, or his or her designee, will issue notification of the maximum tentative tuition rate for each APSSD no later than January 1 for the ensuing school year, calculated as follows:
- 1. The maximum tentative tuition rate per student shall equal the product of the audited actual cost per student for the school year prior to the current school year inflated by twice the tax levy growth limitation of two percent and any applicable change to this percentage identified in N.J.S.A. 18A:7F-38, or the consumer price index (CPI) as defined in N.J.S.A. 18A:7F-45, whichever is greater.
  - 2. The maximum tentative tuition rate shall include:
    - i. For profit-making schools, the annual surcharge permitted in accordance with N.J.A.C. 6A:23A-18.7; and
    - ii. For nonprofit schools, a public school placement restricted working capital fund in accordance with N.J.A.C. 6A:23A-18.8.
- (j) The Commissioner, or his or her designee, may approve a higher tentative tuition rate for any year in which the APSSD can demonstrate, to the Commissioner's or designee's

satisfaction, that the maximum tentative tuition rate for the ensuing fiscal year is inadequate and would cause an undue financial hardship on the APSSD.

1. In the event of such hardship claim, the APSSD shall submit its request for a higher tentative tuition rate for the entire school year to the Commissioner, or his or her designee, no later than January 31 preceding the beginning of the ensuing school year. The APSSD shall submit the request with appropriate documentation, which shall include, but may not be limited to, the following information:
  - i. A budget reflecting projected costs, working capital fund or surcharge, estimated enrollment, and the requested tuition rate based on this information;
  - ii. A detailed narrative prepared by the APSSD's administration and/or management demonstrating the need for increases in excess of increases already provided in the tentative tuition rate calculation; and
  - iii. A properly completed interim financial report in the format prescribed by the Commissioner, or his or her designee, for the six months of operations ending December 31 immediately preceding the school year.
  
- (k) Following a satisfactory compliance review of an independent auditor's certified actual cost per student, the Commissioner will issue an approval that the final tuition rates charged are based on the certified actual cost per student pursuant to (a) above.
  
- (l) If the Commissioner, or his or her designee, determines the tentative tuition rate for the school year established pursuant to (i) and (j) above is greater than the final tuition rate charged for the school year, the APSSD shall pay or credit the difference to subsequent tuition bills for each sending district board of education no later than June 30 of the school

- year in which the final tuition rate charged is approved by the Commissioner, or his or her designee, or not more than 30 days after an appeal on a certified amount is resolved. The same final tuition rate charged shall be charged to each sending district board of education.
- (m) If the tentative tuition rate for the school year established by written contractual agreement pursuant to (h) above is less than the final tuition rate charged for the school year, the APSSD may charge each sending district board of education all or part of the difference owed, but the same final tuition rate shall be charged to each sending district board of education. The sending district board of education shall pay the difference on a mutually agreed upon date during the second school year following the year for which the actual certified cost per student is approved by the Commissioner, or his or her designee.
- (n) The APSSD shall prepare the contract and the form to establish the tentative tuition rate for the ensuing school year, and if applicable, the tentative tuition rate for extraordinary services on Commissioner-prepared forms.
- (o) An APSSD shall reference as guidance the Commissioner-published list of maximum allowable salaries by job title and county, according to the job titles contained in N.J.A.C. 6A:9B relevant to APSSDs. Except for administrative job titles referenced in (p) below, maximum allowable salaries are based on the highest contracted salaries (not including payment of unused sick and vacation days and severance pay) of certified staff by job title in a district board of education for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. The salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of an APSSD staff member shall be prorated for staff employed for less than 12 months. Under no circumstances shall the maximum allowable salary calculated be less than the

corresponding salary in the prior year for the same job title and county. Unrecognized job titles shall be correlated to similar job titles in public schools based on their functional activities. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries pursuant to (o) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year, with the following exceptions:
  - i. Beginning July 1, 2017, the maximum published salaries for the job titles of occupational therapist, physical therapist, and speech and language specialist shall increase annually from the 2016-2017 published list of maximum allowable salaries by CPI determined consistent with N.J.S.A. 18A:7F-45;
  - ii. Beginning July 1, 2017, the Commissioner, or his or her designee, shall publish a maximum allowable salaries list that contains the total maximum hourly rate for occupational therapists, physical therapists, and speech and language specialists contracted by APSSDs as purchased service providers or independent contractors. The published total hourly rates shall include an allowance of 35 percent more than the maximum allowable salary rate calculated and published pursuant to (o)1i above for the same job titles. The total maximum hourly rates shall be applicable only to contracted service providers.
  - iii. Beginning July 1, 2017, an APSSD may contract with an approved clinic and agency pursuant to N.J.A.C. 6A:14-5.1(c) and 5.2 and may pay the approved

clinic or agency for the contracted services at a rate above the maximum allowable salary published rate detailed in (o) above, so long as the APSSD:

- (1) Acquires quotes for the contracted services from at least three approved clinics or agencies prior to contracting with an approved clinic or agency. If any of the three approved clinics or agencies are a related party, the APSSD shall contract with the lowest of the three quotes; and
  - (2) Provides documentation of the three quotes required by (o)1iii(1) above to the Department upon request.
2. Subparagraphs (o)1i and ii above shall sunset on June 30, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (o) above.
  3. Beginning with the 2021-2022 fiscal year, the Department shall initiate a study examining the maximum allowable salary structure. In conducting the study, the Department may seek and/or include input from an APSSD representative(s). The study shall include a data-driven review of maximum salaries and recommendations, if any, for changes to the maximum allowable salary calculation formula contained in (o) above and (p) below.
- (p) An APSSD shall reference as guidance the Commissioner-published list of maximum allowable salaries by administrative and job titles and county according to the job titles contained in N.J.A.C. 6A:9B and 6A:23A-18.2 relevant to APSSDs. Maximum allowable salaries are based on the highest contracted salary (not including payment of unused sick and vacation days and severance pay) by administrative job title for the entire State in a district board of education, special services district board of education, and educational

services commission with comparable average daily enrollments for any prior year, indexed by the average increase in salary between the two preceding school years for each job title. The salaries are based on a 12-month contract period from July 1 through June 30 and the maximum allowable salary of the APSSD staff member shall be prorated for staff employed for less than 12 months. Each district board of education, special services district board of education, and educational services commission with an ADE equal to or less than the highest APSSD ADE will be considered comparable. Under no circumstances shall the maximum allowable salary calculated be less than the corresponding salary in the prior year for the same job title. The maximum allowable salary of a staff member holding a part-time or split-time position shall be prorated including the salary of staff employed in entities defined in (e) and (f) above.

1. Effective July 1, 2017, through June 30, 2024, maximum allowable salaries established pursuant to (p) above shall be published at the rates contained in the maximum allowable salary list published for the 2016-2017 school year;
  2. Paragraph (p)1 above shall sunset on July 1, 2024, and the Commissioner, or his or her designee, shall resume use and publication of a list of maximum allowable salaries calculated pursuant to (p) above.
- (q) An APSSD shall use the recognized position title list published annually by the Commissioner, or his or her designee, to employ staff whose position requires certification in accordance with N.J.A.C. 6A:9B or a bachelor's or master's degree, pursuant to N.J.A.C. 6A:23A-18.2. An APSSD shall hire only staff or consultants in job titles that require certification or a bachelor's or master's degree if the titles are included on the recognized job titles list, or if such titles are unrecognized job titles that are approved

annually by an executive county superintendent in accordance with N.J.A.C. 6A:9B-5.5.

The APSSD may use unrecognized administrative job titles, but maximum salaries for the titles are restricted in accordance with N.J.A.C. 6A:23A-18.6(a)9. The maximum salaries of APSSD-hired staff in administrative or support job titles, such as, but not limited to, chief executive officer or chief financial officer, shall be limited to the maximum salary of a director in accordance with (p) above.

- (r) For non-administrative individual employees, the Commissioner, or his or her designee, may approve a salary higher than the maximum allowable salary identified in (o), (p), or (q) above. Approval may be given for no more than two APSSD employees in any fiscal year in which the APSSD demonstrates, to the Commissioner's or his or her designee's satisfaction, the maximum allowable salary is inadequate and would cause a hardship to the APSSD. The hardship exception will be granted in limited circumstances and only if the Commissioner, or his or her designee, determines the APSSD has demonstrated an exception is warranted based upon the following:
  - 1. The APSSD shall submit an application to the Commissioner, or his or her designee, postmarked or electronically transmitted no later than the May 1 preceding the applicable school year. The APSSD shall submit the application with appropriate documentation that shall include, but not be limited to, the following:
    - i. Detailed information on the staff member for whom the increase is sought, including, but not limited to, job title and related description, experience and credentials, hire date, previous salary information and new salary sought, accomplishments/achievements of note, and publications or the like. If



- applicable, the APSSD shall include the same detailed information for all staff employed under the same job title;
- ii. A detailed budget demonstrating the impact the increased salary would have on the projected total expenditures, ADE, and budgeted tuition rate, if any;
  - iii. Detailed explanation of the need for a salary above the maximum allowable rate; and
  - iv. An outline of the educational impact of the employee.
2. The Commissioner, or his or her designee, shall review the application and respond in writing to the APSSD by June 30 of the school year preceding the applicable school year; and
  3. Applications solely based on the length of service of the employee or familiarity with the school will not be granted.
- (s) For students who are transitioning back to a program of the sending district board of education, or to a third-party location, for a portion of the enrolled school day and who require the services of an APSSD staff person, the ADE for tuition-rate purposes shall be computed as follows:
1. Regardless of the time period the student is enrolled in a program outside the APSSD, the student shall be considered a full-time APSSD student, the student's ADE shall be considered as 1.0, and the sending district board of education shall pay the full-time tuition rate.
  2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.

- (t) For students who are transitioning back to a program of the sending district board of education, or to a third-party location, for a portion of the enrolled school day, the APSSD shall compute the tuition rate as follows:
  - 1. The APSSD shall calculate the student's ADE based on the number of hours enrolled in the APSSD's program relative to the total number of possible hours of the APSSD's program.
  - 2. The sending district board of education shall pay all costs associated with the transition service if it involves a third party.
- (u) For tuition-rate purposes for a private placement student, the APSSD shall charge not less than the audited cost per student or shall finance by other means the costs that exceed the tuition rate charged.

**6A:23A-18.4 New approved private schools for students with disabilities**

- (a) A prospective applicant shall file with the Office of Special Education Programs (OSEP) an application to establish an APSSD and shall obtain the Commissioner's, or his or her designee's, approval of the application prior to operating an APSSD.
  - 1. A current APSSD that is adding additional classrooms to an existing approved educational program at a new location, or opening a new program, is considered a new APSSD subject to (a) above. For the purpose of this paragraph, a new location may include, but shall not be limited to, a new building.
  - 2. A current APSSD that is adding additional classrooms to an existing approved educational program, or adding a new class type(s), either of which will be housed in

another building at the current location, shall not be considered a new APSSD and shall charge as a tentative tuition rate the tuition currently charged.

- (b) An applicant applying for approval as a new APSSD shall provide to the Department evidence of sufficient need for the new private school as follows:
1. The applicant shall file with the OSEP an application to establish an APSSD and shall document there is a need and the new APSSD would likely serve a minimum of 24 public school placement students.
- (c) Applicants that meet the criteria in (b) above shall be approved as follows:
1. The applicant school shall receive preliminary approval to operate for a two-year period, after which the applicant school shall provide documentation that it has a minimum ADE of 24 public school placement students by the end of the second school year;
    - i. An applicant school meeting the minimum ADE of 24 public school placement students by the end of the second school year shall receive new APSSD approval if it meets all other Department requirements;
    - ii. An applicant school not meeting the minimum ADE of 24 public school placement students by the end of the second school year shall have its preliminary approval status revoked and shall no longer be considered an APSSD;
    - iii. Any APSSD approved prior to the 2004-2005 fiscal year that falls below the previous minimum ADE of 16 public school placement students in a school year shall have its status as an APSSD rescinded and shall be considered preliminarily approved. The school shall attain a minimum ADE of 16 public

school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an APSSD;

- iv. Any APSSD approved to operate during the 2004-2005 fiscal year, or thereafter, that falls below an ADE of 24 public school placement students in a subsequent school year shall be considered preliminarily approved. The school shall attain a minimum ADE of 24 public school placement students by the end of the third school year after the year in question or its approval shall be rescinded and it shall no longer be considered an APSSD;
  - v. APSSDs operating in and affiliated with a public school district are exempt from (b)1 and (c)1i, ii, iii, and iv above; and
  - vi. An APSSD operating in and affiliated with a public school district shall be restricted to operate only in the public school district location. An APSSD operating in and affiliated with a public school district that chooses to move to a location other than the public school district location shall comply with this section.
- (d) An APSSD shall straight line amortize start-up costs, if any, over a 60-month period.
- (e) For the first two years of operation of an APSSD, the tentative tuition rate charged at each site shall be established annually and be based on budgeted allowable costs. An APSSD shall submit such estimated cost(s) to the Commissioner, or his or her designee, for approval no later than 90 days preceding the beginning of each school year. The proposed budget shall be on a form and/or electronic system prepared by the Commissioner, or his or her designee, that provides for, but is not limited to, the following:

1. Fiscal and programmatic data;
  2. Projected allowable cost items and projected enrollments;
  3. A projected budget that reflects administrative costs not in excess of, and instructional costs not less than, the percentages identified in N.J.A.C. 6A:23A-18.3(a)3 and as defined in the chart of accounts;
  4. A report of all funding resources;
  5. An affidavit of compliance; and
  6. A statement of assurance as required by the Office of Special Education Programs.
- (f) If the Commissioner, or his or her designee, approves the tentative tuition rate calculated pursuant to (e) above, each sending district board of education shall pay tentative tuition charges based upon the approved estimated costs per student for the first two years of operation.
- (g) If the tentative tuition rate charged differs from the final tuition rate charged after each year of operation, the tentative tuition charges will be adjusted in accordance with N.J.A.C. 6A:23A-18.3.
- (h) An APSSD approved as a new school shall not begin operations before July 1 of the school year immediately following the school year in which the APSSD received approval to operate, except for an APSSD operating in and affiliated with a public school district.

#### **6A:23A-18.5 Bookkeeping and accounting**

- (a) An APSSD shall maintain accounting and bookkeeping systems as prescribed in the Department's Financial Accounting for New Jersey Private Schools for Students with Disabilities in accordance with the following standards:

1. An APSSD shall maintain accounts in accordance with generally accepted accounting principles (GAAP) as established by the Financial Accounting Standards Board (FASB) and recognized as authoritative by the American Institute of Certified Public Accountants, except as already modified in this subchapter.
2. At a minimum, an APSSD shall use accrual accounting on a quarterly basis.
3. An APSSD shall capitalize fixed asset expenditures of \$2,000 or more and depreciate such expenditures using the straight-line depreciation method and using a useful life consistent with current Federal tax law as defined in Internal Revenue Code Section 168 and class lives as defined in that section (also see IRS Publication 946), except for real property that may be depreciated using a useful life of 15 years or the term of the original mortgage, whichever is greater.
4. An APSSD shall:
  - i. Capitalize leasehold improvements made to an existing structure leased by the APSSD and depreciate the improvements using the straight-line method and a useful life equal to the lease's remaining term and any extension(s), but not less than five years;
  - ii. Depreciate any leasehold improvement(s) to which a related party(ies) is the lessor using the straight-line method and a useful life equal to the lease's remaining term and any extension(s), but not less than 10 years;
  - iii. Not depreciate a leasehold improvement(s) made to a structure for any month(s) the structure is not in service as an APSSD, or in excess of amounts determined under (a)4i or ii above for any fiscal year; and

- iv. Not depreciate a leasehold improvement(s) made to a structure that does not directly benefit public school placement students being educated or that is in excess of amounts determined pursuant to (a)4i, ii, or iii above.
5. An APSSD shall maintain asset, liability, and net asset accounts, as well as expenditure and revenue accounts.
6. Nonprofit organizations shall maintain financial records on a fund basis, which requires restricted or unrestricted donations to be maintained in funds separate from the public school restricted fund. Costs incurred as a result of restricted or unrestricted donations shall be charged to the appropriate fund and not through the public school restricted fund. Profit-making organizations shall maintain financial records on a modified fund basis.
7. A chart of accounts issued by the Commissioner, or his or her designee, shall be maintained by each APSSD. A Uniform Minimum Chart of Accounts consistent with Financial Accounting for Local and State School Systems 2014, developed by the National Center for Education Statistics, incorporated herein by reference, as amended and supplemented as prepared, published, and distributed by the Commissioner, or his or her designee, for use in the accounting systems of all APSSDs shall be used for financial reporting to the Department. Effective July 1, 2017, the Department will not consider requests for approval to use an alternative chart of accounts. APSSDs that received approval prior to July 1, 2017, to use an alternative chart of accounts may continue to do so.
  - i. Effective July 1, 2018, the first \$15,000 of attorney's fees or other costs per litigation and per fiscal year of costs incurred by an APSSD shall be included

- within the administrative cost category limits identified in N.J.A.C. 6A:23A-18.3(a)3. Costs for litigation above the first \$15,000 per litigation and per fiscal year shall be outside the total cost category assignment as indicated in the Department's chart of accounts pursuant to (a)7 above.
- ii. For purposes of (a)7i above, litigation means a suit brought by or against an APSSD for which a court of law or agency of the State or Federal government assigns a docket or other form of tracking number.
8. If multiple facilities for an APSSD have been approved, financial information in the bookkeeping records shall be segregated by facility. If the APSSD chooses to charge tuition rates by class type, financial information in the bookkeeping records shall be segregated by class type. Bookkeeping records shall include, but not be limited to:
- i. Cash receipts journal;
  - ii. Cash disbursement journal;
  - iii. General ledger;
  - iv. Tuition ledger;
  - v. Payroll journal; and
  - vi. Fixed asset inventory.
9. An APSSD shall maintain documentation to verify all amounts recorded in the general ledger. Purchase orders shall be prepared in detail to document all payments for goods and services. Invoices or cash register receipts shall be attached to their related purchase orders to support all purchases of goods and services. Detailed vouchers signed by the payee shall be attached to their related purchase orders to support all payments for personal services, employee mileage reimbursements, or any



- payment for which invoices or cash register receipts are not used. All documentation shall be subject to audit by the Department and shall support expenses charged by the APSSD in its audited financial statements.
10. An APSSD shall prepare a payroll that is supported by an accurate employee time record in a format prescribed or approved by the Commissioner, or his or her designee, signed by the employee and supervisor, prepared in the time period in which the work was done and completed semi-monthly, at a minimum. An employee time record shall be prepared for all employees of the APSSD, including all administrative employees. Upon receipt of written approval from the Commissioner, or his or her designee, APSSDs may use an electronic time record system in lieu of the Commissioner-prescribed format. Approval shall continue unless and until an APSSD alters the system or engages the services of a new provider for the electronic time record system.
  11. At least quarterly, an APSSD shall prepare a financial report in a format prescribed or approved by the Commissioner, or his or her designee, for the school-year program. The financial report shall be submitted to the school's governing body and its acceptance shall be documented in the governing body's meeting minutes.
  12. An APSSD shall maintain effective internal control practices, including, but not limited to, the separation of duties such as the recording and authorizing of checks and purchase approvals.
  13. An APSSD shall use the Commissioner-prescribed mandated tuition contract for each student received from a sending district board of education. The mandated tuition

contract may be revised only by the APSSD or the sending district board of education with the Commissioner's prior written approval.

14. An APSSD that incurs contingent pay increases shall have an employee contract that contains the criteria by which the increase will be paid. Under no circumstances shall the APSSD employee's salary plus the contingent pay increase exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q). The criteria shall be submitted to the Commissioner, or his or her designee, for approval prior to implementation. The APSSD shall make payment of the contingent pay increase upon achievement of the contractual contingencies as set forth in the approved plan. The payment shall be based upon measurable criteria and shall not be at the management's discretion. The employee contract shall contain the following:
  - i. The date and signature of both the staff member and authorized APSSD representative;
  - ii. The ADE contingency the APSSD must achieve to generate the increase; and
  - iii. The specific dollar amount or percentage of original contracted salary to be paid pursuant to (a)14ii above.
  
15. An APSSD that incurs merit pay increases shall have adopted a formal policy that outlines the criteria of the merit pay plan(s). The APSSD employee's salary plus the merit pay shall not exceed the maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p), or (q). The plan(s) shall be submitted for approval to the Commissioner, or his or her designee, prior to implementation. The APSSD shall accrue the merit pay and any resultant employer payroll tax expense in the fiscal year in which the merit pay is awarded. Payment of such merit pay increase upon

- achievement of the criteria set forth in the approved plan shall occur no later than the following January 31. The payment shall not be at the management's discretion. The plan(s) shall include the following:
- i. Eligibility for all employees;
  - ii. Basis by which the pay is earned;
  - iii. The amount of the awards by plan(s);
  - iv. The maximum number of awards to be given by plan(s) for each year; and
  - v. The date of approval and date of initiation of the plan(s).
16. An imprest balance petty cash fund shall be maintained upon annual approval in the minutes by the APSSD's governing body. Replenishments and reimbursements shall be supported by documentation. Undocumented outflows from petty cash shall be classified as a non-allowable cost. The imprest fund balance shall not exceed \$1,500 and individual disbursements made shall not exceed \$150.00, except in the case of an emergent condition.
17. A student activity fund shall be approved by the APSSD's governing body and supported by documentation. Revenues derived from public school placement tuition shall be used to supplement, not supplant, student contributions.
18. Mileage records shall be maintained for each school-owned vehicle, leased vehicle, or vehicle contained in a related party transaction involving the purchase of transportation services in a format prescribed by the Commissioner, or his or her designee. The mileage records shall be maintained on a trip-by-trip basis and shall include any personal use including to/from work commutation. At the end of the fiscal year, the percentage determined by the total personal miles to total miles shall

- be applied to all costs associated with the vehicle(s) and the personal costs shall be excluded from the actual allowable costs. Vehicle costs may include, but not be limited to, the following: depreciation, lease costs, gas, oil, repairs and maintenance, and insurance.
19. Upon request from the Commissioner, or his or her designee:
    - i. A profit-making APSSD shall submit a copy of its Internal Revenue Service (IRS) tax return for any fiscal year requested; and
    - ii. A nonprofit APSSD shall submit a copy of IRS form 990 for any fiscal year requested.
  20. An APSSD shall maintain all pertinent financial record(s) for a period of seven years after the November 1 due date of the annual audited financial statement, or until the Commissioner, or his or her designee, issues approval or adjustment to an independent-auditor-certified tuition rate.
  21. A nonprofit entity that has chosen to cease operations as a nonprofit APSSD shall distribute its accumulated public school placement restricted working capital fund to each sending district board of education that had enrolled students during the APSSD's last five years of operation. Public school placement restricted working capital may be retained if an APSSD reconfigures its operations and continues to serve a majority of the same sending district boards of education from the last five years of operation.
    - i. The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD for the last five years of operation to the APSSD's total ADE for the same period.

- ii. Within 90 days of filing with the Department the required year-end audited financial statements in accordance with N.J.A.C. 6A:23A18.10, the APSSD shall submit to the Commissioner, or his or her designee, a listing of the total distribution of the public school placement restricted working capital fund, by sending district board of education.
  22. An APSSD shall ensure school staff; consultants; subcontractors, including members of a management company; and anyone working with students hold the proper school certification, license, or bachelor's degree required pursuant to N.J.A.C. 6A:23A-18.2 to provide the services being rendered.
- (b) An APSSD that receives a refund(s) from a current or prior-year expenditure, or that cancels an accounts payable, shall apply the refund or accounts payable as a reduction to the original general expenditure account charged to reduce the current-year expenditure account even if the original expenditure was not made in the current fiscal year.
- (c) An APSSD annually shall execute an employment contract with each school employee. The contract shall contain the following information:
1. The employee's name;
  2. Dates of employment;
  3. Work hours/durational term of employment;
  4. Certification(s) and/or degree(s) held;
  5. Certification(s) required for the job title;
  6. A job description;
  7. The job title;
  8. All fringe benefits; and

9. The salary.
- (d) An APSSD that operates its educational program outside of a public school district shall request Departmental approval to purchase or rent an administrative or business office at a location outside of the APSSD's educational facility. Once received, an approval shall not require renewal, unless and until the APSSD changes the location of its educational or administrative facility. At the Department's request:
1. The county office of education may conduct an on-site facility review to determine if there is sufficient space at the APSSD's educational facility for these operations; and/or
  2. The APSSD shall submit to the Commissioner, or his or her designee, documents that substantiate the need for additional space.
- (e) An APSSD shall ensure its employees provide:
1. To the students, an instructional program for which the employees are compensated during the hours the school is in session; and
  2. All administrative and business functions on the APSSD's premises whether the premises are owned or leased by the APSSD, and during the APSSD's normal hours of operation, except for meetings and/or conferences held offsite related to the job function. If the APSSD's facilities are not deemed feasible for any administrative or business function, the APSSD shall provide written justification to the Commissioner, or his or her designee, and request approval of a reasonable alternative work location.
- (f) An APSSD shall establish and maintain an employee handbook that shall be distributed to all staff each school year and made available to the Department upon request. The APSSD's employee handbook shall include an outline of all employee fringe benefits. All

employee fringe benefits shall be adopted at a board of directors meeting and documented in board minutes prior to implementing the fringe benefit. Employee fringe benefits that are consistent with N.J.A.C. 6A:23A-18.6(a)23 for which costs are deemed allowable are as follows:

1. Health insurance coverage (including dental and vision) that complies with Federal and State laws, rules, and regulations, including payments to employees for a complete waiver of health insurance coverage that comply with the following:
  - i. The payment for waiver of health insurance coverage shall not exceed \$5,000 per fiscal year; and
  - ii. The employee shall provide, and the APSSD shall keep on file, documented evidence the employee had other valid health insurance coverage during the fiscal year;
2. Life insurance;
3. Type(s) and qualification for retirement plan(s);
4. Severance pay;
5. Vacation;
6. Long-term disability;
7. Sick day and personal day benefits;
8. Premium-only plans;
9. Cafeteria plans;
10. Section 125 plans;
11. Tuition reimbursement;

12. Health savings accounts (HSAs), medical savings accounts (MSAs), health flexible spending arrangements (FSAs), and health reimbursement arrangements (HRAs) established and maintained within applicable laws and regulations; and
  13. Other benefits for which an APSSD has applied and received written approval from the Commissioner, or his or her designee.
- (g) An APSSD that loans funds to any party shall charge interest at a rate equal to the prime rate. An independent auditor shall compute imputed interest on funds that are loaned at less than the prime interest rate or interest free. Imputed interest revenue shall be netted first against short-term interest costs and then against long-term interest costs incurred by an APSSD. If the APSSD has not incurred interest costs, the imputed interest revenue shall be netted against costs incurred in account numbers classified as undistributed expenditures—central services.
- (h) A nonprofit APSSD that has a positive public school placement restricted working capital fund balance but reports a net deficit unrestricted fund balance for more than three consecutive fiscal year-ends shall submit to the Commissioner, or his or her designee, within 60 days after the third fiscal year's end, a corrective action plan to reduce the net overall deficit fund balance. The nonprofit APSSD shall be subject to Department monitoring to ensure implementation of and adherence to the corrective action plan. If the APSSD fails to eliminate the deficit by the end of year three, the APSSD shall be placed on conditional approval status until the deficit unrestricted fund balance is eliminated.
- (i) An APSSD that allows employees to accumulate and carry over from year to year unused sick and/or vacation leave shall do so in accordance with Financial Accounting Standards Board Statement No. 43 Accounting for Compensated Absences (FASB; 401 Merritt 7, PO



Box 5116, Norwalk, CT 06856-5116), incorporated herein by reference, as amended and supplemented, and shall include the costs in program expenses in the appropriate cost category only in the year of payment.

- (j) An APSSD shall use job titles in use in public schools districts in accordance with N.J.A.C. 6A:9B, and the list published each year by the Commissioner, or job titles approved in accordance with N.J.A.C. 6A:9B-5.5.
- (k) An APSSD shall limit compensation increases after the start of the fiscal year to specific instances in accordance with N.J.A.C. 6A:23A-18.3(q), and when the increase:
  - 1. Is due to a staff member's promotion that results in additional job responsibilities;
  - 2. Is due to a staff member's attaining a higher degree or certification;
  - 3. Is due to a staff member's additional job responsibilities such as a coach, advisor, or mentor;
  - 4. Is in accordance with (a)14 or 15 above; or
  - 5. Has been approved by the Department after review of a formal written request to the Commissioner, or his or her designee, documenting the facts supporting the increase.
- (l) An APSSD shall ensure individuals who are newly employed by the APSSD or new to the positions listed below on or after July 1, 2017, possess the appropriate master's degree or other required degree or certification as defined in N.J.A.C. 6A:23A-18.2. The APSSD also shall ensure individuals employed or serving in the following positions on or before June 30, 2017, currently possess the appropriate bachelor's degree or other required degree or certification as defined in N.J.A.C. 6A:23A-18.2, or will be removed from the position:
  - 1. Director;
  - 2. Assistant director;

3. Executive director; and
  4. Business manager.
- (m) An APSSD that incurs costs for a retirement plan(s) in accordance with N.J.A.C. 6A:23A-18.6(a)31 and/or medical benefits for retired employees in accordance with N.J.A.C. 6A:23A-18.6(a)54 shall include the costs in the certified actual cost per student only on the cash basis of accounting.
- (n) An APSSD shall have its paraprofessional staff approved in accordance with N.J.A.C. 6A:32-4.2 and any change(s) to an approved job description shall be resubmitted for approval.
- (o) An APSSD shall comply with the maximum salaries determined pursuant to N.J.A.C. 6A:23A-18.3(o) and (p) and restricted pursuant to N.J.A.C. 6A:23A-18.6(a)6, 8, and 9 regardless of the job titles used and whether they comply with the list of job titles published by the Commissioner, or his or her designee.
- (p) Under no circumstances other than in accordance with (k) above shall an APSSD provide compensation increases after the start of the fiscal year.

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

- (a) Costs that are not allowable in the calculation of the certified actual cost per student shall include the following:
1. Administrative costs in excess of, and/or instructional cost less than, the percentages indicated in N.J.A.C. 6A:23A-18.3(a)3;
  2. Costs for maintaining an administrative office in a private home or other residence;

3. Advertising costs in excess of 0.5 percent of the APSSD's actual allowable costs, not including advertising;
4. Costs associated with lobbying, including salaries and fringe benefits;
5. Costs other than those governed by (a)50 below associated with lobbying in an attempt to influence:
  - i. The outcome(s) of any Federal, State, or local referendum, initiative, or similar activity; or
  - ii. The introduction, enactment, or modification of Federal or State legislation or a State rulemaking.
6. The salary of a professional staff member, consultant, or subcontractor, including a member of a management company, who is not certified but is functioning in, or contracted to perform the duties of, a position requiring certification in accordance with N.J.A.C. 6A:9B or bachelor's or master's degree under this subchapter;
7. The salary and fringe benefits of a staff member, or any payment(s) to a purchased service provider, for time not expended and/or services not performed except in accordance with (a)56 and 57 below;
8. A salary in excess of the associated maximum allowable salary determined pursuant to N.J.A.C. 6A:23A-18.3(o), (p) and (q) for a staff member or consultant whose position requires certification, license, or a bachelor's or master's degree, including a director, assistant director, executive director, and business manager.
  - i. An APSSD shall prorate salaries for such part-time or split-time positions, including salaries in entities described in N.J.A.C. 6A:23A-18.3(e) and (f);

- ii. The part-time and split-time maximum allowable salary shall be calculated as follows:
  - (1) Multiply the staff member's total salary by the percentage of time attributed to the APSSD position;
  - (2) Multiply the maximum allowable full-time salary for the position by the percentage of time attributed to the APSSD position; and
  - (3) Subtract the amount calculated in (a)8ii(2) above from the amount calculated in (a)8ii(1) above. If the result is greater than zero, this is the non-allowable part-time or split-time salary.
  
9. A salary of an employee not covered by (a)6 above in excess of the lowest maximum allowable salary in the same county according to the list of maximum allowable salaries determined in N.J.A.C. 6A:23A-18.3(o), (p) and (q) whose position does not require certification, license, or bachelor's degree, including an individual with the director, assistant director, executive director, or business manager job title whose job function(s) are not consistent with those functions described in N.J.A.C. 6A:23A-18.2.
  - i. An APSSD shall prorate salaries for such part-time or split-time positions, including salaries in entities described in N.J.A.C. 6A:23A-18.3(e) and (f).
  - ii. The part-time and split-time maximum allowable salary is calculated as follows:
    - (1) Multiply the staff member's total salary by the percentage of time attributed to the APSSD position;

- (2) Multiply the lowest maximum allowable salary in the same county by the percentage of time attributed to the APSSD position; and
  - (3) Subtract the amount calculated in (a)9ii(2) above from the amount calculated in (a)9ii(1) above. If the result is greater than zero, this is the non-allowable part-time or split-time salary.
10. Costs of fringe benefits when based on and/or associated with a non-allowable salary;
11. Legal, accounting, or consultant fees resulting from a frivolous challenge to a State audit or financial review or the prosecution of a claim against the State. The Commissioner shall determine whether the challenge is frivolous by considering factors including, but not limited to, the following:
  - i. Overall merit of the claim; or
  - ii. Whether the challenge serves the public interest;
12. Consultant fees for services that fail to meet the following standards:
  - i. The work of the consultant shall be detailed in an executed written contract signed by both parties that includes:
    - (1) A detailed description of the nature of the services to be provided;
    - (2) Duration of the contract;
    - (3) Detailed fee information;
    - (4) Fee payment schedule(s);
    - (5) The approximate number of days to complete the work; and
    - (6) The anticipated product or outcome of the work;

- ii. Performed by a consultant who does not possess the appropriate school certification when such certification exists;
- 13. Total contributions, donations, awards, and scholarships in excess of \$750.00;
- 14. Depreciation unacceptable under N.J.A.C. 6A:23A-18.5(a)3 and 4 and depreciation:
  - i. On donated goods and assets;
  - ii. Not based on estimated straight-line method;
  - iii. On automobiles in excess of the dollar or percentage limitation contained under Internal Revenue Code (IRC) Section 280F, including any passenger vehicle not used in transporting students or supplies without regard to weight class exceptions defined in Section 280F(d)(5)(A);
  - iv. On a stepped-up basis resulting from the sale to a related party as defined in IRC Section 318 for Constructive Ownership of Stock. For a nonprofit organization, Section 318 will apply to the members of the board of directors or related parties as defined in IRC Section 267(b) or 267(c) unless the gain from such a sale was used to offset tuition for a prior year; or
  - v. On a stepped-up basis from transfer from one spouse to another upon death as defined in IRC Section 1014;
- 15. The cost of:
  - i. Depreciation associated with the purchase and ownership of any passenger vehicle not used for transporting students or supplies purchased on or after July 1, 2017, if:
    - (1) The depreciable basis upon which depreciation is calculated exceeds \$30,000;

- (2) The depreciation expensed exceeds allowable depreciation calculated on the straight-line basis over a period of not less than five years; or
    - (3) The depreciation expensed is attributable to a passenger vehicle that has been assigned to, or used on a regular basis, by an APSSD staff member who is not the APSSD executive director, director, and/or owner.
  - ii. Vehicle lease payments made pursuant to the lease agreement entered into, on, or after July 1, 2017, when:
    - (1) The annual lease payment(s) exceeds the annual depreciation allowable on an owned passenger vehicle with a maximum depreciable basis of \$30,000; or
    - (2) The lease payments are for a leased passenger vehicle that has been assigned to, or used on a regular basis by, an APSSD staff member who is not the APSSD executive director, director, and/or owner.
- 16. Investment expenses associated with the purchase/sale of stock, securities, other investment instruments, or other investments not associated with the education of students with disabilities;
- 17. Total costs in excess of \$500.00 incurred for entertainment expenses;
- 18. The cost of food/beverages in excess of \$1,500 for activities such as, but not limited to, staff meetings, parent/teacher meetings, workshops, and professional development seminars for parents or teachers;
- 19. Costs from a fine or penalty resulting from a violation of, or failure by, the APSSD to comply with a Federal, State, and/or local law or rule;
- 20. Meal costs in excess of the limits set forth in N.J.A.C. 6A:23A-18.23.

21. The cost of keyman insurance except where a term insurance policy is required by a lender as collateral for a loan;
22. The cost of an employee's life insurance coverage, both term and whole life policies, in excess of 3.5 times the employee's gross salary;
23. Costs for fringe benefits as follows:
  - i. When the benefits are determined in an arbitrary or capricious manner, including, but not limited to, class of employee, whether by title or position rather than according to an existing written uniform policy based on an equitable standard of distribution, such as years of service or education. The criteria cannot be exclusionary regardless if based on an equitable standard of distribution, such as years of service or education;
  - ii. When the fringe benefit has not been adopted by the APSSD's board of directors at a board meeting prior to the benefit's implementation, documented in the meeting minutes, and the employees were not made aware of the policy;  
or
  - iii. When the benefit is not listed in N.J.A.C. 6A:23A-18.5(f) or not approved by the Commissioner, or his or her designee;
24. The cost of fundraising, including, but not limited to, costs for a financial campaign, an endowment drive, or solicitation of a gift and bequest to raise capital or obtain a contribution;
25. Goodwill;
26. Interest costs on loans when:



- i. Interest is in excess of the general prevailing rate at the time the loan was taken;
  - ii. The loan is a less-than-arm's length/related party transaction that has not been previously approved by the Department and has not been repaid in accordance with the Department's approval letter; or
  - iii. The loan is not exclusively used to meet educational program needs;
27. Interest costs on long-term loans or mortgages if:
  - i. The loan is used for other than financing of fixed assets;
  - ii. The loan is not secured by the fixed asset being financed; or
  - iii. The interest costs are on the portion of the loan term that exceeds the recovery period for depreciation of the fixed asset securing the loan;
28. A loss incurred on the sale or exchange of fixed assets between related parties;
29. The write-off of uncollected accounts receivable (bad debts):
  - i. Before three years has elapsed and before a reasonable effort has been made to collect such accounts receivable; or
  - ii. That arise out of the APSSD's provision of:
    - (1) Extraordinary services;
    - (2) Services to students placed by an out-of-State agency; or
    - (3) Services to private placement students;
30. An ordinary living expense for a student that is normally assumed by the parent of a student attending a public day school;
31. Retirement plan costs that are:

- i. Not in conformance with the Employee Retirement Income Security Act of 1974, P.L. 93-406 and its successor legislation, and that exceed costs allowed by the Internal Revenue Service;
  - ii. For a non-qualified retirement plan(s);
  - iii. For a defined contribution plan in excess of the maximum percentage and maximum dollar amount, (see IRC Section 415(c)) as the lesser of 100 percent of the employee's compensation or \$53,000 as adjusted annually in IRC;
  - iv. For a defined benefit plan in excess of an amount, by employee, that would allow the defined plan to provide a benefit in excess of the percentage of the employee's number of years of service divided by 55 times the highest three-year average salary and at an age prior to age 55;
  - v. For contributions to a retirement plan that are not applied consistently in accordance with (a)23 above even if in compliance with Employee Retirement Income Security Act of 1974 (ERISA). Such excess contributions will be deemed a non-allowable cost;
  - vi. Not paid to a qualified plan within nine months of the end of the APSSD's fiscal tax year;
  - vii. Not paid in accordance with the fringe benefits criteria in (a)23 above; and
  - viii. If applicable, not in conformance with a church plan as defined in ERISA;
32. Costs of a contingent pay increase or merit pay award when the amount(s) was not in accordance with N.J.A.C. 6A:23A-18.5(a)14 or 15 or the contingent pay increase or merit pay award(s) is inconsistent with the plan(s) submitted to and approved by the Commissioner, or his or her designee, prior to implementation;

33. Costs for the payment of a bonus;
34. Costs for a loss on an investment;
35. Costs associated with a research activity, including, but not limited to, staff salaries, supplies, or printing and reproduction of a material;
36. Payment of Federal, State, and local income taxes on income other than tuition;
37. Costs associated with travel to and from the officer's or employee's home and the school or agency;
38. Costs for all personal expenses, such as a personal travel expense or repair on a personal vehicle;
39. Costs associated with personal use of an APSSD-owned or -leased vehicle, including, but not limited to, to/from work commutation as determined pursuant to N.J.A.C. 6A:23A-18.5(a)18;
40. Costs associated with an APSSD-owned or -leased vehicle or a vehicle contained in a related party transaction involving the purchase of transportation services where a detailed daily mileage log documenting vehicle usage was not maintained;
41. A business-incurred charge for a privately owned vehicle in excess of the mileage rate allowed by the IRS for automobile travel;
42. Transportation costs for a student to and from school, except where the student's IEP requires after-school activities;
43. Rental costs for buildings and equipment when the lessor is not a separately identifiable legal entity;
44. Costs related to transactions between related parties in which one party to the transaction is able to control or substantially influence the actions of the other. Such

transactions are defined by the relationship of the parties and include, but are not limited to, transactions between divisions of an institution; institutions or organizations under common control through common officers, directors, members, or owners; and an institution and a director, trustee, officer, or key employee of the institution or his or her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. Such costs shall include, but are not limited to:

- i. Rental costs for buildings and equipment in excess of the actual allocated costs of ownership (for example, straight line depreciation in accordance with N.J.A.C. 6A:23A-18.5(a)3, mortgage interest, real estate taxes, property insurance, and maintenance costs) incurred by the related property owner including a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The APSSD shall submit a cost of ownership form in a Commissioner-supplied format. The property or business owner shall sign and notarize the cost of ownership form and include a copy of the lease agreement, and a list of anticipated costs to be incurred by the property owner;
- ii. Rental costs under a sub-lease arrangement with a related party for buildings and equipment in excess of the actual allocated costs related to the lease (such as rent, lease commission expense, and maintenance costs) incurred by the sub-lessor. Profit, return on investment, or windfall of any kind shall not be included in the sub-rental cost. The sub-lease agreement shall include a list of anticipated costs to be incurred by the sub-lessor and shall be signed by the sub-lessor and notarized;

- iii. Cost of purchasing/lease purchasing buildings, equipment, or other goods from related parties in excess of the original cost to the related party, less depreciation calculated using the straight line method;
  - iv. Cost of personal services paid to a related party when the services are provided by an employee of, or consultant to the APSSD acting as an employee or agent of the related party. Cost of personal services includes all remuneration, paid or accrued, for services rendered during the school year, including, but not limited to, wages, salaries, management fees, and fringe benefits; and
  - v. Cost of the purchase of goods or services from a related party in excess of the actual allocated costs of providing the purchased goods and/or services, including, but not limited to, salaries, fringe benefits, insurance, operation, maintenance, straight-line depreciation incurred by the related party owner. Costs may include a 2.5 percent return calculated on the actual costs of ownership incurred by the related party. The APSSD shall file a cost of ownership form in a Commissioner-prescribed format. The cost of ownership form shall be signed by the property or business owner and shall include a copy of the purchase agreement, and a list of anticipated costs to be incurred by the related party;
45. Cost of a less-than-arm's length/related party transaction when the related party and/or the APSSD, as applicable, does not:
- i. Provide to the Commissioner documentation on Commissioner-prepared forms to support the actual costs of ownership, or does not allow the Commissioner

access to such information for review and audit during normal business hours.

Documentation shall include, but not be limited to:

- (1) The related parties' tax returns;
  - (2) The related parties' invoices received, payroll and payroll tax records, bills and canceled checks, or electronic transfer records concerning the transaction; and
  - (3) Any other document(s) requested by the Department; or
- ii. Disclose the related party relationship on Commissioner-prepared forms pursuant to this subchapter and N.J.A.C. 6A:23A-19;
46. Rental costs under sale and leaseback arrangements in excess of the amount that would be allowable if the APSSD continued to own the property;
47. Indirect and direct costs that are:
- i. For unrelated activities or enterprises as defined in N.J.A.C. 6A:23A-18.3(g);  
or
  - ii. Unrelated to the function, operations, and/or program of an APSSD as defined in N.J.A.C. 6A:23A-18.3(d);
48. Costs for the year-end audited financial statements when prepared by an individual who does not meet the requirements in N.J.A.C. 6A:23A-18.10(a);
49. Costs for membership in civic, business, technical, and professional organizations when the cost is:
- i. Not reasonably related to the value of the services or benefits received;
  - ii. For membership in an organization that devotes any activity(ies) to influencing legislation or State regulation(s) not directly related to the educational

- instruction program of students with disabilities and the activity(ies) is not subsidized by sources other than membership fees from APSSDs;
- iii. Not an established annual rate charged to all members, but one that is periodically adjusted during the year; or
  - iv. Not supported by an annual affidavit signed by the organization's board of directors indicating all legal and lobbying costs not directly associated with the educational instruction programs for students with disabilities were funded by sources other than dues from APSSDs;
- 50. A staff member's salary that is not properly supported by the employee's time record in a format prescribed or approved by the Commissioner in accordance with N.J.A.C. 6A:23A-18.5(a)10;
  - 51. A salary or payment made to a member(s) of the board of directors/trustees for services performed in his or her capacity as a member of the board of director/trustees;
  - 52. Cost of a pension plan contribution made on behalf of, and/or medical benefits for, current or retired members of the board of directors/trustees;
  - 53. Cost of medical benefits for retired employees who have not reached the age of 55 and who were employed a combination of less than 25 years in a New Jersey public school, a New Jersey public agency, or a New Jersey APSSD and have less than 10 years of service in an APSSD;
  - 54. Costs of salaries and fringe benefits of unrecognized position titles not properly approved pursuant to N.J.A.C. 6A:9B-5.5;
  - 55. Cost of employee severance pay:

- i. In excess of four weeks' salary; and
  - ii. If, in addition, the cost of a buyout of the employee's contract;
56. Cost of a buyout of an employee contract:
  - i. In excess of 90 days' salary; and
  - ii. If, in addition, the cost of the employee's severance pay;
57. Cost of a salary or consultant fee paid to a full-time employee or consultant for performing more than one administrative function in the APSSD;
58. Cost to purchase or rent an administrative office or business office at a location other than at the APSSD location that was not approved pursuant to N.J.A.C. 6A:23A-18.5(d);
59. Cost of compensation increases paid after the start of the fiscal year not in accordance with N.J.A.C. 6A:23A-18.5(k);
60. Start-up costs in excess of costs allowed pursuant to N.J.A.C. 6A:23A-18.4(d);
61. Costs of salaries and fringe benefits for employees providing services that are not in compliance with N.J.A.C. 6A:23A-18.5(e)2;
62. The cost of a fine levied pursuant to N.J.S.A. 18A:6-7.5 for any staff member who does not have:
  - i. A criminal history clearance prior to starting employment or;
  - ii. An application for employment on an emergent basis in accordance with N.J.S.A. 18A:6-7.1c;
63. Legal costs for an APSSD and/or for an APSSD representative(s), including an owner, employee, or agent who has plead guilty and/or is found to be guilty or liable



- in a case involving the misuse of funds, fraud (criminal or civil), or endangerment or abuse of a child(ren);
64. The salary in excess of the associated maximum salary identified in N.J.A.C. 6A:23A-18.3(q) and determined in accordance with N.J.A.C. 6A:23A-18.5(o) and (p);
  65. Costs found to be patently unreasonable by the Commissioner, or his or her designee, or an independent auditor/accountant;
  66. Cost(s) of payments made to an individual employee(s) for earned unused sick benefit that is in excess of one percent of the individual employee's contracted salary amount during the fiscal year in which the payment is made;
  67. Proportional costs of salary and fringe benefits for any administrative staff member, as defined in N.J.A.C. 6A:23A-18.3(o), with the exception of principal and unrecognized position titles in the administrative category, that are in excess of a total of 3.0 FTE administrative positions per APSSD, per fiscal year. If the combined administrative positions exceed 3.0 FTE, the disallowed amount will be apportioned equally across all of the positions;
  68. Costs associated with travel, defined in N.J.A.C. 6A:23A-18.21, that:
    - i. Exceed .0025 of the total actual allowable costs, less travel costs, in a fiscal year for an APSSD, or \$20,000, whichever is less; and/or
    - ii. Violate the provisions of N.J.A.C. 6A:23A-18.21(g);
  69. Costs associated with waiver of health insurance coverage that violate the provisions of N.J.A.C. 6A:23A-18.5(f)1;

70. Costs associated with depreciation of leasehold improvements that violate N.J.A.C. 6A:23A-18.5(a)4;
71. Costs of the salary, benefits, or other compensation provided to an APSSD employee or contractor/consultant who is receiving retirement benefits as a result of his or her retirement from the APSSD after two calendar years has expired since the individual began retirement;
72. Costs associated with undocumented outflows from petty cash, pursuant to N.J.A.C. 6A:23A-18.5(a)16; and
73. Costs associated with the failure to comply with the requirements of N.J.A.C. 6A:23A-18.5(d).

#### **N.J.A.C. 6A:23A-18.7 Surcharge**

- (a) For profit-making APSSDs, the tuition rate may include an annual surcharge up to 2.5 percent of the APSSD's allowable actual costs.
- (b) For profit-making APSSDs, interest earned in accordance with N.J.A.C. 6A:23A-18.3(h) is an unrestricted revenue and shall not be part of the school's surcharge computation.
- (c) For profit-making APSSDs, the allowable Federal, State, and local income tax payment in N.J.A.C. 6A:23A-18.6(a)36 shall be computed using only the public school placement tuition income and all allowable and non-allowable APSSD expenses that are allowable tax deductions on the school's Federal, State, and local income tax returns.

### **6A:23A-18.8 Public school placement restricted working capital fund**

- (a) For nonprofit APSSDs, the tuition rate may include an amount that will permit the APSSD to establish a public school placement restricted working capital fund of up to 15 percent of the APSSD's actual allowable costs. However, the APSSD shall not include in the certified actual cost per student an amount in excess of 2.5 percent of the APSSD's actual allowable costs per year. The restricted working capital fund shall not exceed 15 percent of an APSSD's actual annual allowable cost in a fiscal year.
- (b) Interest and/or dividends earned from the investment of tuition funds shall be netted against the APSSD's total allowable costs incurred in account numbers classified as undistributed expenditures-central when calculating the certified actual cost per student.
- (c) Interest earned in accordance with N.J.A.C. 6A:23A-18.3(h) shall be unrestricted revenue and shall not part of the APSSD's public school placement restricted working capital fund computation.

### **6A:23A-18.9 Calculation of student attendance**

- (a) Each APSSD shall maintain a school register in accordance with N.J.A.C. 6A:32-8, to record all student attendance.
- (b) Each APSSD shall submit to the Commissioner, or his or her designee, by September 1, verification of the ADE for the previous school year on Department-provided forms.
- (c) Each APSSD shall identify private placements in the register.
- (d) Each APSSD shall maintain a separate register by class type.

### 6A:23A-18.10 Audit requirements

- (a) Regardless of the APSSD's fiscal year, each APSSD shall submit to the Commissioner, or his or her designee, audited financial statements based on the July 1 to June 30 school year. The audited financial statements shall be postmarked on or before November 1, or the following business day if November 1 falls on a weekend or holiday.
1. The APSSD shall engage to conduct the annual audit only an independent registered municipal accountant of New Jersey or an independent certified public accountant of New Jersey who holds a valid registration license as a public school accountant of New Jersey.
  2. The APSSD shall ensure the auditor's independent status in accordance with the Code of Professional Conduct and General Principles and Responsibilities issued by, and available from, the American Institute of Certified Public Accountants (AICPA).
  3. Additionally, upon review by the Department, an auditor shall not be considered independent if he or she may have been influenced by other parties, including, but not limited to, APSSD directors or other staff, or by conflicting interests such as if the independent auditor or members of his or her firm are engaged to perform services other than the year-end audit and tax return functions for the APSSD. If the Department determines an independent auditor engaged to conduct the APSSD's annual audit has not acted independently, the Department may take any and all appropriate action.

- (b) The audit shall follow generally accepted auditing standards (GAAS), as set forth by the Auditing Standards Board (ASB) in the Codification of Statements on Auditing Standards, 2015, published for the American Institute of Certified Public Accountants, (1211 Avenue of the Americas, NYC, NY 10036-8775), incorporated herein by reference, as amended and supplemented, and when applicable; the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Audit issued by the Federal Office of Management and Budget; or NJOMB Circular Letter 15-08, as amended and supplemented. The APSSD shall ensure the use of the auditing guidelines as published and distributed by the Commissioner, or his or her designee.
1. The APSSD shall ensure the audit includes basic financial statements, required supplementary information, schedules, and narrative explanations.
- (c) The APSSD shall ensure the audited financial statements reflect the certified actual cost(s) per student as determined by an independent auditor and final tuition rate(s) charged at the end of the school year as determined by the APSSD's management.
- (d) The APSSD management representative(s) shall discuss with the auditor the results of the auditor's determination of the certified actual cost per student for management to determine the final tuition rate charged as a result of the audit.
1. The APSSD shall charge as the final tuition rate an amount equal to or less than the certified actual cost per student.
  2. The APSSD shall ensure the audit report contains a letter signed by both the independent auditor and an authorized school representative indicating both parties have met and discussed the audit, and the determination of the final tuition rate charged was a management decision.

- (e) Within 60 days of receipt of the year-end audit, APSSD management shall develop a corrective action plan pursuant to this subchapter in response to recommendations contained in the year-end audit and shall submit the corrective action plan to the Commissioner, or his or her designee, for review and approval. The corrective action plan shall be on a form prescribed by the Commissioner, or his or her designee.
- (f) The APSSD shall not amend the final tuition rate charged after approval by the Commissioner, or his or her designee.
- (g) Any adjustment(s) that results from the approval following a compliance review of the audited financial statements performed by the Commissioner, or his or her designee, and that is in excess of \$10.00 per sending district board of education shall be paid in accordance with N.J.A.C. 6A:23A-18.3(l) and (m).
- (h) An APSSD that files an audit postmarked after November 1 shall cause the tentative tuition rate per student for the ensuing school year to be calculated based upon the audited actual cost per student for the school year two years prior to the current school year, and the provisions of N.J.A.C. 6A:23A-18.3(j) shall not apply.
- (i) Failure to comply with this section may result in the Commissioner, or his or her designee, placing the APSSD on conditional approval status.
- (j) Upon request, the APSSD shall submit to the Department a copy of the APSSD corporation's agency-wide audited financial statements.

**N.J.A.C. 6A:23A-18.11 Appeals**

- (a) The decision of the Commissioner, or his or her designee, regarding the calculation of the tentative tuition rate, pursuant to N.J.A.C. 6A:23A-18.3(j), the approval of a tentative tuition rate pursuant to N.J.A.C. 6A:23A-18.4, and conditional approval status pursuant to N.J.A.C. 6A:23A-18.10(i) may be appealed in accordance with N.J.A.C. 6A:3, Controversies and Disputes.
- (b) The decision of the Commissioner, or his or her designee, regarding certification may be appealed in accordance with N.J.A.C. 6A:3.
- (c) The decision of the Commissioner regarding N.J.A.C. 6A:23A18.4 may be appealed in accordance with N.J.A.C. 6A:4. For purposes of this subchapter, a decision by the Commissioner's designee shall not constitute final agency action.

**N.J.A.C. 6A:23A-18.12 Roundtable work group**

The Commissioner, or his or her designee, may create a working group that may consist of, at the Commissioner's discretion, Department staff, representative(s) from the APSSD community, or others as the Commissioner so shall designate. The working group's purpose shall include, but shall not be limited to, discussing issues that impact APSSDs. Any such discussions or actions of the working group are non-binding. Such working group may be disbanded without prior notice and at any time at the Commissioner's discretion.

**N.J.A.C. 6A:23A-18.13 Out-of-State approved private schools for students with disabilities**

- (a) An out-of-State private school for students with disabilities shall be approved to provide special education programs by the department of education of the state in which the private school is located. Exceptions may be made only at the discretion of the Department's Office of Special Education Programs in accordance with N.J.A.C. 6A:14-7.1(f).
- (b) The Commissioner shall abide by the tuition regulations for an APSSD adopted by the department of education or other regulatory agency in the state in which the private school for students with disabilities is located. The APSSD shall submit to the Commissioner verification of the tuition rate's approval either on Commissioner-prescribed forms or verification from the out-of-State department of education or other regulatory agency.
- (c) If the out-of-State APSSD is located in a state in which the department of education or other regulatory agency does not approve or sanction tuition rates, such tuition rates shall be determined in the following manner:
  - 1. The out-of-State APSSD and the sending district board of education or state agency that determined the placement shall mutually agree to the tuition rate. The tuition rate shall be agreed upon prior to the child's placement, and documentation indicating agreement of the rate shall be forwarded to the Commissioner.
  - 2. An out-of-State APSSD that is licensed as a child care facility by the New Jersey Department of Human Services shall determine a tuition rate through mutual agreement between the out-of-State APSSD, the sending district board of education, and the Department of Human Services, Office of Education. The tuition rate shall be



agreed upon prior to the child's placement and documentation of the rate shall be forwarded to the Commissioner.

3. If a tuition rate cannot be mutually agreed upon in accordance with (c)1 or 2 above, the out-of-State APSSD shall file a budget in a format prescribed by the Commissioner, or his or her designee, to determine a tentative tuition rate and shall comply with the subchapter's provisions to collect tuition from a sending district board of education, charter school board of trustees, or agency. The cost of the audit required pursuant to N.J.A.C. 6A:23A-18.10 may be charged to the sending district board of education or agency that did not mutually agree to the tuition rate.

#### **N.J.A.C. 6A:23A-18.14 Inspection of records**

- (a) All financial and accounting records maintained by the APSSD, as required by this subchapter, shall be open during normal business hours for review and audit by the Commissioner, or his or her designee, for the period indicated in N.J.A.C. 6A:23A-18.5(a)20.
- (b) All financial and accounting records maintained by a related party, as defined by N.J.A.C. 6A:23A-18.6(a)45, that pertain to a transaction(s) or the relationship between the related party and the APSSD shall be open during normal business hours for review and audit by the Commissioner, or his or her designee, for the period indicated in N.J.A.C. 6A:23A-18.5(a)20.

- (c) All auditor's workpapers used in the preparation of the year-end audited financial statements shall be open during normal business hours for review by the Commissioner, or his or her designee, for the period indicated in N.J.A.C. 6A:23A-18.5(a)20.

**N.J.A.C. 6A:23A-18.15 Fiscal monitoring of approved private schools for students with disabilities and corrective action plans**

- (a) The Commissioner, or his or her designee, shall monitor APSSDs in accordance with this subchapter. On-site monitoring shall be conducted at least every six years.
- (b) The monitoring process may include, but is not limited to, all financial information required in this subchapter.
- (c) After the monitoring process is completed, a report shall be written and sent to the APSSD, the executive county superintendent, and the APSSD's independent auditor for the period(s) under audit.
- (d) If the APSSD receives a final report that indicates noncompliance, a corrective action plan shall be developed and submitted, on a form prepared by the Commissioner, or his or her designee, to the Department for approval within 30 days of the final report's receipt.
- (e) The corrective action plan shall include, but not be limited to, the following:
  - 1. Objective and strategies for correcting each noncompliance item; and
  - 2. The date(s) by which noncompliance will be corrected.
- (f) When an APSSD is determined to be in noncompliance, the Commissioner may:
  - 1. Issue a conditional approval status when noncompliance with State regulations and requirements and/or implementation of the corrective action plan is demonstrated;

2. Immediately remove program approval when it is documented that the health, safety, or welfare of students is in danger.
- (g) The actions of the Commissioner, or his or her designee, may be appealed according to N.J.A.C. 6A:3 and/or 6A:23A-18.11, as applicable.
- (h) The Department annually shall publish the results of the fiscal monitoring of APSSDs, as well as the audited financial statements and associated reports or documents.

#### **N.J.A.C. 6A:23A-18.16 Fiscal and budget information**

- (a) In accordance with a timeline and format prescribed by the Commissioner, or his or her designee, each APSSD shall submit information to the Commissioner, or his or her designee, including, but not limited to:
1. Fiscal and program information, including:
    - i. The number of students served;
    - ii. The number of each class type;
    - iii. Number of schools days;
    - iv. The daily hours in session; and
    - v. Revenues, appropriations, and supporting documents;
  2. Staffing information, including, but not limited to:
    - i. A staff roster, which may include requested information, such as names, job titles, salaries, hours worked, and certification(s), degree(s), and license(s) held;

3. An affidavit the program meets the standards of, and is conducted in full compliance with, the Individuals with Disabilities Education Act; Section 504 of the Rehabilitation Act of 1973; Title II and III of the Americans with Disabilities Act, P.L. 101-336; N.J.S.A. 18A:46-1 et seq.; this subchapter; and N.J.A.C. 6A:14; and
  4. An affidavit the owner(s)/operator(s) of the program is aware of the non-allowable costs contained in N.J.A.C. 6A:23A-18.6 and the costs charged as allowable costs in the APSSD tuition rate are consistent with a student with disabilities' IEP and shall be reasonable, that is, ordinary and necessary and not in excess of the cost incurred by an ordinarily prudent person in the administration of public funds.
- (b) The Department annually shall publish a Taxpayer's Guide to Education Spending for APSSDs.
- (c) An APSSD shall have a copy of the board of director's minutes, or the minutes of the partners meetings for a partnership, available upon the Department's request.

**N.J.A.C. 6A:23A-18.17 Failure to comply with Department directives**

The Department may place an APSSD on conditional approval status if the APSSD fails to comply with Department regulations such as, but not limited to, failure to refund tuition funds as a result of a Department tuition audit or failure to provide requested documentation.

**N.J.A.C. 6A:23A-18.18 Sale or disposition of assets of an approved private school for students with disabilities**

- (a) In the event of the bulk sale or non-bulk sale of the capital assets of an APSSD to any

individual or entity, including another APSSD, the selling APSSD shall:

1. Agree to an independent valuation of the acquired assets for the purpose of allocation of the total purchase price to the various acquired capital assets;
2. Enter into a written agreement of sale that references and incorporates the values presented in the independent valuation of the acquired capital assets. The written agreement of sale shall clearly identify the transferred capital assets and, at a minimum, include the date(s) of acquisition and historical cost(s), the dates of capital improvement(s) and historical cost(s), the term of depreciation, the method of depreciation, and the accumulated depreciation for financial purposes of each transferred capital asset. The written agreement of sale shall allocate the total consideration provided to the selling APSSD based upon the independent valuation of the acquired assets;
3. Within 30 days of sale, the selling APSSD shall provide the Department with a copy of the sale agreement, the independent valuation of the capital assets, and the allocation of the purchase price as defined in Internal Revenue Code (IRC) Section 1060 and documented by Internal Revenue Service Form 8594 or successor form.
4. The selling APSSD shall include in the annual audited financial statement as required by N.J.A.C. 6A:23A-18.10 in the year of sale, a separate schedule showing the sale or disposition of its assets and any corresponding tuition refund(s) to the sending district(s) based on the sale of assets (books, supplies, desks, computers, equipment under \$ 2,000, depreciable equipment, etc.) other than Class VI or VII as defined in the IRC cited above (goodwill, going concern, etc.);
5. If the buying entity is a new or existing APSSD, establish the APSSD's beginning

book value for each acquired asset using the independent valuation and the written agreement of sale, except as provided for in (a)6 below; and

6. If the buyer is an APSSD that is a less-than-arm's-length buyer or a related party to the selling APSSD, the buying APSSD shall carry forward the selling APSSD's acquisition dates(s), historical cost(s) plus improvements, term and method of financial depreciation, accumulated depreciation, and book value of the acquired asset(s) for purposes of determining the allowable annual depreciation or amortization pursuant to the acquisition.
- (b) In the fiscal year of the sale or disposition pursuant to (a) above, the gain or loss on the sale of capital or non-capital asset(s) shall not be included in the calculation of allowable costs used to determine the certified actual cost per student, the calculation of surcharge pursuant to N.J.A.C. 6A:23A-18.7, or public school placement restricted working capital pursuant to N.J.A.C. 6A:23A-18.8.
- (c) In addition to the provisions of (a) above, the following conditions shall apply in the event of a sale of real property by an APSSD:
1. If the selling APSSD acquires real property placed in service for the express purpose of operating the APSSD using all of the proceeds from the sale of real property within 30 business days of the sale, the selling APSSD shall not be subject to (c)2 through 4 below.
  2. The selling APSSD shall immediately deposit the proceeds received upon the sale at settlement into a bank account maintained by the APSSD and credited to the retained earnings of the profit-making APSSD or the working capital from sale of real property account of the nonprofit APSSD, except for the simultaneous purchase of

real property placed in service for the express purpose of operating the APSSD. The sale and treatment of the proceeds shall be included in a separate schedule in the annual audited financial statement as required by N.J.A.C. 6A:23A-18.10 in the year of sale and all subsequent years through the fiscal year in which any corresponding tuition refund(s) has been completed.

3. The selling profit-making APSSD shall:
  - i. Not withdraw any amount deposited pursuant to (c)1 above from the APSSD-maintained bank account and/or retained earnings for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD, or to distribute proceeds as provided for in (c)3ii below; and
  - ii. Within 13 months after the sale, distribute the proceeds not used to acquire real property owned by the APSSD and placed in service for the express purpose of operating the APSSD from retained earnings to sending school districts that paid tuition to the APSSD during the five years of operation prior to and including the year of sale as set forth below:
    - (1) The amount of sale proceeds to be refunded to the sending school districts shall be equal to, but shall not exceed, the allowable accumulated depreciation of the property;
    - (2) The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's total ADE for the five years of operation prior to and including the year of sale or disposition of the real property;

- (3) Remaining proceeds may remain in the APSSD's retained earnings for use at the discretion of the profit-making APSSD's management;
  - (4) Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.7; and
  - (5) The APSSD shall provide a listing of the total distribution of retained earnings to the Department within 90 days of filing the required year-end audited financial statements for the year the required distribution of retained earnings is reported.
4. The selling nonprofit APSSD shall:
- i. Not withdraw any amount deposited pursuant to (c)1 above from the APSSD-maintained bank account and/or working capital for a period of 12 months, except to acquire real property to be owned by the APSSD and to be placed in service for the express purpose of operating the APSSD, or to distribute working capital as required by N.J.A.C. 6A:23A-18.5(a)21.
  - ii. Within 13 months after the sale by the APSSD, distribute the proceeds not used to acquire real property owned by the APSSD and placed in service for the express purpose of operating the APSSD, or distributed as required by N.J.A.C. 6A:23A-18.5(a)21 to sending school districts that paid tuition to the APSSD during the five years of operations prior to and including the year of sale as set forth below:
    - (1) The amount of sale proceeds to be refunded to the sending school districts shall be equal to, but shall not exceed, the allowable accumulated depreciation of the property;



- (2) The distribution shall be based on the ratio of each sending district board of education's total ADE in the APSSD to the APSSD's total ADE for the five years of operation prior to and including the year of sale or disposition of the real property;
  - (3) Remaining proceeds may be transferred to the APSSD's working capital account within the limitations at N.J.A.C. 6A:23A-18.8 for use at the discretion of the APSSD's management; and
  - (4) Interest earned on the sale proceeds shall be subject to the provisions of N.J.A.C. 6A:23A-18.8.
- (d) In the event of a sale of stock representing ownership of a profit-making APSSD, the new owner of the APSSD assumes the carryover book value of all assets and liabilities held by the profit-making APSSD. Any gain or loss on the sale of the stock shall be outside of the operations of the APSSD and shall not impact the calculation of the certified actual cost per student or the surcharge pursuant to N.J.A.C. 6A:23A-18.7 in the year of sale or disposition.

#### **6A:23A-18.19 Annual disclosure statement**

- (a) Annually, each APSSD shall file a management disclosure of information statement with the Department on a form prescribed by the Commissioner, or his or her designee. The statement shall be signed by the director, owner, or president of the APSSD who is filing the statement. The signature shall constitute a representation of the accuracy of the statement's contents.

- (b) All disclosure statements filed shall include, but shall not be limited to, salary, pension, and other information regarding staff members, related staff, related parties, vendors, and business interests.
- (c) Annual disclosure statements shall be filed on (the first November 1 following enactment of this rule) and, thereafter, on or before November 1 of each subsequent calendar year.
- (d) All annual disclosure statements filed shall be considered public records.
- (e) An APSSD that fails to file a statement, or files an annual disclosure statement containing information the statement filer knows to be false, shall be subject to reporting to appropriate State agencies and/or be assessed non-allowable costs documented in its annual audited financial statements as applicable in this subchapter. Nothing in this subsection shall be construed to prevent or limit criminal prosecution.

#### **6A:23A-18.20 Nepotism**

- (a) Each APSSD shall develop and implement a nepotism policy to be included in the employee handbook, pursuant to N.J.A.C. 6A:23A-18.5(f). The policy shall include the following:
  - 1. A definition of “relative” consistent with N.J.S.A. 52:13D-21.2 and N.J.A.C. 6A:23A-1.2, and a definition of “member of immediate family” consistent with N.J.S.A. 52:13D-13 and N.J.A.C. 6A:23A-1.2;
  - 2. A provision prohibiting any relative of an APSSD official from being employed in an office or position at the APSSD, unless:
    - i. The relative is properly qualified for the position;

- ii. The relative is properly licensed for the position; and
  - iii. The relative's salary and fringe benefits are comparable to a person of like experience and education.
- (b) Nepotism shall be disclosed in the annual disclosure statement filed pursuant to N.J.A.C. 6A:23A-18.19. If the relative relationship is unknown at the time the disclosure form is filed, the APSSD shall file an updated annual disclosure form immediately upon the statement filer obtaining knowledge of the relationship.

#### **6A:23A-18.21 Travel**

- (a) Each APSSD shall ensure the effective and efficient use of funds by adopting and implementing policies and procedures related to the use of funds for travel by its employees and officials.
- (b) Travel expenditures shall be defined as the costs paid by the APSSD, whether directly by the APSSD or by employee reimbursement, for travel by APSSD employees to training and seminars, conventions and conferences, and APSSD-sponsored events or attendance at meetings or conferences. Costs may include transportation, meals, lodging, and registration or conference fees directly related to participation in an event. Travel expenditures shall not include the cost of mileage reimbursement or tolls for travel carried out in the performance of regularly assigned job functions such as, but not limited to, travel between commonly owned APSSDs.

- (c) Regular business travel expenditures shall be educationally necessary and fiscally prudent and shall be directly related to, and within the scope of, the employee's or APSSD's current responsibilities and/or professional development plan(s);
- (d) The amount of travel expenditures included within the certified actual cost per student each year shall be the lesser of the following:
  - 1. One-quarter of one (.25) percent of an APSSD's total actual allowable costs in the current fiscal year, not including travel expenditures; or
  - 2. Twenty thousand dollars (\$20,000).
- (e) APSSDs may apply for a waiver of the travel expenditure limitations in (d) above. Waivers requests shall be submitted in advance of the travel and will be approved only in instances where the APSSD demonstrates that, due to the limitations imposed under (d) above, APSSD staff attendance at a necessary or required professional development opportunity or training will result in non-allowable costs.
  - 1. The name, location, and date(s) of the event supported by a copy of the agenda or program for the event;
  - 2. A statement justifying the necessity for each staff member(s) attendance, including the primary purpose of the event, the relevance of the event to the staff member's work duties, and how the event will improve instruction or the operation of the APSSD; and
  - 3. A detailed budget for the event, including, but not limited to, the travel method(s) and cost, identification of the hotel or other accommodation and the rate per night, total meal allowance, and the cost of registration.

- (f) Any travel expenditure(s) that exceeds the limits in (d) above without an approved waiver shall be considered a non-allowable cost consistent with N.J.A.C. 6A:23A-18.6(a)70.
- (g) The following types of expenditures shall not be eligible for inclusion in the certified actual cost per student:
  - 1. Travel expenditures by employees whose duties are unrelated to the travel event's purpose or who are not required to attend to meet continuing education requirements or to comply with law or regulation;
  - 2. Travel by spouses, civil union partners, domestic partners, immediate family members, or other relatives or unrelated persons who are not school employees;
  - 3. Costs for employee attendance for coordinating other attendees' accommodations at the travel event;
  - 4. Lunch or refreshments for training sessions, professional development, and retreats held within the APSSD, including in-service days beyond the limitations at N.J.A.C. 6A:23A-18.6(a)18;
  - 5. Training to maintain a certification that is not required as a condition of employment;
  - 6. Charges for laundry, valet service, or entertainment;
  - 7. Limousine services and chauffeuring costs to or during an event;
  - 8. Alcoholic beverages;
  - 9. Entertainment costs, including, but not limited to, amusement, diversion, and social activities, and any directly associated costs;
  - 10. Gratuities or tips in excess of those permitted by the Federal per diem rates;
  - 11. Hospitality rooms;
  - 12. Souvenirs, memorabilia, promotional items, or gifts;

13. The cost associated with a conference, meeting, or seminar held in countries not contiguous to the United States; and
14. Other travel expenditures that are unnecessary and/or excessive.

#### **6A:23A-18.22 Behavior modification**

- (a) APSSDs recording expenditures for behavior modification shall adopt a policy that defines the procedures, evidence-based strategies, techniques, and approaches used in the APSSD's behavior modification program.
- (b) Behavior modification, provided pursuant to (a) above, shall not include:
  1. Cash or checks;
  2. The replacement of meals or components of meals on a regular basis outside of special achievements outlined in the policy described in (a) above; or
  3. High-dollar value items such as personal electronics.

#### **6A:23A-18.23 Child nutrition**

- (a) APSSDs may provide meals to students that align to the Dietary Guidelines for Americans, using United States Department of Agriculture's meal patterns reviewed and/or approved by the New Jersey Department of Agriculture. The costs associated with providing meals may be included in the certified actual cost per student if the following requirements are met:
  1. Nonprofit APSSDs shall:
    - i. Ensure the menu is approved by the New Jersey Department of Agriculture;

- ii. Apply for and receive funding from the Child Nutrition Program administered by the New Jersey Department of Agriculture;
  - iii. Charge students for a reduced and/or paid meal; and
  - iv. Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)1iii above, that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture. Excess expenditures are non-allowable costs, except for where they are solely attributable to substitutions to meals when the disability restricts the child's diet.
2. For-profit APSSDs shall:
- i. Ensure the menu is approved by the New Jersey Department of Agriculture;
  - ii. Charge students for a reduced and/or paid meal; and
  - iii. Not have total food service costs, net of the reimbursement and/or sales pursuant to (a)2ii above, that exceed the maximum daily price schedule for a high school published annually by the New Jersey Department of Agriculture. Excess expenditures shall be deemed non-allowable costs, except for where they are solely attributable to substitutions to meals when the disability restricts the child's diet.
- (b) The cost of meals for staff shall not be included in the certified actual cost per student.