

II. Other Requests for Information

A. NJDEP's January 31, 2023 Comment: Enrollment Figures

Please provide any and all Pre-K enrollment data that supports Applicant's statements made in the pre-application that the only reasonable, feasible, or available option to meet State requirements is to use the proposed diversion area as a school site for pre-kindergarten students enrolled at the Robert Fulton and Horace Mann Schools, and the Adverse Childhood Experiences (ACEs) Program. Specifically, please provide numbers for the 2021-2022 and 2022-2023 school years.

Applicants' Response:

Governor Phil Murphy has proposed expansion of full-day, high-quality preschool to all three- and four- year-old children in the State which creates not only a compelling public need for this diversion but also will yield a significant public benefit by improving the delivery of essential services to the public. Meeting the goal of full day preschool in North Bergen will mean a doubling of enrollment figures, relevant to and supportive of this application. Further, it will limit class sizes to 15 children, down from 18 for half day programs. For example, currently the North Bergen Board of Education has separate half-day morning and afternoon preschool sessions for its 3- and 4-year-old students still housed in the trailers at Braddock Park. Some students also participate in a full day program there. Bringing all 3 and 4 years olds into a full day Pre-K program means all students will be combined into one full day session. There will be no half day option. No Pre-K students were located in other schools in either the 2021-2022 or 2022-2023 school year. As shown herein and below, the only reasonable, feasible, or available option to meet State requirements is to use the proposed diversion area as a school site for the Robert Fulton, Horace Mann Schools, ACEs, and PSD Pre-K students.

NBBOE officials must report enrollment figures to the NJDOE in October and review them throughout the year. Enrollment consistently exceeds capacity as shown on p. 4 and 5 of the 2018 LRFP Approval by NJDOE which provides that information. **(See Exhibit II A-1)**. Enrollment figures fluctuate on a daily and yearly basis, but as the chart below shows, there is a significant increase in demand for North Bergen's Pre-K program and for special education services for its Pre-K students. That demand coupled with Governor Murphy's goal of full day Pre-K, constraints presented by NJ DOE regulations as to educational facilities and special education requirements **(See Exhibit IA-7 Education Facility Planning Standards for School Facilities Housing Preschool Students and Exhibit A2-3 N.J.A.C. 6A14-4.2 Special Education)** is sufficient, but other factors support the proposed diversion and influence enrollment figures such as new residential development. For example, 8200 River Road, evaluated as part of this response, has been approved residential development and is located in the Districting Map area for Horace Mann and Robert Fulton Schools. **(See Exhibit I.A2-1 RSC Architects Correspondence 8200 River Road RSC Architects Correspondence Alternatives Analysis 8200 River Road)**.

Pre-K students at Braddock Park from Horace Mann, Robert Fulton, ACEs, and PSD Programs

Special Education			
Grade	Location	2021-2022	2022-2023
F4	ACES	6	10
F3	ACES	19	20
H3	Non-ACES PSD	37	44
H4	Non-ACES PSD	39	41
General Education			
Grade	Resident School	2021-22	2022-23
H4	Fulton	43	50
H4	Horace Mann	61	50

Pre-K students enrolled at the Braddock Park Pre-K location

2021-2022	Oct 15th	Mar 15th	2022-2023	Oct 15th	Mar 15th
F3	15	18	F3	18	19
H3	64	60	H3	92	104
F4	5	6	F4	6	9
H4	207	205	H4	166	189
Total	291	289	Total	282	321

2021-2022 North Bergen Enrollment

School	F3	F4	K	01	02	03	04	05	06	07	08	09	10	11	12	Total
NBHS	0	0	0	0	0	0	0	0	0	0	0	573	512	417	476	1978
NBHS - Guttenberg	0	0	0	0	0	0	0	0	0	0	0	101	81	86	70	338
Franklin	3	0	64	72	69	62	87	67	80	84	65	0	0	0	0	695
Horace Mann	3	2	114	137	142	138	142	146	148	168	123	0	0	0	0	1352
Kennedy	3	0	48	40	45	41	32	50	34	49	58	0	0	0	0	420
Lincoln	0	1	60	66	69	61	57	83	88	71	72	0	0	0	0	656
McKinley	0	0	32	45	39	30	44	54	36	38	51	0	0	0	0	393
Robert Fulton	6	2	93	100	121	110	104	127	122	147	131	0	0	0	0	1131
Polk Street	0	0	24	40	24	26	20	19	21	14	17	0	0	0	0	205
Total	15	5	435	500	509	468	486	546	529	571	517	674	593	503	546	7168

2022-2023 Enrollment

School	H3	H4	F3	F4	K	01	02	03	04	05	06	07	08	09	10	11	12	Total
NBHS	0	0	0	0	0	0	0	0	0	0	0	0	0	534	531	462	472	1999
NBHS - Guttenberg	0	0	0	0	0	0	0	0	0	0	0	0	0	121	81	67	88	357
Franklin	13	20	1	1	91	61	69	71	72	83	70	88	89	0	0	0	0	729
Horace Mann	25	56	5	1	128	100	140	132	136	139	141	145	163	0	0	0	0	1311
Kennedy	12	11	2	1	32	44	44	49	48	34	50	35	55	0	0	0	0	417
Lincoln	14	12	1	0	63	60	62	70	63	61	79	88	71	0	0	0	0	644
McKinley	8	14	2	0	49	38	43	37	29	48	52	35	35	0	0	0	0	390
Robert Fulton	20	53	7	3	103	98	100	125	111	105	123	124	147	0	0	0	0	1119
Polk Street	0	0	0	0	25	50	24	27	26	16	25	29	19	0	0	0	0	241
Total	92	166	18	6	491	451	482	511	485	486	540	544	579	655	612	529	560	7207

B.The Township's 2018 Long Range Facilities Plan:

The April 2022 Response indicates that continued use of the Fulton Annex is anticipated. If use of the Fulton Annex is expected to continue, please provide a full explanation as to why it is not feasible, reasonable, or available to be used in lieu of the diversion area:

Applicants' Response: The use of the Fulton Annex, also known as the Polk Street School, is not anticipated to continue in the 2023 Long Range Facilities Plan. It is not owned by the Township or the Board of Education. It is owned by the Archdiocese of Newark and not available for sale. Even if it were the property is too small and not ADA compliant.

Grace Lynch, AIA PP of L+C Architects, concerning the use of the Fulton Annex as a preschool and considering acquisition of this currently rented facility:

Use of the Fulton Annex, also known as the Polk Street Annex and Saint John's, was anticipated to continue in the NJDOE approved 2018 LRFP. (See **Exhibit II A-1 2018 LRFP Approved by NJDOE Letter with Capacity, Exhibit IIB-1 Fulton Annex Aerial, Exhibit IIB-2 Fulton Annex Plan circa 2018, Exhibit IIB-3 Fulton Annex Tax Map**). Per the plan, "Should enrollments continue to decrease as projected, the NBBOE will be able to terminate its lease of the Fulton Annex." As the October deadline for the 2023 5-year LRFP amendment approaches, with analysis underway, the Board now anticipates that the use of the Fulton Annex will **NOT** continue. However, use of the facility as an Early Childhood school is not feasible, reasonable, or available in lieu of the diversion area for the following specific reasons.

Please refer to N.J.A.C. 6A:26-6 (**Exhibit IA-7**) "Subchapter 6. Planning and Construction Standards for School Facilities" which incorporates the Uniform Construction Code (UCC) and the Barrier Free Subcode (N.J.A.C. 5:23-7); or N.J.A.C. 6A:26-7-1 (**See Exhibit IB-1**) which governs "Approval of the acquisition of land" specifically:

(e) All school sites shall have sufficient acreage for the following:

4. multi-purpose physical education fields and, for preschool through grade five school facilities, a playground required to support the achievement of the New Jersey Student Learning Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model;
5. Disabled accessible pedestrian walkways, roadways, and parking areas on which people and vehicles access the building;
6. Public- and service access road onto the site including, where warranted, a one-way school bus road of 30 foot-width and a two-way road of 36-foot width; a school bus drop-off area; 18-foot wide posted fire lanes for fire apparatus; and
7. A 30-foot wide access around the entire building

1. The site is not Feasible because:

- a. The building and site are too small as is to support the early childhood program per N.J.A.C. §6A:26-6.4 which states that a pre-kindergarten classroom must have a minimum of 950 square feet.
- b. The building and site do not meet the Barrier Free Subcode as provided under N.J.A.C. §5:23-7. "The provisions of this subchapter shall apply to all buildings, including their associated sites and facilities, and portions thereof, unless exempted by this subchapter. This subchapter shall be interpreted to require access for people with disabilities, including, but not limited to, occupants, employees, consumers, students, spectators, participants, or visitors." For example, there are no ramps for access into the building anywhere on the site.
- c. The building consists of two floors plus a half flight down to multi-purpose area for gymnasium/cafeteria/auditorium, and an outdoor deck and walkway that lead to a Temporary Classroom Unit (TCU) on the site. See N.J.A.C. 6A:26-6.4 which states "[p]reschool classrooms shall be no higher than the second floor of a school facility."
- d. There are only nine classrooms in the building (North Bergen needs 22 classrooms to accommodate the pre-kindergarten children). There is only one classroom that is large enough for pre-kindergarten use. Per N.J.A.C. §6A:26-6.1 through 6.4, including the "facility efficiency standards for early childhood schools", a pre-kindergarten classroom requires a minimum 950 sf and must include an ensuite toilet room and an additional sink. Only one classroom at Fulton Annex

meets these standards as it consists of 1,020 sf with a toilet room; all other rooms are between 655 sf and 800 sf, and do not contain toilet rooms or sinks.

e. The District installed one TCU on the site, to provide a properly sized and ADA compliant pre-kindergarten room.

2. The site is not Reasonable because:

a. There is no outdoor play area suitable and large enough for use by a pre-kindergarten. In fact, the building lot is fully paved for parking, with some “hopscotch” type games painted on pavement. N.J.A.C. 6A:26-6.4 specifically states that the outdoor play space must be 100 square feet per child using the space at one time.

b. Street parking in this residential neighborhood is limited, and on-site parking would be nonexistent if the paved site areas were renovated for use as play space.

c. The building is not fully handicapped accessible as required per ADA 402.2 Components: Accessible routes shall consist of one or more of the following components: walking surfaces with a *running* slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides elevators, and platform lifts.

i. No elevator.

ii. The half-flight from first floor to all purpose room that houses the Gym, Cafeteria and Auditorium is very tight, without space for a ramp, stair-climber, or lift.

d. The plaster walls contain asbestos, requiring that any modifications, even small actions such as drilling holes for running data cabling, require abatement, containment, and testing.

3. The site is not Available because:

a. North Bergen and the North Bergen BOE considered acquisition of this property, demolition of the existing building, and construction of a new pre-school facility on site.

b. Even if the existing building was razed, the site is less than half the size required for a pre-kindergarten facility, and due to the lot configuration, does not support the proposed use. See all comments under sections 1 and 2.

c. The District does not own this facility, it is leased from the Archdiocese of Newark. Procurement of the property would be required, but not sought for reasons stated herein.

d. Should the District be able to acquire the property, and propose a new code-compliant pre-school facility, the project would be subject to the previously mentioned Codes which includes requirements for 30' wide access around the entire building and bus drop off area, as well as the N.J.A.C. 6A:26-7-1 concerning the approval process for the Board of Education's acquisition of land or an existing building for use as a school and

e. The Fulton Annex Site is .64 acres (27,667 SF)- too small for 22 classrooms and the related requirements for a new school.

i. Per the Early Childhood Model in N.J.A.C. 6A:26-6.4, a 22-classroom Pre-School requires approximately 39,550 SF, which may be distributed on a maximum of two floors (possibly 20,000 SF per floor), plus outdoor play space of 100 sf for each child using the space at one time.

ii. The above-mentioned 30' wide access around the entire building and bus drop off area would also be required on site.

iii. There isn't sufficient area to accommodate school play area and the parking needs.

C. Footprint of the Disposal Area: The current configuration of the proposed disposal area appears to follow the layout of the trailers. Explain whether the proposed permanent location will have the same footprint as the trailers. Explain whether the trailers will continue to serve as the school facility, or if there will be a permanent building constructed on the site. If a permanent building will be constructed, submit a set of plans and specifications for the construction as part of the pre-application pursuant to N.J.A.C. 7:36- 26.9(d)1vii.:

Applicants' Response:

The proposed permanent location will have the same footprint as the trailers.

(See Exhibit A2-2 2023 North Bergen PREK Braddock Park 2 and Exhibit II.C-1 Green Acres Program State House Commission Pre-Application Local Parkland—Major Disposal/diversion ATTACHMENT IV: PERMIT/APPROVAL CHECKLIST- BRADDOCK PARK).

EXHIBITS:

Exhibit IIA-1 2018 LRFP Approved by NJDOE Letter with Capacity

Exhibit IA-7 Education Facility Planning Standards for School Facilities Housing Preschool Students

Exhibit A2-3 N.J.A.C. 6A14-4.2 Special Education

Exhibit I.A2-1 RSC Architects Correspondence 8200 River Road RSC Architects Correspondence

Alternatives Analysis 8200 River Road

Exhibit IIB-1 Fulton Annex Aerial

Exhibit IIB-2 Fulton Annex Plan circa 2018

Exhibit IIB- Fulton Annex Tax Map

Exhibit IA-7 N.J.A.C. Section 6A26-6.4 entitled "Education Facility Planning Standards for School Facilities Housing Preschool Students."

Exhibit IB-1 N.J.A.C. 6A26-7-1 "Approval of the acquisition of land" JA.C. 6A26-7-1 which governs "Approval of the acquisition of land"

Exhibit IA2-2 2023 North Bergen PREK 2023 Childhood Schematic 2023 North Bergen Pre-K Braddock Park

Exhibit IIC-1 Green Acres Program State House Commission Pre-Application Local Parkland—Major Disposal/diversion ATTACHMENT IV: PERMIT/APPROVAL CHECKLIST- BRADDOCK PARK



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

LAMONT O. REPOLLET, Ed.D.
Commissioner

October 5, 2018

Dr. George Solter, Superintendent
HUDSON COUNTY
North Bergen Township School District
7317 Kennedy Boulevard
North Bergen, NJ 07047

Re: Approval of Long-Range Facilities Plan Amendment
(Major Amendment; Enrollment and Educational Adequacy Impact)

Dear Dr. Solter:

The Department of Education (Department) has completed its review of the proposed amendment to the approved Long-Range Facilities Plan (LRFP or Plan) submitted by the **North Bergen Township School District** (District) pursuant to the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A: 7G-1 *et seq.*), as amended by P.L. 2007, c. 137 (Act), N.J.A.C. 6A:26 -1 *et seq.* (Educational Facilities Code), and the Facilities Efficiency Standards (FES). The amendment includes the following changes to the LRFP previously approved on **January 15, 2010**,

- **Enrollment Projections**
- **Grade Realignment**
- **Inventory Changes**
- **System Improvements**
- **Additions and Alterations**

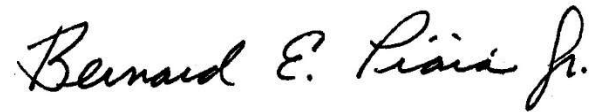
The amendment submission includes updates to the Department's LRFP website and the submission of required supporting documentation, including a Board of Education resolution authorizing the amendment.

The Department has approved the District's LRFP amendment submission, which is reflected in the attached "Summary of the Long-Range Facilities Plan, as Amended". **The approved LRFP amendment fulfills LRFP reporting requirements for a period of five years from the date of this letter per N.J.S.A. 18A: 7G-4 (a) unless the LRFP needs to be further amended to address a proposed school facilities project that is inconsistent with the approved Plan.** The approval of the LRFP amendment, and thus the approved amended LRFP, supersedes all former LRFP approvals and replaces all prior versions of the LRFP. Unless and until a new amendment is submitted to and approved by the Department pursuant to N.J.S.A. 18A:7G-4(c), this approved LRFP shall remain in effect.

Approval of the LRFP, and any projects and costs listed therein, does not imply approval of an individual school facilities project or its corresponding costs and eligibility for State support under the Act. Similarly, approval of the LRFP does not imply approval of portions of the Plan that are inconsistent with the Department's FES and proposed building demolition or replacement. Determination of preliminary eligible costs and final eligible costs will be made at the time of the approval of a particular school facilities project pursuant to N.J.S.A. 18A:7G-5. The District must submit a feasibility study as part of the school facilities project approval process, pursuant to N.J.S.A. 18A:7G-7b, to support proposed building demolition or replacement. The feasibility study should demonstrate that a building might pose a risk to the safety of the occupants after rehabilitation or that rehabilitation is not cost-effective.

Please contact Anthony Brun at the Office of School Facilities, at telephone number (609) 376-3669 or email at anthony.brun@doe.nj.gov with any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Bernard E. Piaia Jr." in a cursive script.

Bernard E. Piaia, Jr.
Director, Office of School Facility Projects

BEP:ab:

c: Lamont O. Repollet, ED.D., Commissioner
Kevin Dehmer, Division of Finance
Melissa Pearce, Executive Hudson County Superintendent
Steven Somick, North Bergen School District Business Administrator
Grace Lynch, L & C Design Consultants
Susan Kutner, Deputy Director, Office of School Planning
Anthony Brun, Office of School Facility Projects

North Bergen School District

Summary of the Long-Range Facilities Plan, as Amended

The Department of Education (Department) has completed its review of the Long-Range Facilities Plan (LRFP or Plan) amendment submitted by the **North Bergen Township School District** (District) pursuant to the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A: 7G-1 *et seq.*), as amended by P.L. 2007, c. 137 (Act), N.J.A.C. 6A:26-1 *et seq.* (Educational Facilities Code), and the Facilities Efficiency Standards (FES).

This is the Department’s summary of the District’s LRFP, as amended. The summary is based on the standards set forth in the Act, the Educational Facilities Code, the FES, District-entered data in the Department’s LRFP website, and District-supplied supporting documentation. The referenced reports in *italic* text are standard LRFP reports available on the Department’s LRFP website.

1. Inventory Overview

The District provides services for students in grades Pre-K-12. The predominant existing school grade configuration is Pre-K-8, and 9-12. The predominant proposed school grade configuration is Pre-K-6, and 7-12. The District is classified as “under 55 EPCA” district for funding purposes.

The District identified existing and proposed schools, sites, buildings, playgrounds, playfields, and parking lots in its LRFP. The total number of existing and proposed district-owned or leased schools, sites, and buildings are listed in Table 1. A detailed description of each asset can be found in the LRFP website report titled “*Site Asset Inventory Report.*” Section 6 of this Summary lists work proposed at each school.

Table 1: Inventory Summary

	Existing	Proposed
Sites:		
Total Number of Sites	8	8
Number of Sites with no Buildings	0	0
Number of Sites with no Instructional Buildings	0	0
Schools and Buildings:		
Total Number of Schools with Enrollments*	7	8
Total Number of Instructional Buildings	11	11
Total Number of Administrative and Utility Buildings	1	1
Total Number of Athletic Facilities	0	1
Total Number of Parking Structures	0	0
Total Number of leased or Temporary Facilities	1	0

**Includes schools with three-digit Department code numbers and Fall Report enrollments.*

As directed by the Department, incomplete school facilities projects that have project approval from the Department are represented as “existing” in the Plan. District schools with incomplete approved projects that include new construction or the reconfiguration of existing program space are as follows: “n/a”.

Major conclusions are as follows:

- The District is proposing to **maintain** the existing number of District-owned or leased sites.
- The District is proposing to **increase** the existing number of District-operated schools.
- The District is proposing to **maintain** the existing number of District-owned or leased instructional buildings.
- The District is proposing to **maintain** the existing number of District-owned or leased non-instructional buildings.

FINDINGS The Department has determined that the proposed inventory is adequate for approval of the District's LRFP amendment. However, the LRFP determination does not imply approval of an individual school facilities project listed within the LRFP. The District must submit individual project applications for project approval. If building demolition or replacement is proposed, the District must submit a feasibility study, pursuant to N.J.S.A. 18A:7G-7b, as part of the application for the specific school facilities project.

2. District Enrollments and School Grade Alignments

The District determined the number of students, or "proposed enrollments," to be accommodated in the LRFP on a district-wide basis and in each school. The District's existing and proposed enrollments and the cohort-survival projection provided by the Department on the LRFP website are listed in Table 2. Detailed information can be found in the LRFP website report titled "*Enrollment Projection Detail*." Existing and proposed school enrollments and grade alignments can be found in the report titled "*Enrollment and School Grade Alignment*."

Table 2: Enrollment Comparison

	Actual Enrollments 2016-2017 school year	District Proposed Enrollments	Department's LRFP Website Projection
Grades K-5, including SCSE	3,392	3,143	N/A
Grades 6-8, including SCSE	1,741	1,635	N/A
Grades 9-12, including SCSE	2,630	2,183	N/A
Totals K-12	7,763	6,961	

"SCSE" = *Self-Contained Special Education*

Major conclusions are as follows:

- The District did not select the Department's LRFP website projection. Supporting documentation was submitted to the Department as required to justify the proposed enrollments.
- The District is planning for decreasing enrollments.

FINDINGS The Department has determined that the District’s proposed enrollments are supportable for approval of the District’s LRFP amendment. The Department will require a current enrollment projection at the time an application for a school facilities project is submitted incorporating the District’s most recent Fall Enrollment Report in order to verify that the LRFP’s planned capacity is appropriate for the updated enrollments.

3. Preschool Enrollments

The District identified the preschool universe for five –year planning purposes. Preschool enrollments include three year olds, if applicable, four year olds, and special education students.

Table 3 summarizes existing and proposed preschool enrollments in District and private provider facilities. Proposed private provider use is based on 2017-2018 projections by the Department’s Office of Early Childhood.

Table3: Preschool Enrollments

	Total Preschool	District	Private Provider
Actual (2016-2017)	203	1203	0
District Proposed	384	384	0

Major conclusions are as follows:

- The District does not provide a preschool program for three-year olds and provides a full-day preschool program for four-year olds.
- The District does not utilize private providers to accommodate preschool students.

4. FES and District Practices Capacity

The proposed room inventories for each school were analyzed to determine whether the LRFP provides adequate capacity for the proposed enrollments. Two capacity calculation methods, called “FES Capacity” and “District Practices Capacity,” were used to assess existing and proposed school capacity in accordance with the FES and District program delivery practices. A third capacity calculation, called “Functional Capacity,” determines Unhoused Students and potential State support for school facilities projects. Functional Capacity is analyzed in Section 5 of this Summary.

- *FES Capacity* only assigns capacity to pre-kindergarten (if district-owned or operated), kindergarten, general, and self-contained special education classrooms. No other room types are considered to be capacity-generating. Class size is based on the FES and is prorated for classrooms that are sized smaller than FES classrooms. FES Capacity is most accurate for elementary schools, or schools with non-departmentalized programs, in which instruction is “homeroom” based. This capacity calculation may also be accurate for middle schools depending upon the program structure. However, this method usually significantly understates available high school capacity since specialized spaces that are typically provided in lieu of general classrooms are not included in the capacity calculations.

- *District Practices Capacity* allows the District to include specialized room types in the capacity calculations and adjust class size to reflect actual practices. This calculation is used to review capacity and enrollment coordination in middle and high schools.

A capacity utilization factor in accordance with the FES is included in both capacity calculations. A 90% capacity utilization rate is applied to classrooms serving grades K-8. An 85% capacity utilization rate is applied to classrooms serving grades 9-12. No capacity utilization factor is applied to preschool classrooms.

Table 4 provides a summary of proposed enrollments and District-wide capacities. Detailed information can be found in the LRFP website report titled “*FES and District Practices Capacity.*”

Table 4: FES and District Practices Capacity Summary

	Total FES Capacity	Total District Practices Capacity
(A) Proposed Enrollments	7,345	7,345
(B) Existing Capacity	4,616.14	5,226.30
<i>*Existing Capacity Status (B)-(A)</i>	-2,728.86	-2,118.70
(C) Proposed Capacity	5,765.35	7,076.90
<i>*Proposed Capacity Status (C)-(A)</i>	-1,579.65	-268.10

** Positive numbers signify surplus capacity; negative numbers signify inadequate capacity. Negative values for District Practices capacity are acceptable if proposed enrollments do not exceed 100% capacity utilization.*

Major conclusions are as follows:

- The District has adequately coordinated proposed school capacities and enrollments in the LRFP for grade groups with proposed new construction.
- Adequate justification has been provided by the District if capacity for a school with proposed work in the LRFP deviates from the proposed enrollments by more than 5%.

FINDINGS The Department has determined that proposed District capacity, in accordance with the proposed enrollments, is adequate for approval of the District’s LRFP amendment. The Department will require a current enrollment projection at the time an application for a school facilities project is submitted, incorporating the District’s most recent Fall Enrollment Report, in order to verify that the LRFP’s planned capacity meets the District’s updated enrollments.

5. Functional Capacity and Unhoused Students Prior to Proposed Work

Functional Capacity was calculated and compared to the proposed enrollments to provide a preliminary estimate of Unhoused Students and new construction funding eligibility. Functional Capacity is the adjusted gross square footage of a school building (*total gross square feet minus excluded space*) divided by the minimum area allowance per Full-time Equivalent student for the grade level contained therein. Unhoused Students is the number of students projected to be enrolled in the District that exceeds the Functional Capacity of the District’s schools pursuant to N.J.A.C. 6A:26-2.2(c).

“*Excluded Square Feet*” in the LRFP Functional Capacity calculation includes (1) square footage exceeding the FES for any pre-kindergarten, kindergarten, general education, or self-contained special education classroom; (2) grossing factor square footage (*corridors, stairs, mechanical rooms, etc.*) that exceeds the FES allowance, and (3) square feet proposed to be demolished or discontinued from use. Excluded square feet may be revised during the review process for individual school facilities projects.

Table 5 provides a preliminary assessment of Functional Capacity, Unhoused Students, and Estimated Maximum Approved Area for the various grade groups in accordance with the FES. Detailed information concerning the calculation and preliminary excluded square feet can be found in the LRFP website reports titled “*Functional Capacity and Unhoused Students*” and “*Functional Capacity Excluded Square Feet*.”

Table 5: Functional Capacity and Unhoused Students Prior to Proposed Work

	A Proposed Enrollment	B Estimated Existing Functional Capacity	C = A-B Unhoused Students	D Area Allowance (gsf/students)	E = C x D Estimated Maximum Approved Area for Unhoused Students
Preschool (PK)	384	331.92	52.08	125.00	6,510.26
Elementary (K-5)	3,143	2,623.76	519.24	125.00	64,905.00
Middle (6-8)	1,635	459.51	1,175.49	134.00	157,515.00
High (9-12)	2,183	1,125.50	1,057.50	151.00	159,681.81
Totals K-12	7,345	4,540.69			

Major conclusions are as follows:

- The calculations for “Estimated Existing Functional Capacity” school facilities projects that have been approved by the Department but were not under construction or complete at the time of the submission of the LRFP amendment.
- The District, based on the preliminary LRFP assessment, does not have Unhoused Students for the following FES grade groups: “n/a”.
- The District, based on the preliminary LRFP assessment, does have Unhoused Students for the following FES grade groups: “Grades PK, K-5, 6-8, and 9-12”.
- The District is not proposing to demolish or discontinue the use of existing District-owned instructional space. The Functional Capacity calculation excludes square feet proposed to be demolished or discontinued for the following FES grade groups: n/a.

FINDINGS Functional Capacity and Unhoused Students calculated in the LRFP are preliminary estimates. Justification for square footage in excess of the FES and the determination of additional excluded square feet, Preliminary Eligible Costs (PEC), and Final Eligible Costs (FEC) will be included in the review process for specific school facilities projects. A feasibility study undertaken by the District is required if building demolition or replacement is proposed per N.J.A.C. 6A:26-2.3(b)(10).

6. Proposed Work

The District was instructed to review the condition of its facilities and sites and to propose corrective “system” and “inventory” actions in its LRFP. “System” actions upgrade existing conditions without changing spatial configuration or size. Examples of system actions include new windows, finishes, and mechanical systems. “Inventory” actions address space problems by removing, adding, or altering sites, schools, buildings and rooms. Examples of inventory actions include building additions, the reconfiguration of existing walls, or changing room use.

Table 6 summarizes the type of work proposed in the District’s LRFP for instructional buildings. Detailed information can be found in the LRFP website reports titled “*Site Asset Inventory*,” “*LRFP Systems Actions Summary*,” and “*LRFP Inventory Actions Summary*.”

Table 6: Proposed Work for Instructional Building

Type of Work	Work Included in LRFP
System Upgrades	Yes
Inventory Changes	
Room Reassignment or Reconfiguration	Yes
Building Addition	Yes
New Building	Yes
Partial or Whole Building Demolition or Discontinuation of Use	Yes
New Site	Yes

Major conclusions are as follows:

- The District has proposed system upgrades in one or more instructional buildings.
- The District has proposed inventory changes, including additions and reconfigurations.
- The District has not proposed new construction in lieu of rehabilitation in one or more instructional buildings.

Please note that costs represented in the LRFP are for capital planning purposes only. Estimated costs are not intended to represent preliminary eligible costs or final eligible costs of approved school facilities projects.

The Act (N.J.S.A. 18A:7G-7b) provides that all school facilities shall be deemed suitable for rehabilitation unless a pre-construction evaluation undertaken by the District demonstrates to the satisfaction of the Commissioner that the structure might pose a risk to the safety of the occupants even after rehabilitation or that rehabilitation is not cost-effective. Pursuant to N.J.A.C. 6A:26-2.3(b)(10), the Commissioner may identify school facilities for which new construction is proposed in lieu of rehabilitation for which it appears from the information presented that new construction is justified, provided, however, that for such school facilities so identified, the District must submit a feasibility study as part of the application for the specific school facilities project. The cost of each proposed building replacement is compared to the cost of additions or rehabilitation required to eliminate health and safety deficiencies and to achieve the District’s programmatic model.

Facilities used for non-instructional or non-educational purposes are ineligible for State support under the Act. However, projects for such facilities shall be reviewed by the Department to determine whether they are consistent with the District’s LRFP and whether the facility, if it is to house students (full or part time) conforms to educational adequacy requirements. These projects shall conform to all applicable statutes and regulations.

FINDINGS The Department has determined that the proposed work is adequate for approval of the District’s LRFP amendment. However, Department approval of proposed work in the LRFP does not imply that the District may proceed with a school facilities project. The District must submit individual project applications with cost estimates for Department project approval. Both school facilities project approval and other capital project review require consistency with the District’s approved LRFP.

7. Functional Capacity and Unhoused Students After Completion of Proposed Work

The *Functional Capacity* of the District’s schools *after* completion of the scope of work proposed in the LRFP was calculated to highlight any remaining Unhoused Students.

Table 7 provides a preliminary assessment of Unhoused Students and Estimated Remaining Maximum Area after completion of new construction proposed in the LRFP, if applicable. Detailed information concerning the calculation can be found in the website report titled “*Functional Capacity and Unhoused Students*.”

Table 7: Functional Capacity and Unhoused Students After Completion of Proposed Work

	Estimated Maximum Approved Area for Unhoused Students	Total New GSF	Proposed Functional Capacity after Construction	Unhoused Students after Construction	Estimated Maximum Area for Unhoused Students Remaining
Preschool (PK)	6,510.26	17	332.05	51.95	6,493.78
Elementary (K-5)	64,905.00	363	2,626.63	516.37	64,546.27
Middle (6-8)	157,515.00	141,537	1,463.18	171.82	23,024.05
High (9-12)	159,681.81	102,121	1,848.49	334.51	50,510.93
Totals K-12			6,270.35		

Major conclusions are as follows:

- New construction is proposed for the following grade groups: Grades PK, K-5, 6-8, and 9-12.
- Proposed new construction exceeds the estimated maximum area allowance for Unhoused Students prior to the completion of the proposed work for the following grade groups: “n/a”.
- The District, based on the preliminary LRFP assessment, will not have Unhoused Students after completion of the proposed LRFP work for the following grade groups: “n/a”.
- The District, based on the preliminary LRFP assessment, will have Unhoused Students after completion of the proposed LRFP work for the following grade groups: “PK, K-5, 6-8, and 9-12”.

FINDINGS The Functional Capacity and Unhoused Students calculated in the LRFP are preliminary estimates. Justification for square footage in excess of the FES and the determination of additional excluded square feet, Preliminary Eligible Costs (PEC), and Final Eligible Costs (FEC) will be included in the review process for specific school facilities projects.

8. Proposed Room Inventories and the Facilities Efficiency Standards

The District's proposed room inventories for instructional buildings, or programmatic models, were evaluated to assess general educational adequacy and compliance with the FES area allowance pursuant to N.J.A.C. 6A:26-2.2 and 2.3. Major conclusions are as follows:

- The District school(s) that will provide less square feet per student than the FES allowance. School(s) proposed to provide less area than the FES are as follows: "n/a".
- The District is proposing school(s) that exceeds the FES square foot per student allowance: "n/a".

FINDINGS The Department has determined that the District's proposed room inventories are educationally adequate. If schools are proposed to provide less square feet per student than the FES, the District has provided a written justification indicating that the educational adequacy of the facility will not be adversely affected and has been granted an FES waiver by the Department. This determination does not include an assessment of eligible square feet for State support, which will be determined at the time an application for a specific school facilities project is submitted to the Department. The Department will also confirm that a proposed school facilities project conforms with the proposed room inventory represented in the LRFP when an application for a specific school facilities project is submitted to the Department for review and approval.

N.J.A.C. 6A:26, Educational Facilities

Table of Contents

Subchapter 1. General Provisions

[6A:26-1.1 Purpose and applicability of rules](#)

[6A:26-1.2 Definitions](#)

Subchapter 2. Long-Range Facilities Plans

[6A:26-2.1 Responsibilities of school district](#)

[6A:26-2.2 Completion of long-range facilities plans](#)

[6A:26-2.3 Review and approval of long-range facilities plans](#)

[6A:26-2.4 \(Reserved\)](#)

Subchapter 3. Capital Project Review

[6A:26-3.1 Initiation of a capital project](#)

[6A:26-3.2 School facilities projects](#)

[6A:26-3.3 Review and approval of school facilities projects](#)

[6A:26-3.4 Calculation of preliminary eligible costs for school facilities projects](#)

[6A:26-3.5 Determination of final eligible costs for Development Authority school facilities projects](#)

[6A:26-3.6 Determination of final eligible costs for ROD school facilities projects](#)

[6A:26-3.7 Local support of school facilities projects](#)

[6A:26-3.8 Determination of State support for school facilities projects](#)

[6A:26-3.9 Design and construction of Development Authority school facilities projects](#)

[6A:26-3.10 Design and construction of ROD school facilities projects](#)

[6A:26-3.11 Initiation of other capital projects](#)

[6A:26-3.12 Acquisition of land by school districts](#)

[6A:26-3.13 Review, approval, and use of temporary facilities](#)

[6A:26-3.14 Emergency stabilization](#)

[6A:26-3.15 Insurance, damage awards, gifts, grants, other private sources of funds, and municipal surplus](#)

Subchapter 4. Management of Capital Projects

[6A:26-4.1 Capital projects fund](#)

[6A:26-4.2 Use of capital projects fund to account for a capital project funded in part or in whole by school bonds, short term notes, or pre-EFCFA lease purchase agreements of greater than five years duration](#)

[6A:26-4.3 Use of capital projects fund to account for a school facilities project not funded in part or in whole by school bonds or short term notes](#)

[6A:26-4.4 Options where there are insufficient funds to complete a capital project](#)

[6A:26-4.5 Over-expending a capital project](#)

[6A:26-4.6 Unexpended bond proceeds](#)

[6A:26-4.7 Oversight of ROD constructed school facilities projects](#)

[6A:26-4.8 Bidding and awarding of contracts for ROD capital projects](#)

[6A:26-4.9 Submission of change orders for ROD projects](#)

[6A:26-4.10 Change orders for Development Authority school facilities projects](#)

Subchapter 5. Review of Capital Projects for Educational Adequacy

[6A:26-5.1 General provisions](#)

[6A:26-5.2 Educational specifications](#)

[6A:26-5.3 Schematic plans and other related project documents](#)

[6A:26-5.4 Detailed plans and specifications and final plans and specifications](#)

[6A:26-5.5 Fee schedule](#)

[6A:26-5.6 Capital projects not subject to educational adequacy review](#)

Subchapter 6. Planning and Construction Standards for School Facilities

[6A:26-6.1 Application of the Uniform Construction Code](#)

[6A:26-6.2 Exceptions](#)

[6A:26-6.3 Educational facility planning standards](#)

[6A:26-6.4 Educational facility planning standards for school facilities housing preschool students](#)

[6A:26-6.5 Private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services](#)

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

[6A:26-7.1 Approval of the acquisition of land](#)

[6A:26-7.2 Approval of the acquisition of land in certain districts under the Development Authority auspices](#)

[6A:26-7.3 Approval for the acquisition of existing facilities](#)

[6A:26-7.4 Approval for the disposal of land, including rights or interest therein, or improvements thereon](#)

[6A:26-7.5 Approval for the closing of a school facility](#)

Subchapter 8. Temporary School Facilities

[6A:26-8.1 Temporary facilities standards](#)

Subchapter 9. (Reserved)

Subchapter 10. Lease Purchase and Lease Agreements

[6A:26-10.1 Use of lease-purchase agreements](#)

[6A:26-10.2 Costs of lease-purchase agreements of five years or less](#)

[6A:26-10.3 Approval of lease-purchase agreements for improvements or additions to school facilities](#)

[6A:26-10.4 Contents of lease-purchase agreement of five years or less](#)

[6A:26-10.5 Contents of ground lease](#)

[6A:26-10.6 Approval procedures to refinance a lease-purchase agreement](#)

[6A:26-10.7 Approval procedures for a defeasance of lease-purchase agreements](#)

[6A:26-10.8 Lease purchase agreements entered into prior to July 18, 2000](#)

[6A:26-10.9 Approval of lease agreements of facilities to be used for school purposes](#)

[6A:26-10.10 Limitation on multiyear leases of facilities](#)

[6A:26-10.11 Public hearing for leases for facilities in excess of five years](#)

Subchapter 11. County Vocational School District Facilities Rehabilitation Fund

[6A:26-11.1 County vocational school district facilities rehabilitation fund](#)

[6A:26-11.2 Application for funds](#)

Subchapter 12. Safety Requirements for School Facilities

[6A:26-12.1 Facilities maintenance requirements](#)

[6A:26-12.2 Policies and procedures for school facility operation](#)

[6A:26-12.3 Health facilities, equipment and supplies](#)

[6A:26-12.4 Safe drinking water](#)

[6A:26-12.5 Eye protection in schools](#)

Subchapter 13. (Reserved)

Subchapter 14. Withholding of State Support for Non-Compliance

[6A:26-14.1 Withholding of State support for non-compliance](#)

Subchapter 15. (Reserved)

Subchapter 16. Certified Educational Facilities Manager

[6A:26-16.1 Certified educational facilities manager](#)

Subchapter 17. Appeals

[6A:26-17.1 Appeals of Commissioner's determinations](#)

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

6A:26-18.1 Eligibility for section 15 grants for RODS, not including county vocational school districts

6A:26-18.2 Funding options for school facilities project in RODs, other than county vocational school districts, which are not awarded a section 15 grant

6A:26-18.3 Deadlines for submission of Section 15 grant applications for RODs, not including county vocational school districts

6A:26-18.4 Section 15 grants for county vocational school district school facilities projects

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

6A:26-19.1 Purpose

6A:26-19.2 Determination of eligibility by the Commissioner

6A:26-19.3 Notification of SDA districts

6A:26-19.4 Limitation of applicability of subchapter

Subchapter 20. Comprehensive Maintenance Plans

6A:26-20.1 Purpose

6A:26-20.2 Scope

6A:26-20.3 Required maintenance activities

6A:26-20.4 Required maintenance expenditures

6A:26-20.5 Requirements for comprehensive maintenance plans

6A:26-20.6 Submission and review of comprehensive maintenance plans

6A:26-20.7 Requirements for a maintenance package for newly completed school facilities projects

6A:26-20.8 Required maintenance budget amount

6A:26-20.9 The maintenance factor in State debt service aid

Chapter 26. Educational Facilities

Subchapter 1. General Provisions

6A:26-1.1 Purpose and applicability of rules

The rules are adopted by the New Jersey State Board of Education to implement the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c.72, as amended and as defined in N.J.S.A. 18A:7G-1, as well as to consolidate, conform, and update other rules relating to educational facilities in this State. The rules are adopted to ensure that the educational facilities in the State are safe, healthy, and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled, as defined by the New Jersey Student Learning Standards. The rules apply to all district boards of education in the State. To the extent these rules are inconsistent with other rules in Titles 6 and 6A of the New Jersey Administrative Code, the rules in this chapter shall take precedence.

6A:26-1.2 Definitions

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

“24-hour school facilities” mean facilities that host residents on-site year round, require the availability of water at all hours, employ staff on site 24 hours a day, and/or are care facilities, such as hospitals with educational programs provided at the facilities.

“Additional costs” means the additional construction costs beyond the area cost allowance for construction or the costs beyond reasonable estimated actual costs for rehabilitation if such costs are the result of factors outside the control of the school district, provided that either type of costs results from design factors that are required to meet the facilities efficiency standards and are approved or authorized pursuant to N.J.S.A. 18A:7G-5(g).

"Additional space" means space in excess of facilities efficiency standards.

"Adjusted gross square footage" means the gross square footage of a facility less excluded spaces.

"Annual maintenance budget amount" means the amount required to be included in the school district's annual budget certified for taxes as a deposit into the maintenance reserve account or in the required maintenance line-item accounts.

"Application for State School Aid" or "ASSA" means the application filed pursuant to N.J.S.A. 18A:7F-33, on a form issued by the Commissioner, in which a school district sets forth student enrollment by category and other pertinent information.

"Approved area for unhoused students" means the product of the area allowance per FTE student times the number of unhoused students.

"Approved LRFP" or "approved plan" means an LRFP that conforms to the requirements of N.J.A.C. 6A:26-2 and that has been determined by a Commissioner's final determination to ensure the school facilities are educationally adequate to support over the next five years the achievement of the New Jersey Student Learning Standards.

"Area allowance per FTE student" means 125 square feet for preschool through grade five, 134 square feet for grades six through eight, and 151 square feet for grades nine through 12.

"Area cost allowance" means as set forth in N.J.S.A. 18A:7G-3.

"Building system" means a set of related or similar building components that work together to perform a major function in a building or facility.

"Capital maintenance" means maintenance intended to extend the useful life of a school facility, including upgrades and replacements of building systems, such as structure, enclosure,

mechanical, plumbing and electrical systems, and can be considered to constitute or be part of a school facilities project.

"Capital project" means a school facilities project, other capital project or land acquisition project.

"Capital reserve account" means as defined in N.J.A.C. 6A:23A-1.2.

"Certified laboratory" means a laboratory certified pursuant to the provisions of N.J.A.C. 7:18.

"Comprehensive Annual Financial Report" or "CAFR" means the official annual report of a governmental unit that includes all funds and account groups, as defined in N.J.A.C. 6A:23A-1.2.

"Comprehensive maintenance plan" means a school district's multi-year maintenance plan covering required maintenance activities for each school facility in the school district adopted pursuant to this chapter.

"Cost index" means the average annual increase, expressed as a decimal, in actual construction cost factors for the New York City and Philadelphia areas during the second fiscal year preceding the budget year as determined pursuant to rules promulgated by the Development Authority.

"County vocational school district" means a county vocational school district established pursuant to N.J.S.A. 18A:54-1 et seq.

"Debt service" means as set forth in N.J.S.A. 18A:7G-3.

"Development Authority" means the New Jersey Schools Development Authority established pursuant to N.J.S.A. 52:18A-237.

"District aid percentage" means the number, expressed as a percentage derived from dividing the school district's equalization aid calculated pursuant to N.J.S.A. 18A:7F-53 as of the date of the Commissioner's determination of preliminary eligible costs by the school district's adequacy

budget calculated pursuant to N.J.S.A. 18A:7F-51 as of the date of the Commissioner's determination of preliminary eligible costs.

"District board of education" means the local board of education or State district superintendent in the case of a State-operated district.

"District factor group" means an index of socioeconomic status established by the Department of Education based upon indicators available in the decennial census. School districts are arranged in 10 groups, DFG A through DFG J, A being the group with the lowest socioeconomic status, J the highest.

"Division" means the Department's Division of Administration and Finance.

"Drinking water outlet" means any location at a school facility, other facility, or temporary facility, as those terms are defined in this section, where water is expected to be used for consumption or food preparation.

"Educational adequacy" means, for purposes of a school facilities project, the suitability of a facility to provide instruction that will enable students to achieve the New Jersey Student Learning Standards and will encompass the facilities efficiency standards combined with the requirements of N.J.A.C. 6A:26-5.

"Educational space" means any space in a school facility for general instruction, specialized instruction, administration or student services and support.

"Emergency stabilization" means actions taken by a school district to correct and eliminate an actual or imminent peril to the health and safety of students or staff designed to render a school facility fit for occupancy by students or staff.

"Emergent condition" means a condition is so injurious or hazardous that it causes an imminent peril to the health and safety of students and staff.

"Emergent project" means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff.

"Estimated actual costs" means costs as determined pursuant to N.J.A.C. 6A:26-2.3 or 3.4.

"Excess costs" means as set forth in N.J.S.A. 18A:7G-3.

"Excluded space" is an existing space that is not contained in the facilities efficiency standards but may be included in a school district's approved room inventory that would be structurally or fiscally impractical to convert to other uses in the facilities efficiency standards as demonstrated by the school district and that:

1. Delivers programs and services aligned to the New Jersey Student Learning Standards; or
2. Provides support services directly to students.

"Facility" means a structure or building as further defined in this section by the terms school facility, temporary facility or other facilities.

"Facilities efficiency standards" means the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4.

"Feasibility study" means a study undertaken to determine whether a school facilities project is achievable in view of possible identified factors that may influence the project's design or construction, including, but not limited to, applicable Federal, State and local laws; physical site conditions; market conditions; and costs and benefits. For example, such a study may be a pre-construction evaluation undertaken by a school district to determine whether it would be more feasible to replace rather than renovate a school facility because of health and safety or

efficiency. It may also consist of a pre-land acquisition evaluation to determine whether it would be more feasible to acquire land for a school facilities project because of health and safety, efficiency, environmental factors, physical site conditions, or cost.

"Filing year" means the year in which the comprehensive maintenance plan is filed with the executive county superintendent.

"Final eligible costs" means as set forth in N.J.S.A. 18A:7G-3.

"Final plans and specifications" means the plans and specifications utilized to bid a capital project and to undertake and complete its construction.

"FTE" means as set forth in N.J.S.A. 18A:7G-3.

"Functional capacity" means the number of students that can be housed in a building to provide sufficient space for the building to be educationally adequate for the delivery of programs and services necessary for student achievement of the New Jersey Student Learning Standards.

Functional capacity is determined by dividing the adjusted gross square footage of a school facility by the minimum area allowance per FTE student for the grade level students contained therein.

"Grant cycle" means the amount of annual funding available, as determined by the Commissioner, for section 15 grants for school facilities projects in RODs, other than county vocational school districts.

"Gross square footage" means the total square footage of a school facility.

"Inconsistent space" means spaces that differ from the facilities efficiency standards in number, configuration, size, location, or use.

"Land acquisition" means an acquisition of land, whether by purchase, condemnation, or by gift or grant, to be used as a school site. Land acquisition is either an eligible cost of a school facilities project or an other capital project not eligible for funding pursuant to EFCFA.

"Lead action level" means the lead action level established by the United States Environmental Protection Agency at 40 CFR 141.80 for lead in drinking water.

"Lease-purchase agreement" means any agreement under which the school district leases equipment or school facilities as the lessee, and gives the school district the option of purchasing the leased property during or upon termination of the lease with credit toward the purchase price for all or part of rental payments that have been made by the school district in accordance with the lease-purchase agreement.

"Lease-purchase payment" means as set forth in N.J.S.A. 18A:7G-3.

"Local funding" means the funds supplied by a school district to finance the total costs of an other capital project.

"Local portion" means the amount of school bonds issued for a school facilities project funded under N.J.S.A. 18A:7G-9 or 10.

"Local share" means as set forth in N.J.S.A. 18A:7G-3.

"Local support" means the local share or the local portion.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a school district pursuant to N.J.S.A. 18A:7G-4.

"Maintenance reserve fund" means the account established by a school district pursuant to N.J.S.A. 18A:7G-13 into which it deposits monies to be used exclusively for required maintenance of school facilities.

"New construction" means a school facilities project that consists of either:

1. New school facilities; and/or
2. Additions to school facilities characterized by an increase in the gross square footage of the school facility and that is necessary due to unhoused students.

"New Jersey Student Learning Standards" means the standards established pursuant to N.J.S.A. 18A:7F-4.a.

"Other allowable costs" means the cost of temporary facilities; site remediation; site development; acquisition of land/or other real property interest necessary to effectuate the school facilities project; fees for the services of design professionals, including architects, engineers, construction managers, and other design professionals; legal fees; permitting and plan review fees; financing costs; and the administrative costs of the Development Authority or the school district incurred in connection with the school facilities project.

"Other capital projects" means all projects, or portions thereof, that are 100 percent locally funded, including:

1. Capital projects for the construction or rehabilitation of other facilities;
2. Leased school facilities, other facilities or temporary school facilities, unless used as temporary space for a school facilities project in accordance with N.J.A.C. 6A:26-3.14, subject to Department review of the terms and conditions of the lease, in the case of school districts for which the State share of eligible costs for school facilities projects is 100 percent;
3. Eligible capital projects for which a school district is not seeking State support; and
4. Projects for which there are no costs eligible for State support.

"Other facilities" means athletic stadiums; swimming pools; any associated structures; or related equipment tied to such facilities, including, but not limited to, grandstands and night field lights,

greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building, or facility used solely for school administration.

“Preconstruction activities” means the activities that must be undertaken prior to completion and submission to the Department of a school facilities project application for approval and calculation of preliminary eligible costs. Such activities can include site analysis, acquisition of land, remediation, site development, feasibility studies, design work, and acquisition of and design work for temporary facilities.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project, which shall be deemed to include the costs of construction and other allowable costs, as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7 after the completion of preconstruction activities.

“Priority project categories” means the categories specified in N.J.A.C. 6A:26-3.9(a) and 18.1.

"Project documents" means educational specifications, schematic plans, detailed plans and specifications, final plans and specifications, and other documents required for capital project review and approval by the Division.

“Quality Single Accountability Continuum” or “QSAC” means the monitoring and evaluation process of school districts pursuant to N.J.S.A. 18A:7A-10 et seq.

“Redevelopment entity” means an entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

“Regular operating school district” or “ROD” means a school district other than an SDA district.

"Rehabilitation" means a school facilities project consisting of the reconstruction, remodeling, alteration, modernization, or repair of a school facility to keep the school facility functional for

its original purpose or for new purposes and that does not increase the gross square footage of the school facility.

"Replacement cost" means the area cost allowance multiplied by the gross square footage of the building for the year specified in this chapter.

"Required maintenance" means, for purposes of determining "M" in the formula in N.J.A.C. 6A:26-3.8, specific maintenance activities required for system warranty purposes that are approved for repairs and replacements to keep a school facility open and safe for use or in its original condition - including repairs and replacements to a school facility's heating, lighting, ventilation, security and other fixtures to keep the facility or fixtures in effective working condition - and that does not consist of routine or capital maintenance. Required maintenance is not an eligible cost of a school facilities project.

"Room inventory" means a list of each general instructional, specialized instructional, administrative, and support space, and the sizes and numbers that would constitute a school facility adequate to support the achievement of the New Jersey Student Learning Standards by the projected student enrollment.

"Routine maintenance" means contracted custodial or janitorial services; expenditures for the cleaning of a school facility or its fixtures; the care and upkeep of grounds or parking lots; the cleaning of, or repairs and replacements to, movable furnishings or equipment; or other expenditures that are not required to maintain the original condition over the school facility's useful life. Routine maintenance is not an eligible cost of a school facilities project.

"School bonds" means as set forth in N.J.S.A. 18A:7G-3.

"School district" means a district board of education, including a local or regional school district established pursuant to N.J.S.A. 18A:8-1 et seq. or 18A:13-1 et seq.; a county special services

school district established pursuant to article 8 of N.J.S.A. 18A:46-1 et seq.; a county vocational school district established pursuant to article 3 of N.J.S.A. 18A:54-1 et seq.; and a school district under full State intervention pursuant to N.J.S.A. 18A:7A-34 et seq.

"School enrollment" means the number of FTE students who are recorded in the school registers on the last school day prior to October 16 of the current school year, except that it shall not include FTE students in evening programs, post-graduate students, and post-secondary vocational students.

"School facility" means and includes any structure, building, or facility used wholly or in part for educational purposes by a school district and facilities that physically support the structures, buildings, and facilities, such as school district wastewater treatment, power generating and steam generating, but excludes other facilities as defined in this section.

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or any other personal property necessary for, or ancillary to, any school facility. School facilities project includes, but is not limited to, fixtures; furnishings and equipment; site acquisition; site development; services of design professionals such as engineers and architects; construction management; legal services; financing costs; and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project must be new construction to meet the housing needs of unhoused students, or rehabilitation to keep a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

"SDA district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year.

“Section 15 grant” means a grant of funds to be made pursuant to N.J.S.A. 18A:7G-15.

"Short-term notes" means temporary notes or loan bonds as described in N.J.S.A. 18A:24-3.

"Special education student" means a student receiving specific services pursuant to N.J.S.A. 18A:46-1 et seq. and N.J.A.C. 6A:14, Special Education.

"State debt service aid" means the amount of State aid determined pursuant to N.J.S.A. 18A:7G-9 for school bonds issued for school facilities projects approved by the Commissioner on or after July 18, 2000, in school districts that elect not to have the Development Authority or a redevelopment entity construct the project or that elect not to finance the project under N.J.S.A. 18A:7G-15; and the amount of State aid determined pursuant to N.J.S.A. 18A:7G-10 for school bonds or certificates of participation issued for school facilities projects approved by the Commissioner prior to July 18, 2000.

"State debt service aid percentage" means the district aid percentage or 40 percent, whichever is greater.

"State share" means as set forth in N.J.S.A. 18A:7G-3.

"State support" means the State share or State debt service aid.

“Temporary facility” means a facility used for educating students on a temporary basis while awaiting completion of a school facilities project that will permanently house students. It also means:

1. A facility reviewed and approved by the executive county superintendent and/or the Division as substandard prior to June 7, 2004, and a facility approved by the Division, as a temporary facility under the rules in effect on or after that date;
2. A facility not planned or constructed as a permanent school facility that is rented, leased, or otherwise acquired by a school district or a private school for the disabled for use by public school students; and

3. A temporary classroom unit, self-propelled van or other mobile unit, whether or not installed on a school district-owned school site.

"Total costs" means the final eligible costs plus excess costs, if any, for a school facilities project to be constructed by the Development Authority or a redevelopment entity or financed pursuant to N.J.S.A. 18A:7G-15; the total cost of the project as determined by the school district for a school facilities project not to be constructed by the Development Authority or a redevelopment entity or financed pursuant to N.J.S.A. 18A:7G-15, and the total costs of an other capital project as determined by the school district.

"Type I school district" means a school district established in a city, pursuant to N.J.S.A. 18A:9-2, where board members are appointed by the municipality, and where the governing body of the municipality issues school bonds for school district capital projects, pursuant to N.J.S.A. 18A:22-20 and 18A:24-11.

"Type II school district" means a school district established in a municipality other than a city, every consolidated school district, and every regional school district, pursuant to N.J.S.A. 18A:9-3, where board members are elected or appointed by the municipality, as applicable, and where the district board of education issues school bonds for school district capital projects in a school district without a board of school estimate, pursuant to N.J.S.A. 18A:24-12.

"Uniform Construction Code" or "UCC" means N.J.A.C. 5:23.

"Unhoused students" means the number of students in excess of the functional capacity of a school facility calculated pursuant to N.J.A.C. 6A:26-2.2(c).

"Useful life" means the applicable recovery period for depreciation purposes determined under Section 168 of the Internal Revenue Code of 1986, 26 U.S.C. § 168 as amended and supplemented, and the applicable regulations.

Subchapter 2. Long-Range Facilities Plans

6A:26-2.1 Responsibilities of school district

- (a) Following the approval of the 2005 LRFP, each school district shall amend its LRFP at least once every five years on software made available by the Department, and in accordance with the instructions for completing the software. For newly established school districts, the LRFP shall be submitted no later than one year following its formation or earlier if the school district seeks approval for a school facilities project. The LRFP shall detail the school district's school facilities, other facilities and temporary facilities and the school district's plan for meeting school facilities needs during the ensuing five years.
- (b) Except as provided in N.J.A.C. 6A:26-3.14, no school facilities project shall be considered or approved unless the school district's LRFP has been submitted to the Department and approved by the Commissioner.
- (c) Each school district shall submit its LRFP to the planning board(s) of the municipality(ies) in which the school district is situated, no later than the date the school district submits the LRFP to the Commissioner, to afford the planning board(s) the opportunity to prepare and submit findings to the school district. In the case of a regional school district, all municipalities comprising the regional school district shall be considered school districts in which the regional school district is situated for purposes of this subsection. A school district shall provide to the Division proof of the date the school district submits the LRFP to the Commissioner and to the planning board(s). The planning board(s) shall submit its findings, if any, to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500, within 45 days of its receipt of the LRFP. No LRFP shall be considered complete until comments have been received from the planning board(s) or until 45 days have passed

from the planning boards' receipt of the LRFP. If the school district or its architect receives the planning board findings, the findings shall be forwarded promptly to the Division at the above address.

- (d) All school districts sending students to another school district to be educated pursuant to N.J.S.A. 18A:38-8 et seq. shall expeditiously provide all information necessary for the receiving school district to complete its LRFP, including, but not limited to, demographic information necessary to prepare enrollment projections. Both sending and receiving school districts must submit a LRFP. If a send-receive relationship is terminated pursuant to N.J.S.A. 18A:38-21, both the sending and receiving school district shall promptly submit an amended LRFP.
- (e) If one or more member school districts withdraw from a regional school district operating pursuant to N.J.S.A. 18A:13-1 et seq., or the regional school district dissolves pursuant to N.J.S.A. 18A:13-51 et seq., all such withdrawing school districts and the regional school district, if applicable, shall submit an amended LRFP.
- (f) At any time, a school district may submit an amendment to an approved LRFP for review and approval by the Commissioner.
- (g) A school district's approved LRFP shall remain in effect until an amended LRFP is approved.

6A:26-2.2 Completion of long-range facilities plans

- (a) Each LRFP shall include:
 - 1. Enrollment projections for the school district for the five years covered by the plan, by grade level, as set forth in the Fall Survey Report for grades K through 12 and the ASSA for preschool programs, and utilizing enrollment figures as of October 15 of the previous year as the base enrollment figures. Students enrolled in the school district who are attending charter schools, students attending the schools of the school district pursuant to the school choice program, and students

enrolled in the school district but attending private schools for the disabled shall be separately identified in enrollment projections, and shall be excluded from the calculation of the number of unhoused students pursuant to (b) below.

- i. The enrollment figures shall be certified by a qualified demographer;
- ii. The resume and any other professional credentials relied upon by the school district to demonstrate that the person who prepared the enrollment projection possesses adequate experience to be considered a qualified demographer shall be submitted as part of the school district's LRFP. Adequate experience shall include preparation of enrollment reports and projections on behalf of school districts, both in fulfillment of statutory or regulatory obligations and for other purposes. School district employees, such as the chief administrator and school business administrator, as well as persons hired by a school district may, if they possess the requisite experience, serve as a qualified demographer;
- iii. Projections shall be for the five ensuing years utilizing a cohort survival method, shall utilize pertinent live births of residents of the community provided by the New Jersey Department of Health and Senior Services and shall include enrollment trends for the previous five years as set forth in the previous six Fall Survey Reports or ASSA, as appropriate;
- iv. Where a school district does not believe a five-year projection utilizing a cohort survival method will accurately predict future enrollment, the school district shall submit additional data and justification for consideration by the Commissioner;
- v. A school district shall adjust enrollment projections to account for significant numbers of students who are attending charter schools; and

- vi. ECPA school districts shall make appropriate adjustments to enrollment projections for preschool children based on the history of the actual enrollments in those programs and consistent with the school district's approved ECPA plan;
- 2. The functional capacity of every school facility in the school district, listed separately by facility and grade level, including an inventory of all spaces in each facility;
- 3. An inventory of every school facility, other facility and temporary facility in the school district.
 - i. If a school district shares or leases facilities or any portion thereof, either as a lessor or lessee, all such spaces shall be included in its LRFP.
 - ii. All facilities, or portions thereof, owned by a school district that are leased or otherwise conveyed to another entity shall be included if the facility, or portion thereof, will become available for use by the school district in the ensuing five years. Only the terms of leases currently in effect shall be considered when determining whether a space will be available to the school district in the ensuing five years.
 - iii. All facilities, or portions thereof, acquired by the school district through a leasehold agreement, or to which the school district is otherwise entitled to possession by any legal arrangement, shall be included for the period covered by the plan during which the school district is entitled to use of the facility;
- 4. An inventory of all school district-owned land, indicating whether used currently, previously, or never, as a school site, with a map of the school district indicating the location of all school district-owned land and the location of existing schools in the school district;

5. A listing of the approximate size and nature of any new sites that may be needed for school facilities projects set forth in the LRFP, listing the specific project(s) to be constructed on each site;
6. An inventory of all building systems within each facility, including structure, enclosure, mechanical, plumbing, interior walls and finishes and electrical systems;
7. A determination of the life expectancy of all building systems;
8. A determination of any building system deficiencies in each school facility and the required remediation;
9. The school district's proposed school facilities projects and other capital projects and preliminary scopes of work in the five years ensuing, setting forth each proposed new school facility, addition and renovation, including each separate space to be constructed or renovated (for example, classrooms, art and music rooms, cafeterias, gymnasiums), the functional capacity of each proposed school facility and the priority tier pursuant to N.J.S.A. 18A:7G-5(m), and all school facilities to be sold, converted to other non-school facility uses or razed;
10. The school district's proposed programmatic models for school facility types and capacities the school district intends to operate in the five years ensuing;
11. A comparison of the school district's proposed programmatic models with the facilities efficiency standards and identification of all types of spaces, sizes of spaces and number of spaces inconsistent with those standards. The school district shall note for all spaces that are inconsistent with the facilities efficiency standards whether it intends to seek a waiver of a facilities efficiency standard, locally fund the space, or seek approval for funding of additional space;
12. A comparison of the school district's programmatic models with the existing inventory and how the school district proposes to convert the existing inventory to the programmatic models;

13. The school district's proposed plans for new construction and renovation of other facilities in the five years ensuing, setting forth each proposed new other facility, addition and renovation, including each separate space to be constructed or renovated and all other facilities to be sold, converted to other non-school facility uses or razed;
 14. For each school facility set forth in the LRFP for which the school district is seeking approval of additional space or waiver of a facility efficiency standard to be approved as part of the LRFP, the school district shall submit documentation supporting the request in accordance with N.J.A.C. 6A:26-2.3(c);
 15. For each school facility to be replaced, a preliminary comparison of the cost of replacement of the school facility verses the cost to rehabilitate the school facility;
 16. Preliminary data to support each proposed new school facility or addition, renovation to an existing school facility and the removal from the school district's inventory of school facilities each school facility to be sold, converted to non-school facility use or razed;
 17. A preliminary estimate of the cost of every school facilities project set forth in the LRFP; and
 18. A district board of education resolution approving submission of the LRFP.
- (b) Each LRFP shall include a determination by the school district of the number of unhoused students for the ensuing five-year period calculated as follows:
1. The number of unhoused students shall be the number of FTE students projected to be enrolled in preschool disabled, preschool, kindergarten, grades one through 12 and special education student programs to be provided in the school district in the ensuing five years that exceed the functional capacity of the school district's current school facilities or school facilities that will be available within five years, including community provider facilities housing preschool students, excluding projects which have been approved pursuant to N.J.A.C. 6A:26-3. Projected

enrollments and functional capacity shall be separately determined for early childhood and elementary students (preschool through grade five), middle school students (grades six through eight) and high school students (grades nine through 12). For the purpose of calculating the school district's unhoused students, special education students shall be considered part of the grade level to which the students' chronological age corresponds. In the event approval is granted for a school facilities project which involves the construction of a new school facility to replace an existing school facility, the calculation of the number of unhoused students shall exclude the functional capacity of the facility to be replaced.

- (c) Approved area for unhoused students (AU) shall be determined according to the following formula: $AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$ where UEC, UE, UM, UH are the numbers of unhoused students in the early childhood, elementary, middle, and high school enrollment categories, respectively; and SEC, SE, SM, SH are the area allowances per FTE student in preschool and kindergarten, grades one through five, grades six through eight, and grades nine through 12, respectively. Area allowances shall be determined based on the grade level of a student regardless of the grade configurations of the school buildings of the school district. Gross square footage is to be used for these determinations.
- (d) An ECPA school district is encouraged to include one or more community provider early childhood education facilities projects, including projects of Head Start providers that qualify as community providers, as part of its LRFP. Superintendents are strongly encouraged to meet and collaborate with community early childhood education providers to meet the needs of unhoused students in the LRFP.
- (e) The school district shall incorporate the facilities efficiency standards in the LRFP.
 - 1. If the LRFP includes a proposal for new construction or rehabilitation of a school facility that does not meet the facilities efficiency standards, the school district

shall seek, as part of the LRFP approval, a waiver for those components that are not consistent with the standards.

2. If the LRFP includes a proposal for new construction pursuant to N.J.S.A. 18A:7G-7(a), or rehabilitation pursuant to N.J.S.A. 18A:7G- 7(b), of a school facility that exceeds the facilities efficiency standards, the school district may seek Commissioner approval of that additional space and, if approved, such space will be deemed eligible for State funding. If the school district does not seek Commissioner approval for the additional space, the school district shall state that fact in its submission and that space will be deemed ineligible for State support at the time of approval of the LRFP.

6A:26-2.3 Review and approval of long-range facilities plans

- (a) Within 90 days of receipt of a LRFP from a school district that has not previously submitted a LRFP, the Division shall determine whether the plan is fully and accurately completed and whether all information necessary to review the plan has been filed by the school district.
 1. When a LRFP is determined to be complete, the Division shall notify in writing the school district that the plan is deemed complete.
 2. When a LRFP is determined to be incomplete, the Division shall notify in writing the school district and require the submission of additional information as detailed in the notification. A school district shall submit the requested information. Only after the Division determines all requested information has been submitted and the information is accurate shall it determine a plan to be complete.
- (b) Within 60 days of the date of the notification that a plan is complete, the Commissioner shall notify the school district of the final determination of the LRFP. A final determination shall set forth:

1. Reasonable five-year enrollment projections;
 2. A complete facility inventory;
 3. A complete inventory of physical conditions/deficiencies of every facility;
 4. A listing of all school-district-owned land, and a listing of any new school sites needed for school facilities projects if identified by the school district;
 5. Spaces for which a waiver is approved pursuant to (e) below;
 6. Identification of school facilities for which new construction was proposed in lieu of rehabilitation and for which it appears from the information presented that new construction is justified but, for school facilities so identified, a feasibility study shall be submitted as part of the application for the school facilities project;
 7. A listing of all proposed new construction projects for unhoused students; and
 8. A listing of all proposed capital projects included in the LRFP.
- (c) A school district shall amend its approved LRFP whenever it seeks to undertake a capital project that is inconsistent with the approved LRFP in effect. The amendment request shall be accompanied by a district board of education resolution approving the submission of the LRFP amendment.
1. In the case of an emergent project, the LRFP may be amended as provided in N.J.A.C. 6A:26-3.14(e).
 2. In the case of a school facilities project requiring amendment to the school district's applicable approved room inventory in the approved LRFP, approval of the school facilities project shall require the prior approval of an amended room inventory. If amending the room inventory would affect the capacity of one or more of the school district's school facilities, the school district shall fully document the impact of amending the room inventory on each school facility in the school district, and Division review and approval of the LRFP amendment shall be required prior to Division approval of the school facilities project.

3. In the case of a school district seeking to amend its LRFP involving capital maintenance, the school district shall amend its LRFP by submitting an amendment request and updating the Department's software to:
 - i. Identify the building system or systems affected by the project;
 - ii. Revise building system conditions to reflect deficiencies;
 - iii. Indicate the deficient quantity and unit costs for the deficient system; and
 - iv. Commit the deficiency to a proposed project.
 4. Prior to approval of a project that is inconsistent with a school district's approved LRFP and that affects the capacity of one or more of its school facilities, or the total number or grade alignment of school facilities in the school district, a school district shall amend its LRFP to fully document the project's impact on each facility. The Division shall review and approve the LRFP amendment according to this section prior to the Division's approval of the project.
- (d) Notwithstanding any provision of this chapter to the contrary, if at any time the number of LRFPs pending before the Commissioner for review exceeds 20 percent of the total number of operating school districts in the State, the Commissioner may extend by 60 days the deadline for reviewing each plan then before him or her. The Commissioner shall notify in writing each affected school district of the extension. No LRFP shall be considered to be pending before the Commissioner for review until a school district is notified by the Commissioner that the plan is complete.
- (e) Any school district that has an approved LRFP may begin undertaking feasibility studies for new construction identified pursuant to (b)6 above, site acquisition, development, remediation and design work, and acquire temporary facilities, provided that such activities are consistent with its approved LRFP and this chapter. For school districts required to use the Development Authority, the activities also shall be undertaken under

the auspices of the Development Authority and in accordance with N.J.S.A. 18A:7G-5 and this chapter.

6A:26-2.4 (Reserved)

Subchapter 3. Capital Project Review

6A:26-3.1 Initiation of a capital project

- (a) All capital projects shall be undertaken in accordance with this subchapter.
- (b) School facilities projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.2 and 3.3; land acquisition projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.9 or 3.13 and 6A:26-7, as applicable; and other capital projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.12.
- (c) Project documents for school facilities projects and other capital projects shall be reviewed by the Division and approved for compliance with the requirements of N.J.A.C. 6A:26-5 as applicable.
- (d) Project documents for school facilities projects and other capital projects that involve the acquisition of land shall be reviewed for compliance with the requirements of N.J.A.C. 6A:26-7.
- (e) The Division shall review each capital project to determine whether the project is consistent with the school district's approved LRFP and whether it complies with the applicable room inventory in the approved LRFP, if any.

6A:26-3.2 School facilities projects

- (a) Any school district seeking to initiate a school facilities project shall apply to the Division on a Commissioner-provided form for approval of the school facilities project.
School facilities projects include:

1. New construction;

2. Rehabilitation, provided that the rehabilitation or capital maintenance consists of the entire building system in the same school facility building section, as building section is defined in the approved LRFP, unless one or more of the components of a mechanical, electrical, or plumbing building system is required for the continued operation of such system;
3. Acquisition of existing buildings to accommodate unhoused students;
4. Furnishings, fixtures, and equipment, but they shall be eligible for State support only as follows:
 - i. Furnishings with a useful life of 10 years or greater when part of a school facilities project is either new construction or rehabilitation and also qualified as reconstruction. The cost of furnishings shall not exceed the cost of the item if purchased through a State contract, if applicable. For purposes of this subsection, reconstruction is to be defined in accordance with the UCC, N.J.A.C. 5:23-6.3;
 - ii. Fixtures when part of a school facilities project;
 - iii. Equipment with a useful life of 10 years or greater either consisting of a school facilities project when it is an integral and substantial part of a building system in a school facility or when part of a school facilities project. The cost of equipment shall not exceed the cost of the item if purchased through a State contract, if applicable. Operating equipment such as vacuums, snowblowers, and floor polishers, along with repairs to such items shall be ineligible for State support;
 - iv. Air conditioning equipment with a useful life of 10 years or greater either consisting of a school facilities project when it is an integral and substantial part of a building system or when part of a school facilities project. If the school facilities project consists of new construction, the air conditioning

system shall be eligible for State support to the extent that it is included in the area cost allowance. If the school facilities project consists of rehabilitation that includes the replacement of an existing air conditioning system, the replacement shall be eligible for State support provided that it is for the entire building air conditioning system in the same school facility building section, as building section is defined in the approved LRFP, unless one or more of the components of that building system are required for the continued operation of such system. If the school facilities project consists of rehabilitation that includes the installation of a new air conditioning system, the new system shall be eligible for State support if it is for the entire building air conditioning system in the same school facility building section and for instructional spaces (excluding industrial shops) and/or for occupied non-instructional spaces (excluding kitchens and locker rooms). To the extent that a new air conditioning system is for unoccupied non-instructional spaces, such as utility rooms and storage rooms, except for spaces that accommodate heat- and humidity-sensitive equipment, it will not be eligible for State support; and

- v. Technology electronic systems recommended by the “Facilities Standards for Technology in New Jersey Schools” and the “Working Toward the Future With Our Children” educational technology plan for New Jersey, or subsequent State educational technology standards for New Jersey schools, when part of a school facilities project which is either new construction or rehabilitation that also qualifies as reconstruction as defined in the UCC, N.J.A.C. 5:23-6.3; and

- 5. The rehabilitation of a multi-purpose physical education field(s) and, for pre-school-through-grade-five school facilities, a playground with playground

equipment when required to support the New Jersey Student Learning Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model. A new multi-purpose physical education field or playground, including playground equipment is eligible for State support, within the area cost allowance only when part of a school facilities project consisting of new construction for unhoused students.

- (b) An application for a school facilities project shall contain the following information:
1. All information set forth in N.J.A.C. 6A:26-5.2 and 5.3 if the project is subject to educational adequacy review and, if not, any drawings or narrative relating to the project from a New Jersey licensed architect or professional engineer, if applicable, and, if the school facilities project includes the acquisition of land, N.J.A.C. 6A:26-7.1;
 2. Necessary updates to the enrollment projections in the school district's approved LRFP to support the project;
 3. A delineation and description of each of the functional components of the school facilities project;
 4. The number of unhoused students to be housed in the school facilities project;
 5. The minimum area allowances per FTE student as calculated pursuant to this chapter;
 6. A narrative description of the school facilities project on a form prescribed by the Commissioner, including an itemized breakdown of estimated actual costs and quantities by area for new construction, rehabilitation and acquisition of existing buildings;
 7. Identification of the site for new construction, if any;
 8. Identification and description of any spaces that exceed the facilities efficiency standards for which the school district received approval pursuant to the approved LRFP or is seeking approval as additional space pursuant to N.J.A.C. 6A:26-3.3;

9. A complete room inventory of the spaces contained in the building;
 10. A feasibility study for all new construction in lieu of rehabilitation;
 11. Identification of the programmatic model from the school district's approved LRFP and supporting documentation to confirm that the school facilities project conforms to the programmatic model;
 12. The tier the school district proposes for each school facilities project in accordance with N.J.S.A. 18A:7G-5(m);
 13. A resolution of the district board of education authorizing the submission of the application to the Division;
 14. A certification from the chief school administrator and the school business administrator that the school district has not advertised or awarded a construction or purchase contract for the school facilities project and that the school facilities project has not been completed; and
 15. Any additional information that a school district deems relevant for the Commissioner's review of the school facilities project.
- (c) Where required by N.J.S.A. 40:55D-31 and 18A:18A-16, each school district shall submit applications for school facilities projects to the planning board(s) of the municipality(ies) in which the school district is situated, no later than the date the school district submits to the Division each application to afford the planning board(s) the opportunity to prepare and submit findings to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500. A school district shall provide to the Division proof of the date that it submits each school facilities project application to the planning board(s). The planning board(s) shall submit to the Division findings, if any, within 45 days of its receipt of each project application from a school district required to use the Development Authority, and has an additional 10 days to file with the Division notice of recommendations against approval of the project. No school facilities project

application shall be considered complete until comments have been received from the planning board(s) or until either 45 days or 55 days, as applicable, have passed from the planning board's receipt of each school facilities project application, whichever is earlier. If the school district or its architect receives the planning board findings, it shall be forwarded promptly to the Division at the above address.

- (d) A school district shall not initiate a school facilities project without an approved LRFP.

6A:26-3.3 Review and approval of school facilities projects

- (a) After receipt of a school facilities project application, the Division shall assess the application and determine whether it is fully and accurately completed and all necessary information has been filed by the school district or the Development Authority on behalf of the school district. All information in N.J.A.C. 6A:26-3.2(b) must be provided to the Division before a school facilities project application shall be considered fully and accurately completed and the application shall be reviewed to determine whether it conforms to the school district's approved LRFP and whether it complies with the applicable programmatic model in the approved LRFP, if any, or the facilities efficiency standards. If a school facilities project application is determined to be incomplete, the Division shall inform the school district by listing in writing all deficiencies in the application and missing required information. After all required information is received and a school facilities project application is determined complete, the Division shall notify in writing the school district that the school facilities project application is deemed complete. In the case of a Development authority schools facility project, preconstruction activities shall be conducted prior to the application being deemed complete.
- (b) After approval of the LRFP, within 90 days of receipt of a complete school facilities project application, or from the date of the school district's last revision to the project application, whichever is later, the Division shall review each application to determine

whether the school facilities project is consistent with the school district's approved LRFP and whether it complies with the applicable room inventory in the approved LRFP, if any, or the facilities efficiency standards. If unable to make a decision within the 90 days, the Division shall notify the school district, explaining in writing the reason for the delay and indicating the date by which a decision shall be made. The decision date shall be no later than 60 days from the expiration of the original 90 days. If a decision is not made by the subsequent date established, the school facilities project shall be deemed approved.

- (c) When the Division determines that a school facilities project complies with the requirements of N.J.A.C. 6A:26-5.1 through 5.3, and is consistent with the facilities efficiency standards or the applicable room inventory in the school district's approved LRFP, if any, and does not exceed the standards or the applicable room inventory approved in the LRFP, except for spaces for which the school district is not seeking State support, the Division shall approve the school facilities project, provide a final determination of the preliminary eligible costs pursuant to the formulas set forth in N.J.S.A. 18A:7G-1 et seq. and N.J.A.C. 6A:26-3.4, and shall notify in writing the school district of the approval and preliminary eligible costs.
- (d) The Division shall notify the school district if it determines that a school facilities project is inconsistent with the facilities efficiency standards or the applicable room inventory in the approved LRFP. Within 30 days of the notification, the school district shall advise the Division of its determination to do one of the following:
 - 1. Revise its school facilities project and re-submit it for review by the Division;
 - 2. Make a request for additional space eligible for State support;
 - 3. Locally fund any excess costs; or
 - 4. Seek a waiver as set forth in (i) below.
- (e) The Division shall approve requests for additional or inconsistent space eligible for State support if the school district demonstrates that:

1. School facility needs related to programs required pursuant to State or Federal law or regulation cannot be addressed within the facilities efficiency standards and that all other spaces are consistent with the standards;
 2. Such spaces are necessary to comply with Federal or State laws concerning educating students with disabilities to the greatest extent possible in the same building or classes with their non-disabled peers and the additional or inconsistent spaces will:
 - i. Allow for the return of students with disabilities from out-of-school-district facilities;
 - ii. Permit the retention of students with disabilities who would otherwise be placed in out of school district facilities;
 - iii. Provide space for regional programs in a host school building that houses both disabled and non-disabled students; or
 - iv. Provide space for the coordination of regional programs by a county special services school district, educational services commission, jointure commission or other agency authorized by law to provide regional special education services, in a school facility that houses both disabled and non-disabled students;
 3. Such spaces are necessary to house the school district's central administration and:
 - i. The proposed administrative offices will be housed in a school facility;
 - ii. The existing central administrative offices are obsolete or it is more practical to convert those offices to instructional space; and
 - iii. The space sought does not exceed an increase of the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total school district school enrollment.
- (f) Spaces approved pursuant to (e) above shall be aided pursuant to N.J.S.A. 18A:7G-5.g(4).

- (g) When reviewing requests by SDA districts for additional space, the Commissioner shall, in accordance with *Abbott v. Burke*, 153 N.J. 480 (1998) (Abbott V), afford deference to a school district's determination that specialized instructional rooms are necessary based on the school district's particular needs.
- (h) If a request for additional space is determined to be eligible for State support, the applicable room inventory in the school district's approved LRFP shall be deemed amended. If the Division does not approve a request for additional space, it shall be deemed ineligible for State support unless and until the Division's decision is reversed on appeal.
- (i) The Division shall not approve any school facilities project for new construction or rehabilitation that is not consistent with the facilities efficiency standards or the applicable room inventory in the approved LRFP unless the school district demonstrates that waiver of the standard(s) will not adversely affect the facility's educational adequacy, including the ability to deliver the programs and services necessary to enable all students to achieve the New Jersey Student Learning Standards. If the Division approves a waiver, the applicable room inventory in the school district's approved LRFP shall be deemed amended. If the Division does not approve a waiver request, the school district shall conform the school facilities project to the facilities efficiency standards and resubmit the project.
- (j) School facilities projects that comprise new construction shall receive approval for State support only if necessary for reasons of unhoused students.
- (k) A school facilities project that consists of rehabilitation shall be approved only if it will keep the school facility functional for its original purpose or for a new purpose and if it can be accomplished without increasing the gross square footage of the original facility but shall not include any routine maintenance or required maintenance. The Division may approve rehabilitation projects that include elevators, egress, and other modifications to school facilities to render them compliant with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.,

the UCC, N.J.S.A. 52:27D-119 et seq. or other State and Federal requirements, even if the gross square footage of the building is thereby increased to complete the school facilities project.

- (l) All school facilities shall be deemed suitable for rehabilitation unless a feasibility study undertaken by the school district demonstrates to the Division's satisfaction that the structure might pose a risk to the safety of the occupants even after rehabilitation, or that rehabilitation is not cost-effective. Whenever a school district initiates a school facilities project for new construction in lieu of rehabilitation, the school district shall submit a feasibility study as part of the school facilities project application supporting its determination that it would be more feasible to replace rather than rehabilitate the school facility because of health and safety or efficiency. The feasibility study shall consist of:
 1. Estimated costs of repairing the existing school facility and providing upgrades and additions required to make the school facility educationally adequate. The estimated costs of a rehabilitation project shall contain only the costs necessary for compliance with the UCC, health and safety, and educational adequacy as determined pursuant to N.J.A.C. 6A:26-5 and N.J.S.A. 18A:7G- 5.g(1);
 2. Estimated costs of replacing the existing school facility, including site acquisition, if required, and disposal of the existing site and school facility; and
 3. Estimated costs of all extraordinary factors, including off-site improvements, environmental remediation and temporary facilities.
- (m) When a school district demonstrates to the Division's satisfaction that replacement is more feasible than rehabilitation and the proposed school facilities project is otherwise approvable, the Division shall approve the school facility project for new construction in lieu of rehabilitation, and the preliminary eligible costs shall be determined pursuant to N.J.A.C. 6A:26-3.4(a).

- (n) When a school district does not demonstrate to the Division's satisfaction that replacement is more feasible than rehabilitation, the Division may approve the school facilities project if all other requirements are met, but the preliminary eligible costs shall be determined in accordance with N.J.A.C. 6A:26-3.4(b).
- (o) If the Division determines that the preliminary eligible costs of a rehabilitation project, as determined pursuant to N.J.A.C. 6A:26-3.4(b), appear so excessive as to make rehabilitation an unreasonable option, it may direct the school district to conduct a study comparing cost and other factors associated with the rehabilitation versus new construction. If the Division determines that rehabilitation is an unreasonable option based on the comparison, the school district shall either re-submit the project as new construction or preliminary and final eligible costs shall be determined pursuant to N.J.A.C. 6A:26-3.4(a) if the school district determines to continue with the rehabilitation project.
- (p) Upon approval of a school facilities project and determination of the preliminary eligible costs pursuant to N.J.A.C. 6A:26-3.4, the Division shall notify the school district that the school facilities project has been approved and of the preliminary eligible costs, excess costs, and additional costs, if any.

6A:26-3.4 Calculation of preliminary eligible costs for school facilities projects

- (a) Upon approval of a completed school facilities project application, preliminary eligible costs for new construction, new construction in lieu of rehabilitation approved pursuant to N.J.A.C. 6A:26-3.3, and purchase of an existing facility to be utilized as a school facility shall be calculated as follows:

Preliminary eligible costs = AU x C

Where

AU is the approved area for unhoused students; and

C is the area cost allowance.

- (b) Preliminary eligible costs for rehabilitation or new construction in lieu of rehabilitation that is not approved pursuant to N.J.A.C. 6A:26-3.3 shall equal reasonable estimated actual costs as calculated on a form prescribed by the Commissioner, which shall include, but not be limited to:
1. Specific unit costs and quantities;
 2. Other allowable costs;
 3. The costs to render a school facility energy efficient;
 4. The costs to render a school facility compliant with the UCC;
 5. The costs to ensure that a school facility meets health and safety standards; and
 6. The costs to ensure that the school facility meets educational adequacy as determined pursuant to the facilities efficiency standards and N.J.A.C. 6A:26-5.
- (c) The reasonableness of estimated actual costs under (b) above shall be determined in accordance with industry standards.
- (d) Notwithstanding (a) and (b) above, preliminary eligible costs for new construction and rehabilitation of a purchased facility within five years of purchase shall be determined as follows:
- Preliminary eligible costs = $(ACP-PC) \times (C/CP)$
- where
- ACP is the preliminary eligible costs for the facilities purchased pursuant to (a) above;
- PC is the purchase cost for the facility;
- C is the area cost allowance at the time of application for the school facilities project; and
- CP is the area cost allowance at the time of purchase of the facility.
- Preliminary eligible costs so calculated shall not be less than zero.
- (e) For school facilities projects deemed approved pursuant to N.J.A.C. 6A:26-3.3(b), preliminary eligible costs for new construction shall be calculated by using the proposed

square footage of the school facility as the approved area for unhoused students, and for rehabilitation shall be the reasonable estimated costs of the rehabilitation.

- (f) Notwithstanding anything to the contrary, preliminary eligible costs for school facilities projects of county vocational school districts and of special services school districts shall equal the amount determined by the board of school estimate and approved by the board of chosen freeholders pursuant to N.J.S.A. 18A:46-42 or 18A:54-31, as appropriate.
- (g) Notwithstanding anything to the contrary, preliminary eligible costs for Development Authority school facilities projects shall equal the amount determined by the Development Authority pursuant to N.J.S.A. 18A:7G-5.

6A:26-3.5 Determination of final eligible costs for Authority school facilities projects

- (a) School facilities projects of SDA districts shall be constructed by the Development Authority.
- (b) After approving a project that shall be constructed by the Development Authority and calculating the preliminary eligible costs, the Division shall promptly prepare and submit to the Development Authority a preliminary project report that shall consist, in addition to any other information deemed relevant by the Commissioner, of the following information:
 - 1. A complete description of the school facilities project;
 - 2. The actual location of the school facilities project;
 - 3. The total square footage of the school facilities project together with a breakdown of total square footage by functional component;
 - 4. The preliminary eligible costs of the school facilities project;
 - 5. The project's priority ranking determined pursuant to N.J.S.A. 18A:7G-5(m);
 - 6. Any other factors to be considered by the Development Authority in undertaking the school facilities project; and
 - 7. The name, address, and phone number of the person from the school district to contact concerning the school facilities project.

- (c) If the Development Authority determines that a school facilities project can be completed within the preliminary eligible costs based on detailed plans and specifications, the final eligible costs shall be deemed to equal the preliminary eligible costs pursuant to EFCFA and the preliminary project report shall be deemed to be the final project report delivered to the Development Authority pursuant to N.J.S.A. 18A:7G-5(j).
- (d) In the event that the Development Authority determines that a school facilities project cannot be completed within the preliminary eligible costs, prior to the submission of its recommendations to the Commissioner, the Development Authority shall consult with the school district and the Commissioner and determine whether changes can be made to the school facilities project that will result in a reduction in costs while meeting the requirements of educational adequacy.
1. When the Commissioner is notified by the Development Authority that the Development Authority has determined that changes in the school facilities project are possible so the project can be accomplished within the scope of the preliminary eligible costs while still conforming to the facilities efficiency standards, the Division shall:
 - i. Calculate the final eligible costs to equal the preliminary eligible costs; and
 - ii. Issue a final project report to the Development Authority in accordance with (h) below.
 2. When the Development Authority has determined it is not possible to make changes in a school facilities project so it can be completed within the preliminary eligible costs either because the additional costs are the result of factors outside the control of the school district or because the additional costs are required to meet educational-adequacy requirements, the Development Authority will recommend to the Commissioner that the preliminary eligible costs be increased accordingly, whereupon the Division shall:

- i. Calculate the final eligible costs to equal the sum of the preliminary eligible costs plus the increase recommended by the Development Authority; and
 - ii. Issue a final project report in accordance with (h) below.
- 3. When the Development Authority has determined the additional costs are the result of factors within the school district's control or of design factors that are not required to meet the facilities efficiency standards, the Development Authority shall recommend to the Commissioner that the preliminary eligible costs be accepted, whereupon the Division shall:
 - i. Calculate the final eligible costs to equal the preliminary eligible costs unless the preliminary eligible costs are determined to be insufficient to meet the educational needs of the school district, in which case preliminary eligible costs shall be adjusted upward as appropriate, and specify the excess costs that shall be borne by the school district; and
 - ii. Issue a final project report to the Development Authority in accordance with (h) below.
- (e) For any school facility project to be constructed by the Development Authority in which the State share of final eligible costs is 100 percent, the Development Authority may delay the request for a determination of final eligible costs until receipt of the construction bids by the Development Authority.
- (f) After receipt by the Development Authority of a final project report, the school district shall be responsible only for the local share identified in the report, cost overruns relating to excess costs, if any, and the costs associated with changes, if any, made at the request of the school district to the scope of the school facilities project. If a school district fails to obtain approval of the local share within one year of the determination of the final eligible costs, the Development Authority may redetermine final eligible costs and forward them to the Commissioner for approval. If the Development Authority elects to

re-determine final eligible costs, the school district shall not seek or obtain approval of the local share until the final eligible costs are re-determined.

- (g) The Development Authority shall not commence the acquisition or construction of a school facilities project until the Division transmits to the Development Authority a final project report except as provided in N.J.A.C. 6A:26-3.9.
- (h) The final project report shall contain all of the information contained in the preliminary project report and also shall contain:
 - 1. The final eligible costs;
 - 2. The excess costs, if any;
 - 3. The total costs, which equal the final eligible costs plus excess costs, if any;
 - 4. The State share of the final eligible costs; and
 - 5. The local share of the total costs.

6A:26-3.6 Determination of final eligible costs for ROD school facilities projects

- (a) Prior to a determination of final eligible costs, a school district that is not using the Development Authority for construction of a school facilities project may appeal to the Commissioner for an increase in the preliminary eligible costs that were approved pursuant to N.J.A.C. 6A:26-3.3 if the detailed plans and specifications prepared in accordance with N.J.A.C. 6A:26-5.4 by a licensed architect or engineer for the school facilities project indicate that the cost of constructing the portion of the school facilities project approved for State support exceeds by 10 percent or more the preliminary eligible costs for the project as determined by the Commissioner. The school district shall file its appeal within 30 days of the preparation of the detailed plans and specifications.
- (b) The appeal shall outline the reasons why the preliminary eligible costs calculated for the school facilities project are inadequate, provide documentation to support such reasons, and estimate the amount of the adjustment that needs to be made to the preliminary

eligible costs. Upon a determination that the appeal information is complete, the Commissioner shall forward the appeal information to the Development Authority for its review and recommendation.

- (c) The Commissioner shall make a determination on the appeal within 30 days after receipt of the Development Authority's recommendation. If the Commissioner does not approve the adjustment to the preliminary eligible costs sought by the school district, the Commissioner shall issue in writing his or her findings setting forth the reasons for the denial and why the preliminary eligible costs as originally calculated, or an adjustment to the preliminary eligible costs that is smaller than sought by the school district, is sufficient.
- (d) A school district that decides not to appeal the determination of preliminary eligible costs may request, at any time after approval of the school facilities project and determination of preliminary eligible costs, that the Commissioner determine final eligible costs for the project.
- (e) Final eligible costs for the school facilities project shall be determined as follows:
 - 1. The preliminary eligible costs shall become the final eligible costs if a school district does not appeal or unsuccessfully appeals the determination of preliminary eligible costs.
 - 2. The final eligible costs shall be the preliminary eligible costs as adjusted by the Commissioner if a school district successfully appeals the determination of preliminary eligible costs pursuant to (b) above. In no case shall the adjustment to preliminary eligible costs be more than 10 percent.
- (f) Following the determination of final eligible costs, the Division shall notify in writing the school district of the following:
 - 1. The final eligible costs;
 - 2. The total costs;
 - 3. The State share or State debt service aid percentage;
 - 4. The local share, if applicable;
 - 5. Excess costs, if any; and

6. Additional costs, if any.
- (g) A school district shall not seek approval of the local share or the total costs of a school facilities project receiving State debt service aid through a bond referendum for the school facilities project until the Division has notified the school district of the final eligible costs for the project. A school district may seek approval of the estimated local share in its annual budget prior to a determination of final eligible costs. If the local share estimate in the annual budget is less than the actual local share, the school district shall proceed in accordance with N.J.A.C. 6A:26-4. A school district may seek approval of local share utilizing capital reserve pursuant to N.J.A.C. 6A:23A-14.

6A:26-3.7 Local support of school facilities projects

- (a) No school facilities project shall be constructed unless local support, if any, plus other local revenue sources utilized to fund the total costs of a school facilities project receiving State debt service aid has received approval as set forth in this section. School districts shall notify the Commissioner and executive county superintendent when approval is obtained, and, if applicable, provide each the schedule for issuance of school bonds. School districts shall also notify the executive county superintendent of the issuance of school bonds within 30 days of their issuance.
- (b) If the Development Authority is constructing the school facilities project, the school district shall provide to the Development Authority funds for 100 percent of the ineligible costs of the project in accordance with the rules of the Development Authority.
- (c) If the school district determines to issue school bonds to fund all or any part of the local support, the school district shall proceed in accordance with (e), (f), or (g) below, as applicable. If the school district determines to fund the entire local support through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate voter or board-of-school-estimate approval of the expenditure of

local support, make withdrawals from capital reserve in accordance with N.J.A.C.

6A:23A-14. A school district may fund the local support for additions or improvements to an existing school facility or equipment through a lease-purchase agreement not in excess of five years' duration if the school district obtains approval of the lease-purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.

- (d) If a school district submits to voters a separate proposal for local funding for a non-referendum capital project pursuant to N.J.S.A. 18A:7F-5 and N.J.A.C. 6A:23A-8.4, such amounts shall not be utilized as the local share or to reduce the total costs of a school facilities project receiving State debt service aid of a school facilities project.
- (e) Whenever the district board of education in a Type I or Type II school district having a board of school estimate determines it is necessary to sell school bonds to raise money for the local support for any school facilities project approved pursuant to EFCFA and these regulations, it shall estimate by resolution the amount necessary to be raised for school facilities project(s) and itemizing the estimate to make it readily understandable. The secretary of the district board of education shall certify to each member of the school district's board of school estimate a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds; the final eligible costs of the school facilities project as approved by the Commissioner; the total costs; the State share or State debt-service-aid percentage; the local share, if applicable; and the excess costs, if applicable. If the district board of education determines to use a combination of school bonds and other revenue sources, the resolution shall also include the portion of the local share or total costs of a school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from it. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.

(f) Whenever a school facilities project(s) to be paid for from school bond proceeds is submitted to the voters of a Type II school district an annual or special school election for their approval or disapproval, the district board of education shall frame and adopt the question(s) to be submitted so each school facilities project is submitted as a separate question, or so all or any number of them are submitted in one question, which shall state the school facilities project(s) submitted and the amounts to be raised for each of the school facilities projects separately submitted or for each or all of the school facilities projects jointly submitted, as the case may be, but any proposal for land purchase shall be sufficient to authorize the taking and condemning of the land. If the district board of education determines to use a combination of school bonds and other revenue sources, the question shall also include the portion of the local share or total costs of a school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from it. Gifts, grants, private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.

1. If the school facilities project is to be constructed by the Development Authority or a redevelopment entity, or by the school district with a grant pursuant to N.J.S.A. 18A:7G-15, the single-question referendum shall request approval for the local share and shall disclose the amount needed to be raised by school bonds, the final eligible costs of the school facilities project as approved by the Commissioner, the State share, the total costs, and the excess costs, if any.
2. If the school facilities project is not to be constructed by the Development Authority or a redevelopment entity or by the school district with a grant pursuant to N.J.S.A. 18A:7G-15, the single-question referendum shall request approval for the total costs of the school facilities project, disclose the amount needed to be

raised by school bonds, the State debt-service-aid percentage, the final eligible costs, and the excess costs, if any.

i. The State debt-service-aid percentage shall be stated as a percentage of the annual debt service of the final eligible costs.

3. When a school facilities project is framed in more than one question, the explanatory statement accompanying the questions shall include a summary that lists the total costs of the project; the State share or the State debt-service-aid percentage; the final eligible costs of the project; the local share, if applicable; excess costs; and the revenue source for the local share or total costs of a school facilities project receiving State debt service aid.

4. The statement of excess costs in any ballot question and in any explanatory statement that accompanies a ballot question shall describe the excess costs as follows: "This school facilities project includes (insert amount) for school facility construction elements in addition to the facilities efficiency standards developed by the Commissioner of Education, or that are not otherwise eligible for State support pursuant to N.J.S.A. 18A:7G-5(g)".

(g) Whenever a State-operated school district determines it is necessary to sell school bonds to raise money for any school facilities project approved pursuant to EFCFA and this subchapter, it shall estimate the amount necessary to be raised for the school facilities project(s), itemizing such estimate to make it readily understandable. The State school district superintendent shall certify to each member of the school district's capital project review board a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds; the final eligible costs of the school facilities project as approved by the Commissioner; the total costs; the State share or the State debt-service-aid percentage; the local share, if applicable; and the excess costs, if any. The capital project review board shall review the project in accordance with N.J.S.A. 18A:7A-46.2. If the

school district determines to use a combination of school bonds and other revenue sources, the question shall also include the portion of the local share or total costs of the school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.

- (h) A school district, other than a State-operated school district, that sought and failed to receive approval pursuant to N.J.S.A. 18A:7G-11 of a school facilities project that did not have excess costs, and sought and failed within the three years prior but after July 18, 2000, to receive approval of the same school facilities project, with or without excess costs, may file a petition with the Office of Controversies and Disputes, in conformance with N.J.A.C. 6A:3-1.4 and the procedures in this subsection, to request that the Commissioner approve the school facilities project and authorize the issuance of school bonds for the local share of the school facilities project. Pursuant to N.J.S.A. 18A:7G-12, a State-operated school district may not use the process set forth in this paragraph but shall instead use the process established by N.J.S.A. 18A:7A-46.2 to undertake a school facilities project.

- 1. A petition filed pursuant to this subsection shall be captioned In the Matter of the Application of the Board of Education of the (Township, Borough, etc.) of (School district), (Name) County, for an Order Directing Issuance of Bonds Pursuant to N.J.S.A. 18A:7G-12 and shall:

- i. Briefly set forth the basis for the school district's appeal, including: an explanation of how each school facilities project proposed in the petition meets the statutory requirements that the school district has failed to obtain approval of the local share of the school facilities project(s) within the three years prior to the latter of such failures; the latter failure was for a school

- facilities project(s) without excess costs as defined in N.J.A.C. 6A:26-1.2; and why the requested school facilities project(s) is necessary for the provision of a thorough and efficient system of education in the school district;
- ii. Be accompanied by a district board of education resolution approving the school district's appeal, documentation of the failed referenda underlying the appeal and a verification as set forth in N.J.A.C. 6A:3-1.4; and
 - iii. Be filed in triplicate (original and two copies).
2. The review, public comment, and hearing process regarding the petition shall be as follows:
- i. A conforming petition and supporting materials filed pursuant to (h)1 above shall be forwarded to the Division, which shall review the record for completeness and solicit such documentation from the school district as may be necessary to ensure the petition's consistency with the threshold statutory criteria as set forth in (h)1 above. Once the record is determined to be complete, the Division shall return to the Office of Controversies and Disputes the record with a written report of its review. The Division also shall provide to the school district a copy of its written report;
 - ii. Upon receipt of a completed record from the Division, the Office of Controversies and Disputes shall notify the district board of education that it has met the prerequisites for seeking an order of the Commissioner directing issuance of school bonds for the local share of the school facilities project(s) and shall direct the school district to:
 - (1) Announce at a district board of education meeting to occur by a specified date that interested persons may submit written comments to the Commissioner through the Office of Controversies and Disputes, in duplicate and no more than 10 pages in length, and a copy to the district board of education;

- (2) Publish by the date specified and in a minimum of two newspapers, one local and one Statewide, notice of the opportunity for the public to file such comments. Both the announcement and published notice shall identify clearly the school facilities projects; the amount of school bonds the school district seeks to issue; the fact that the voters previously rejected referenda seeking the issuance and the number of such rejections; and the purpose of the school district's appeal to the Commissioner; and
 - (3) File with the Office of Controversies and Disputes a sworn certification that the required announcement was made and the required notice was published.
- iii. Upon receipt of the required certification from the school district and expiration of the public comment period pursuant to (h)2ii above, the Commissioner shall arrange for an evidentiary hearing in accordance with the following procedures:
 - (1) The Commissioner may either request that the Director of the Office of Administrative Law assign an administrative law judge to conduct the matter as an uncontested case pursuant to N.J.S.A. 52:14F-5(o) or arrange for assignment of a hearing officer to conduct the matter on behalf of the Department;
 - (2) Written notice of the hearing date(s) shall be sent to the district board of education and its legal representative;
 - (3) The district board of education shall effectuate notice to interested persons by announcing the hearing date at a district board of education meeting prior to the hearing date, and shall publish same in a minimum of two newspapers, one Statewide and one local,

with a minimum of 20 days' notice provided through both means, and with proof of both the announcement and the publication to be submitted to the assigned judge or hearing officer;

- (4) The hearing shall be conducted on an expedited basis and, to the extent possible, at a location close to the school district;
- (5) Interested persons shall be provided with a reasonable amount of time, as determined by the assigned judge or hearing officer, to present comments without unduly prolonging proceedings; and
- (6) The district board of education shall present, in a manner to be determined by the assigned judge or hearing officer, proofs as to why the school facilities project(s) for which it seeks to issue school bonds are necessary for provision of a thorough and efficient system of education in the school district.

3. Following review of the report and recommendation issued by the Office of Administrative Law pursuant to N.J.A.C. 1:1-21.5 or prepared by the assigned hearing officer in a manner consistent with N.J.A.C. 1:1-21.5, the Commissioner shall make in a written decision a final determination taking into consideration the report's recommended findings of fact and conclusions of law.

- i. Within 13 days of the date the report was mailed to the district board of education, or such longer period as may be requested by the school district and granted by the Commissioner, the school district may file with the Office of Administrative Law comments on the report and recommendation.

4. If the Commissioner finds that the school facilities project(s) is necessary for the provision of a thorough and efficient system of education in the school district, the written ordering decision shall authorize the district board of education to prepare to issue school bonds once the Division has approved the final eligible

costs of the school facilities project(s) pursuant to N.J.A.C. 6A:26-3.5 and to submit to the Division detailed plans and specifications, or if unavailable, the most complete documentation on the project.

- i. The Division shall then issue a preliminary project report and transmit the documentation to the Development Authority for purposes of a Development Authority recommendation of the final eligible costs of the school facilities project(s), pursuant to N.J.A.C. 6A:26-3.5.
 - ii. If the Development Authority has the detailed plans and specifications and/or documentation sufficient to make a recommendation of the final eligible costs of the project(s), the recommendation shall be forwarded to the Division. If the plans for the school facilities project(s) do not meet the criteria for detailed plans and specifications, the additional design work shall be funded so a final-eligible-cost recommendation can be made to the Division. The local share shall be adjusted to reflect the Development Authority's funding of the additional design work.
 - iii. Once the Commissioner approves the final eligible costs of the school facilities project(s) and issues to the Development Authority a final project report, the Commissioner shall approve the school facilities project(s) without excess costs and authorize the issuance of school bonds to fund the local share.
5. In addition to the amount of taxes determined by the legal voters of the school district at the annual school election, the district board of education secretary shall certify the amount required for the repayment of the interest and principal of the school bonds required to fund the local share approved by the Division in the same manner required for interest and debt-redemption charges pursuant to N.J.S.A. 18A:22-33. The amount certified shall be included in the taxes assessed, levied, and collected in the municipality(ies) comprising the school district.

6. Any school facilities project authorized pursuant to this subsection shall be constructed by the Development Authority pursuant to N.J.A.C. 6A:26-3.9.
- (i) Any ROD included in district factor group A or B as of July 18, 2000 may apply to the Commissioner for 100 percent State share of final eligible costs of a school facilities project in the event the school district is having difficulty financing the local share or the total costs of a school facilities project receiving State debt service aid. To receive from the Commissioner a recommendation for 100 percent State share of final eligible costs, a school district shall submit documentation demonstrating that:
 1. It sought approval of a school facilities project that did not have excess costs, and failed to receive such approval, and previously sought and failed to receive approval of the same school facilities project, with or without excess costs and:
 - i. The budget equalized tax rate of the school district is at least 130 percent of the State average; or
 - ii. The equalized municipal tax rate is above the State average; and
 2. The school facilities project is necessary for the provision of a thorough and efficient system of education in the school district.
- (j) Upon review of the application, the Commissioner shall determine whether to recommend to the Legislature that the school district receive 100 percent State share of the final eligible costs of the project. A school district will receive 100 percent State share only if the Legislature so determines upon receipt of the Commissioner's recommendation.
- (k) All school facilities projects approved pursuant to (i) and (j) above shall be constructed by the Development Authority pursuant to N.J.A.C. 6A:26-3.9. Final eligible costs of the project shall be determined in accordance with N.J.A.C. 6A:26-3.5 prior to the Development Authority undertaking construction of the school facilities project.

6A:26-3.8 Determination of State support for school facilities projects

(a) State support for school facilities projects shall be determined as follows:

1. State debt service aid for projects approved on or after July 18, 2000, shall be calculated as follows:

Aid is the sum of A for each issuance of school bonds issued for a school facilities project approved by the Commissioner on or after July 18, 2000, where:

$$A = B \times AC/P \times DAP \times M, \text{ with } AC/P = 1$$

whenever AC/P would otherwise yield a number greater than one, and where:

B is the school district's debt service for the individual issuance for the State fiscal year;

AC is the preliminary eligible costs determined pursuant to section 7 of EFCFA;

P is the principal of the individual issuance plus any other funding sources approved for the school facilities project;

DAP is the district aid percentage as defined pursuant to N.J.S.A. 18A:7G-3, except that DAP shall not be less than 40 percent and, for county special services school districts, DAP is that of the county vocational school district in the same county; and
M is a factor representing the degree to which a school district has fulfilled maintenance requirements for a school facilities project, and shall be 1.0 except when a different maintenance factor is required by N.J.S.A. 18A:7G- 9.

2. State debt service aid for school facilities projects approved prior to July 18, 2000, shall be calculated as follows:

Aid is the sum of A where

$$A = B \times CCSAID/TEBUD \text{ and where}$$

B is the school district's total debt service or lease purchase payment for the individual issuance for the State fiscal year;

CCSAID is the school district's core curriculum standards aid amount determined pursuant to N.J.S.A. 18A:7F-15; and

TEBUD is the school district's T & E budget determined pursuant to N.J.S.A. 18A:7F-13.

For county special services school districts, CCSAID/TEBUD shall be that of the county vocational school district in the same county.

3. The amount of a grant shall be determined as follows:

i. The State share payable to the school district shall equal the product of the school facilities project's final eligible costs and the district aid percentage or 40 percent, whichever is greater. The Development Authority shall provide grant funding for the State share pursuant to an agreement between the school district and the Development Authority, which shall set forth the terms of disbursement of the State share in addition to other terms and conditions.

(1) All grants and the corresponding local share shall be accounted for separately by project in the capital projects fund in accordance with N.J.A.C. 6A:26-4;

(2) Local share budgeted in capital outlay shall be transferred to the capital projects fund upon execution of the grant agreement with the Development Authority. Any unexpended transferred capital outlay funds remaining after completion of the school facilities project shall be transferred to the general fund in the current year or reserved and designated in the subsequent year's general fund budget.

6A:26-3.9 Design and construction of Development Authority school facilities projects

(a) The Development Authority shall design and construct school facilities projects in accordance with EFCFA and the Development Authority's rules.

1. The Commissioner shall develop an educational facilities needs assessment for each SDA district. The assessment shall be updated periodically by the

Commissioner in accordance with the schedule the Commissioner deems appropriate for the school district; except that each assessment shall be updated at a minimum within five years of the development of the school district's most recent prior educational facilities needs assessment.

2. The assessment shall be transmitted to the Development Authority to be used to initiate the planning activities required prior to the establishment of the educational priority ranking of school facilities projects pursuant to this subsection.
3. Following the approval of an SDA district's LRFP or of an amendment to the plan, but prior to authorization of preconstruction activities for a school facilities project included in the plan or amendment, the Commissioner shall establish in consultation with the SDA district an educational priority ranking of all school facilities projects in the SDA district based upon the Commissioner's determination of critical need in accordance with priority project categories developed by the Commissioner. The priority project categories shall include, but not be limited to, health and safety; overcrowding in the early childhood, elementary, middle, and high school grade levels; spaces necessary to provide in-district programs and services for current disabled students who are being served in out-of-district placements or in-district programs; and services for the projected disabled student population, rehabilitation and educational adequacy.
4. In consultation with the Commissioner, SDA districts, and the governing bodies of the municipalities in which the SDA districts are situated, the Development Authority shall establish a Statewide strategic plan pursuant to N.J.S.A. 18A:7G-5.m to be used in the sequencing of SDA district school facilities projects based upon the projects' educational priority rankings and issues that impact the Development Authority's ability to complete the projects.

- (b) To advance a school facilities project, a school district that is required to use the Development Authority and has an approved LRFP may request the initiation of preconstruction activities in connection with a school facilities project identified as a priority project in the Statewide strategic plan, provided that such activities are consistent with its approved LRFP and are undertaken under the auspices of the Development Authority.
1. School districts shall submit to the Division a preconstruction application setting forth all preconstruction activities - including feasibility studies, remediation, site development, demolition, design work, acquisition of and design work for temporary facilities, and acquisition of land - that need to be undertaken prior to submission of a school facilities project application. The Division shall review each application for consistency with the educational priority ranking, the Statewide strategic plan, and the approved LRFP. If the Division authorizes the Development Authority to undertake preconstruction activities, it shall forward the application to the Development Authority, which shall undertake such activities pursuant to procedures developed by the Development Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for a State share.
 2. For school districts in which the State share of final eligible costs of a school facilities project is 100 percent, the Development Authority shall provide the funding for these preconstruction costs.
- (c) A school district that is required to use the Development Authority shall seek approval from the Commissioner to acquire land pursuant to N.J.A.C. 6A:26-7. The Commissioner may approve the land purchase if the site is capable of supporting the applicable school facility in the approved LRFP. If the Commissioner approves the request, he or she shall notify the school district and the Development Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed

eligible for a State share. For school districts in which the State share of eligible costs for the school facilities projects is 100 percent, the Development Authority shall provide the funding for the cost of the land if approved by the Commissioner and the Development Authority.

- (d) The Development Authority shall submit detailed plans and specifications to the Department for review and approval pursuant to N.J.A.C. 6A:26-5.4. If the final plans and specifications prepared by the Development Authority change the number, size, location, configuration or use of educational spaces as set forth in the detailed plans and specifications required by N.J.A.C. 6A:26-5 submitted to the Department when a school facilities project was approved, the Development Authority shall submit the final plans and specifications to the Department for review and approval pursuant to N.J.A.C. 6A:26-5. For purposes of N.J.A.C. 6A:26-5.5, the detailed plans and specifications submitted by the Development Authority shall constitute final plans and specifications.
- (e) For all school facilities projects constructed by the Development Authority, or which the school district is constructing under delegation of the Development Authority pursuant to N.J.S.A. 18A:7G-13(a), the Development Authority shall notify the Department of any change order affecting the number, size, location, configuration or use of educational spaces and submit the change order to the Department for review and approval.
- (f) The Development Authority shall provide to the Division a copy of the final plans and specifications utilized when soliciting bids for a school facilities project and certify that no changes affecting educational adequacy were made between the detailed plans and specifications, and the final plans and specifications.
- (g) Upon completion of a school facilities project by the Development Authority, the school district shall submit to the Commissioner and the Development Authority a plan for school facility maintenance in accordance with N.J.A.C. 6A:26-20.

6A:26-3.10 Design and construction of ROD school facilities projects

- (a) The provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and implementing rules are applicable to any school facilities project constructed by a school district.
- (b) Prior to UCC approval for construction of a school facilities project, a school district shall submit to the Division the final plans and specifications for final approval pursuant to N.J.A.C. 6A:26-5.4.
- (c) Upon completion of a school facilities project by a school district, the school district shall submit to the Commissioner a plan for school facility maintenance in accordance with N.J.A.C. 6A:26-20. All plans shall include a provision for a maintenance reserve fund. All maintenance reserve funds created in accordance with N.J.A.C. 6A:26-20 shall be funded annually with two-tenths of one- percent of the net replacement cost of the school facility, which shall be included in the annual budget of the school district. The monies in the maintenance reserve fund may be withdrawn at any time during the year to fund the maintenance mandated by N.J.A.C. 6A:26-20. The net replacement cost of the school facility shall equal the area cost allowance multiplied by the gross square footage of the building.

6A:26-3.11 Initiation of other capital projects

- (a) Other capital projects shall be reviewed by the Division based on the following criteria:
 - 1. Whether they are consistent with the school district's approved LRFP;
 - 2. The total amount of funds the school district intends to expend to complete the other capital project;
 - 3. The type of facility to be constructed; and
 - 4. Whether the facility, if it is to house students, conforms to educational adequacy requirements at N.J.A.C. 6A:26-5.2.
- (b) Other capital projects that require educational adequacy reviews are subject to the provisions of N.J.A.C. 6A:26-5. Land acquisition projects shall be reviewed pursuant to

N.J.A.C. 6A:26-7. Other capital projects shall conform to all other applicable statutes and regulations, including N.J.S.A. 18A:18A-1.1 et seq.

- (c) A school district may annually transfer by district board of education resolution an unbudgeted fund balance up to one percent of the school district's annual budget certified for taxes or \$50,000, whichever is higher, to capital outlay to fund other capital projects, except land acquisition projects, that received approval in accordance with (a) and (b) above. Once it exceeds the annual maximum-transfer amount, the school district shall receive approval for local funding for other capital projects as set forth below.

1. If the school district determines to issue school bonds to fund all or any part of the local funding, the school district shall proceed in accordance with (c)2 or 3 below, as applicable, and (c) 4 below. If the school district determines to fund the entire local funding through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate approval of the expenditure of local funds, and make withdrawals from capital reserve in accordance with N.J.A.C. 6A:23A-4.1. A school district also may fund the local funding for additions or improvements to an existing facility or equipment through a lease-purchase agreement not in excess of five years' duration if the school district obtains voter or board of school estimate approval of the lease-purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.
2. Whenever the district board of education in a Type I or Type II school district having a board of school estimate shall determine it is necessary to sell school bonds to raise money for the local funding for an other capital project, it shall estimate by district board of education resolution the amount necessary to be raised for such other capital project(s), itemizing the estimate to make it readily understandable. The district board of education secretary shall certify to each member of the school district's board of school estimate a copy of the resolution.

The resolution shall include the amount needed to be raised by school bonds. If the board determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of the local funding to be raised through other funding sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.

3. Whenever the undertaking of an other capital project(s) to be funded by the proceeds of a school bonds issue is to be submitted to voters of a Type II school district at an annual or special school election for their approval, the district board of education shall frame and adopt the question(s) to be submitted so each other capital project is submitted as a separate question, or all or any of them are submitted as one question. The question shall state the other capital project(s) submitted, and the amounts to be raised for each other capital projects separately submitted or for each or all other capital projects jointly submitted, as the case may be. Any proposal for the purpose of land shall be sufficient to authorize its taking and condemning. If the district board of education determines to use a combination of school bonds and other funding sources, the question shall also include the portion of the local funding to be raised through other funding sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.
4. Whenever a State-operated school district shall determine it is necessary to sell school bonds to raise local funding for an other capital project, the school district shall estimate the amount necessary to be raised for the other capital project(s),

itemizing the estimate to make it readily understandable. The State school district superintendent shall certify to each member of the school district's capital project review board a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds. The Capital Project Review Board shall review the project in accordance with the procedures in N.J.S.A. 18A:7A-46.2. If the school district determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of local funding to be raised through other funding sources, listing separately each source and amount from that source. Gifts, grants, and other private taxpayer sources, along with municipal surplus, shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.

5. If the school district issues school bonds for an other capital project under (c)2, 3, or 4 above, the resolution or question to the voters shall specifically state that the other capital project is not eligible for State support. In the case of a school facilities project for which a school district determines not to seek State support, the resolution or question shall state as follows: "The other capital project to be funded herein was potentially eligible for State support, in whole or in part, at a minimum amount of 40 percent for eligible components of the project. However, (add name of school district) determined not to seek State support for this other capital project." If a school district has not received approval of its LRFP, the school district shall submit a request to amend its LRFP to include the other capital project. Approval of the amendment shall be required prior to the review of the other capital project.

6A:26-3.12 Acquisition of land by school districts

- (a) Every acquisition of land, whether by purchase, condemnation, or by gift or grant, to be used as a school site shall comply with N.J.A.C. 6A:26-7 and receive approval thereunder.
- (b) School districts may seek to acquire land as part of a school facilities project or prior to approval of a school facilities project. If approval for land acquisition is sought prior to approval of a school facilities project and the school facilities project is subsequently approved, such school facilities project shall be deemed to have included the land acquisition.
- (c) Every land acquisition shall be approved by voters or the board of school estimate, unless otherwise provided in (c)1 through 3 below:
 - 1. If a school district intends to utilize school bonds to acquire the land prior to the approval of a school facilities project, the request for local-debt authorization shall state that the school bonds proceeds will be utilized to acquire land to be used for a school facilities project identified in the approved LRFP, and that the availability of State support for such a school facilities project will not be determined unless and until the school facilities project is submitted and approved as eligible for State support pursuant to EFCFA and this subchapter. School districts may also seek to acquire land as part of an other capital project or prior to its review and approval, if any.
 - 2. If a school district intends to utilize funds in its capital reserve account to fund an acquisition of land for a school facilities project in its approved LRFP, voter approval of the withdrawal from capital reserve is not required if the appropriation to the capital reserve account for the acquisition of land receives voter approval pursuant to N.J.A.C. 6A:23A-14.1.
 - 3. If a school district utilizes funds other than school bonds or funds from the capital reserve account to acquire the land, except for gifts, grants, other private sources, and

municipal surplus, the school district shall include as a line item in its annual school budget submitted to the voters the appropriation of funds for the land acquisition.

- i. An approved line-item appropriation for the acquisition of land in the annual budget certified for taxes shall not become part of the pre-budget-year net budget for purposes of calculating the spending-growth limitation of the subsequent year pursuant to N.J.S.A.18A:7F-1 et seq. Unused spending authority calculated pursuant to N.J.A.C. 6A:23A-10.3 that is created by such appropriation shall not be considered unused spending authority available to a district board of education in the next two budget years.

6A:26-3.13 Review, approval, and use of temporary facilities

- (a) As part of a school facilities project, a school district may propose providing temporary facilities pending the construction of a school facilities project either by the Development Authority or the school district. A school district may also propose providing temporary facilities not as part of a school facilities project and, therefore, to be locally funded as an other capital project. An approved private school for the disabled may also propose to provide temporary facilities, which are not part of a school facilities project and shall be reviewed as an other capital project.
- (b) All temporary facilities shall be approved by the Division pursuant to this section and, if housing students, pursuant to the educational adequacy requirements at N.J.A.C. 6A:26-5.4(c) and the temporary facility standards at N.J.A.C. 6A:26-8.
 1. If an SDA district seeks approval of a temporary facility and it is part of a school facilities project, and if approval is sought prior to the school facility project's approval, it shall submit to the Division a preconstruction application referencing the acquisition of a temporary facility (including related design work), pursuant to N.J.A.C. 6A:26-3.9.

- i. If the SDA district seeks approval of a temporary facility prior to approval of a school facilities project, the school district or the Development Authority on behalf of the school district, shall submit an application for approval of the temporary facility pursuant to this section. The Division shall then make a determination on the temporary facility, and notify both the school district and the Development Authority. When the SDA district later submits an application for the related school facilities project, the temporary facility submission shall be deemed to be included in the application. The preliminary eligible cost and final eligible cost determinations shall incorporate the eligible costs of the temporary facility.
- ii. If the SDA district seeks approval of a temporary facility at the time it seeks approval of a school facilities project, the school district, or the Development Authority on behalf of the school district, shall submit an application for approval of the temporary facilities pursuant to this section. The temporary facility cost estimate for the estimated actual costs of the temporary facility shall be included in the cost estimate for the school facilities project. The project and preliminary eligible cost, land, and educational adequacy determinations shall occur at the same time as its temporary facility determination pursuant to this section.
- iii. If the SDA district, or the Development Authority on behalf of the SDA district, seeks approval of a temporary facility after the time it seeks approval of a school facilities project, the cost estimate for estimated actual costs of the temporary facility shall be added to the cost estimate for the school facilities project, and the temporary facility determination shall occur after the project and preliminary eligible cost determinations are made by the Division.

2. If a ROD seeks approval of a temporary facility that is part of a school facilities project, the ROD shall engage an architect to undertake the design work required for the temporary facility to be approved as part of a school facilities project.
 - i. If the school district seeks approval of a temporary facility prior to approval of a school facilities project or at the time it seeks approval of a school facilities project, the school district shall submit an application for temporary facility approval, including a cost estimate for the temporary facility based on its estimated actual costs. A temporary facility approved prior to the approval of a school facilities project shall be funded locally. Once the project has been approved, the school district shall receive credit toward the local share of its final eligible costs, pursuant to N.J.A.C. 6A:26-3.8.
- (c) An application for a temporary facility, including in the case of an approved private school for the disabled, shall contain the following information:
1. If the temporary facility is to house students, all information set forth in N.J.A.C. 6A:26-5.4(c), relating to detailed plans and educational specifications, and all information demonstrating that the design of the facility complies with N.J.A.C. 6A:26-8, Temporary Facility Standards;
 2. All information to the extent applicable to temporary facilities in N.J.A.C. 6A:26-7.1 if the temporary facility includes the acquisition of land;
 3. If the temporary facility is part of a school facilities project and if intended to house students due to overcrowding, necessary updates to the enrollment projections in the school district's approved LRFP to support the temporary facility;
 4. The number of unhoused students, if any, to be housed in the temporary facility;
 5. A cost estimate for the temporary facility;
 6. A recommendation of the county superintendent of schools certifying the need for a temporary facility;

7. A resolution of the district board of education or the board of trustees of the approved private school for the disabled approving the application; and
 8. Where required by N.J.S.A. 40:55D-31 and 18A:18A-16, either proof that 45 or 55 days have passed, whichever time period is applicable, pursuant to N.J.A.C. 6A:26-3.2, from the planning board's receipt of the temporary facility application or the receipt of comments from the local planning board(s) on the temporary facility application, whichever is earlier. Such comments are to be sent to the Division, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500.
- (d) After the Division receives a completed temporary facility application, it shall make a determination on the temporary facility based on the following criteria:
1. Whether the temporary facility is consistent with the school district's approved LRFP;
 2. If intending a temporary facility to be part of a school facilities project and intending the temporary facility to house students due to overcrowding, whether the school district evidences through updates to its enrollment projections that the related school facility has a functional capacity of less than 90 percent of the facilities efficiency standards when the capacity is most efficiently utilized through scheduling and other means;
 3. If it is to house students, whether the facility conforms to educational-adequacy requirements at N.J.A.C. 6A:26-5.4(c);
 4. Whether the design of the facility demonstrates compliance with the temporary facility standards at N.J.A.C. 6A:26-8;
 5. If it includes land acquisition, whether the facility conforms to the applicable requirements at N.J.A.C. 6A:26-7.1;
 6. Whether the facility meets the facilities efficiency standards; and
 7. Whether the estimated actual cost of the temporary facility is reasonable.

- (e) If the temporary facility is intended to be funded as an other capital project, the school district shall conform to all other applicable statutes and regulations, including N.J.S.A. 18A:18A-1.1 et seq. and the local support provisions at N.J.A.C. 6A:26-3.11(c).
- (f) If a school district or an approved private school for the disabled houses public school students in a facility that was reviewed and approved as a substandard facility under the rules in effect prior to June 7, 2004, the facility shall not be required to be re-approved as a temporary facility under the rules in effect after June 7, 2004. Renewal of the facility's approval as a substandard facility shall be subject to standards for substandard facilities in effect prior to June 7, 2004.
- (g) A temporary facility may be approved by the Division for a term of two years, with three annual renewals if the school district, or the Development Authority on behalf of the school district, demonstrates satisfactory progress toward the provision of permanent facilities. No such approval shall remain in effect or be eligible for renewal unless the executive county superintendent determines in consultation with the Division and upon inspection of the temporary facility that:
 - 1. The temporary facility meets the educational-adequacy and temporary-facility standards as specified in this chapter;
 - 2. The school district or approved private school for the disabled demonstrates through the LRFP or other plan, in the case of the approved private school for the disabled, that students housed in the temporary facility will be housed in permanent school facilities; and
 - 3. The temporary facility meets N.J.A.C. 5:23 requirements for a certificate of occupancy for "E" (educational) group use.
- (h) When a school district receives State support pursuant to EFCFA for a school facilities project and temporary facilities are acquired by the school district to house students

pending completion of the school facilities project, the temporary facilities shall not be encumbered, sold or otherwise disposed of until the Division approves the action.

6A:26-3.14 Emergency stabilization

- (a) Emergency stabilization must qualify as an emergency pursuant to N.J.S.A. 18A:18A-7 and the rule promulgated pursuant thereto at N.J.A.C. 5:34-6.1. Emergency stabilization is not eligible for State support, and therefore the costs incurred by the school district in undertaking the emergency stabilization will not be eligible for reimbursement by the State in the event that it is determined that an emergent condition exists after undertaking such stabilization.
- (b) When a school district determines that an emergency exists pursuant to N.J.S.A. 18A:18A-7, it shall undertake emergency stabilization as follows:
 - 1. The school district shall, if possible, immediately undertake the actions necessary, including temporary repairs to alleviate the emergency;
 - 2. The school district shall conform to the Public Schools Contract Law and the applicable rule at N.J.A.C. 5:34-6.1 when undertaking such emergency stabilization; and
 - 3. The school district shall proceed as set forth in (d) or (e) below if, after undertaking emergency stabilization, it is necessary to undertake an emergent project.
- (c) Emergent projects can be either school facilities projects eligible for State support or other capital projects. Emergent projects that are school facilities projects shall proceed in accordance with (d) and (e) below. Emergent projects that are other capital projects shall proceed in accordance with (f) below. If a school district determines that an emergent condition exists after undertaking an emergency stabilization, the school district in applying for review and approval, if applicable, of the project shall submit evidence acceptable to the Division of the emergency stabilization costs.

- (d) Prior to the approval of a school district's LRFP, a school district may, on a form provided by the Commissioner, apply directly to the Commissioner for approval of a school facilities project when an emergent condition exists.
1. The Commissioner shall approve a school facilities project for an emergent condition only if, after an on-site inspection, the county superintendent of schools, in consultation with the Division, certifies that an emergent condition exists.
 2. If a school facilities project for an emergent condition is approved by the Commissioner, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The scope of work contained in the application shall be limited to action required to rectify the emergent condition.
 3. Notwithstanding the approval of a school facilities project for an emergent condition prior to approval of a school district's LRFP, pursuant to this section, preliminary eligible costs and final eligible costs for the school facilities project shall be determined consistent with this chapter.
- (e) After approval of a school district's LRFP, a school district may, on a form provided by the Department, apply directly to the Division for approval of a school facilities project when an emergent condition exists.
1. The Division shall approve a school facilities project for an emergent condition only after an on-site inspection, the county superintendent of schools, in consultation with the Division, certifies that an emergent condition exists.
 2. If the existence of the emergent condition has been certified pursuant to (e)1 above, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The expedited basis shall include Division acceptance of school district submission of the school facilities project application or a predevelopment request in the case of

Authority managed projects, within 45 days of the date of such submission. If the emergent condition was not included in the school district's approved LRFP, the school district shall request an amendment to its LRFP as part of the project application and amend its LRFP within 45 days of such submission. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the school district's approved LRFP.

3. Preliminary eligible costs and final eligible costs for the school facilities project shall be determined consistent with this chapter.
- (f) If a school district determines that an emergent condition exists after undertaking an emergency stabilization, and the emergent project is an other capital project, the school district shall submit the information required by N.J.A.C. 6A:26-3.11, and the Division shall perform all required reviews on an expedited basis. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the school district's approved LRFP.

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

- (a) School districts shall insure all insurable property, real or personal, in accordance with N.J.S.A. 18A:20-25.
- (b) Insurance proceeds and damages awards received by a school district shall be applied as follows: if the school district applies for approval of a school facilities project involving a facility for which there are insurance proceeds or a damages award, the insurance proceeds and/or damages award shall be applied to reduce the amount of State support as follows:

1. For locally constructed school facilities projects for which a school district elects to receive a State share pursuant to N.J.S.A. 18A:7G-15, the State share amount shall be reduced in the following manner:
 - i. Calculate the percentage of total project costs that would be funded by the State pursuant to N.J.A.C. 6A:26-3.8 if no insurance proceeds and/or damages award were received by the school district;
 - ii. Multiply the percentage by the amount of insurance proceeds and/or damages award to which the school district is entitled, minus any amount that would exceed the eligible costs of the project; and
 - iii. Reduce the State share by the amount determined in step ii.
2. For Development Authority-constructed school facilities projects with a local share, the local share shall be adjusted in the following manner:
 - i. Calculate the percentage of total costs that would be funded by local share if no insurance proceeds and/or damages award were received by the school district;
 - ii. Reduce the total costs by the amount of insurance proceeds and/or damages award to which the school district is entitled minus any amount that would exceed the eligible costs of the project;
 - iii. Multiply the local share percentage determined in (b)2i above by the amount determined in (b)2ii above; and
 - iv. Add the amount of insurance proceeds and/or damages award to the revised local share amount determined in (b)2iii above. The amount determined in this subparagraph shall be provided to the Development Authority before it undertakes a school facilities project.
3. For Development Authority-constructed school facilities projects without a local share, the State share shall be adjusted in the following manner:

- i. Reduce the State share by the amount of insurance proceeds and/or damages award to which the school district is entitled; and
 - ii. The amount determined in (b)3i above shall be provided to the Development Authority before it undertakes a school facilities project.
4. For locally constructed school facilities projects for which a school district elects to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9, the school district shall issue bonds only for the amount of the total projects costs minus the insurance proceeds and/or damages award.
 - i. If the bonds have already been issued, the insurance proceeds and/or damages award should be used to reduce the outstanding principal amount at the earliest call date or to annually reduce the amount of debt service payment. The calculation of State debt service aid shall be made from the reduced amount.
- (c) Gifts, grants, other private sources, and/or municipal surplus received by a school district shall be applied as follows: if the school district applies for approval of a school facilities project that will also receive funding through any of the above sources, such source of revenue shall be applied to the local share of the project, and may be applied to reduce the State support only if a Development Authority-constructed school facilities project does not have a local share, or for school facilities projects with a local share, the source of revenue exceeds the local share and, by its terms, may only be used for the school facilities project, in which case State share shall be reduced by the amount of the excess over local share.
 1. For locally constructed school facilities projects for which a school district elects to receive a State share pursuant to N.J.S.A. 18A:7G-15, and the revenue source exceeds the local share and, by its terms, may only be used for the school facilities project, such excess shall be applied to the State share of the project and reduce the amount of the grant before a disbursement is made.

2. For locally constructed school facilities projects for which a school district elects to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9, the school district shall issue bonds only for the amount of the total project costs, minus the revenue source.
3. For Development Authority-constructed school facilities projects with a local share, the revenue source shall be applied toward the local share, and that amount shall be provided to the Development Authority before it undertakes the school facilities project, along with any amount in excess of the local share that by the terms of the revenue source must be used for the school facilities project, which shall be applied to reduce the amount of State share.
4. For Development–Authority-constructed school facilities projects without a local share, the revenue source shall be applied to reduce the amount of State share only if the terms of the revenue source require that it be used for the school facilities project, in which case that amount shall be provided to the Development Authority before it undertakes the school facilities project.

Subchapter 4. Management of Capital Projects

6A:26-4.1 Capital projects fund

- (a) All revenues and appropriations related to school facilities projects receiving funding pursuant to EFCFA and this chapter, and to other capital projects that utilize revenue sources identified in (b) below, shall be accounted for in the capital-projects fund defined in N.J.A.C. 6A:23A-1.2.
- (b) The source of revenue in the capital-projects fund includes the:
 1. Sale of school bonds;
 2. Issuance of temporary notes or loan bonds pursuant to N.J.S.A. 18A:24-3;
 3. Issuance of certificates of participation for a lease-purchase agreement greater than five years approved prior to EFCFA;

4. Grants received pursuant to N.J.S.A. 18A:7G-15; and
 5. All revenue sources identified in the referenda or resolution authorizing the issuance of school bonds pursuant to N.J.A.C. 6A:26-3.7 and 3.12.
- (c) The revenue source in the capital-projects fund also shall include capital-reserve withdrawals and other local revenues to fund the local share of a school facilities project not utilizing school bonds pursuant to N.J.A.C. 6A:26-3.7(c).
- (d) All revenue sources identified in the referenda or resolution pursuant to N.J.A.C. 6A:26-3.7 or 3.11 shall be transferred to the capital-projects fund upon voter, board of school estimate or capital project review board approval. The revenue sources shall be accounted for separately with, and accorded the same accounting treatment as, the corresponding school bonds.

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

- (a) The cost of a capital project covered by bond proceeds shall include costs associated with architects, lawyers, and construction managers even if not specifically stated in the referendum question approved by voters or in the resolution approved by the board of school estimate or capital project review board. A district board of education that budgeted and charged such costs to the general fund prior to the referendum has the option to reimburse the costs from the capital-projects fund after approval of the referendum or resolution.
- (b) Use of the capital-projects fund to account for bond proceeds and short-term notes shall be limited to the following:
1. Type I and Type II school districts with boards of school estimate shall be limited to the amount fixed by the board of school estimate pursuant to N.J.A.C. 6A:26-

3.7(e) for each capital project, or projects when jointly submitted, under N.J.S.A. 18A:22-19 and 30, and 18A:24-55.

2. Type II school districts without a board of school estimate shall be limited to the amount approved by voters for each capital project, or projects when jointly submitted, pursuant to N.J.S.A. 18A:22-39 and 18A:24-55.
 3. State-operated school districts shall be limited to the amount approved by the capital project review board.
 4. The local share of capital projects when jointly submitted in (b)1 or 2 above may be transferred among projects within an approved referendum as long as the school district adequately discloses in the referendum question that such transfers can be made and the district board of education can attest that all projects can be completed as approved, and no excess costs beyond those approved by voters shall be eligible for transfers.
 - i. If the ability to transfer was not disclosed in the referendum question, the Commissioner may approve the transfer upon the school district's written request of need and the district board of education's certification of its ability to complete all projects as approved and that no excess costs beyond those approved by voters shall be eligible for transfer.
- (c) Use by a district board of education of the capital projects fund to account for a lease-purchase agreement greater than five years is limited to the expenditures in the approved pre-EFCFA lease-purchase agreement greater than five years.
- (d) A district board of education shall not transfer capital-project cost overruns to general-fund current expense or capital outlay and shall not fund capital-project cost overruns by general-fund appropriations or surplus pursuant to N.J.S.A. 18A:22-8.2, unless such transfer is approved by the Commissioner to supplement proceeds from a school bond authorization or pre-EFCFA LPA agreement pursuant to N.J.S.A. 18A:22-8.2(c). After

consideration of alternative corrective actions, the Commissioner shall approve, according to N.J.A.C. 6A:26-4.4(a)5, the transfer only if it is in the best interests of both students and taxpayers.

- (e) Interest earned on investments in the capital-projects fund shall not be used to supplement the school-bond authorization, unless expressly authorized in the referendum or resolution pursuant to N.J.A.C. 6A:26-3.7, or expressly authorized in the pre-EFCFA LPA.

- 1. All transfers of interest shall be:

- i. Made by resolution to either the debt-service fund or the general fund at the discretion of the district board of education; and
 - ii. Completed annually and at the end of the project.

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

- (a) School districts shall use the capital-projects fund to account for an approved school facilities project where the school district elects to receive a grant pursuant to N.J.S.A. 18A:7G-15 and to fund the entire local share through a means other than school bonds or short-term notes.
- (b) Local share budgeted in capital outlay and/or withdrawn from capital reserve for a school facilities project not funded by school bonds or short-term notes shall be transferred to the capital-projects fund upon execution of the grant agreement with the Development Authority in accordance with N.J.A.C. 6A:26-3.8(a)3 and 9.1.
- (c) A district board of education may utilize by resolution general-fund surplus up to 20 percent above the awarded project cost in response to change orders allowed pursuant to N.J.A.C. 6A:26-4.9 and in accordance with N.J.A.C. 6A:26-4.4(b).

6A:26-4.4 Options where there are insufficient funds to complete a capital project

(a) A district board of education shall have the following options for referendum-authorized projects upon opening initial bids for the project, or at any other time when it is determined that there are not sufficient funds to complete the referendum-authorized project(s). The district board of education shall:

1. Reject all bids pursuant to N.J.S.A. 18A:18A-36 and re-advertise based on the same specifications, or on modified specifications that do not materially impact the nature and scope of the project and that have been approved by the Division pursuant to N.J.A.C. 6A:26-5;
2. If contracts were previously awarded, seek approval pursuant to N.J.A.C. 6A:26-4.9 for a change order for modifications to effect economies they would not materially impact the nature or scope of the project as approved by the Division and board of school estimate or voters, as applicable;
3. Seek approval of the board of school estimate or voters, as applicable, for additional funds to complete the project.
 - i. The sale of additional bonds, transfer of general-fund surplus, additional tax levy, capital reserve, and/or unexpended bond proceeds of a capital project authorization may be utilized upon voter or board-of-school-estimate approval according to procedures in N.J.A.C. 6A:26-4.6(b);
 - ii. Approval for the sale of additional bonds shall be by resolution or referendum in accordance with N.J.S.A. 18A:24-1 et seq.;
 - iii. Approval for the transfer of general-fund surplus, additional tax levy, and/or capital reserve to supplement an approved referendum may be through special appropriation in a Type I school district, separate question at a special election in a Type II school district without a board of school

estimate, or through the appropriate line-items and supporting documentation in the base budget at the annual election as follows:

- (1) Requests at the annual election through the appropriate line-items and supporting documentation in the base budget shall have a statement of purpose, as prescribed by the Commissioner, to be included in the advertised budget. Requests shall also be specifically discussed at the public hearing as documented in the district board of education minutes.
 - (2) Approved line-item appropriations in the annual budget certified for taxes for the requests in (a)3iii(1) above shall not become part of the pre-budget-year net budget for purposes of calculating the spending-growth limitation of the subsequent year pursuant to N.J.S.A. 18A:7F-1 et seq. Unused spending authority calculated pursuant to N.J.A.C. 6A:23A-10.3 that is created by such approvals shall not be considered unused spending authority available to a district board of education in the next two subsequent budget years;
4. Redefine/scale down the scope of the project and seek approval of the board of school estimate or voters, as applicable, to use the original proceeds for the redefined scope and/or new purpose. All such projects shall be resubmitted and the Division shall redetermine final eligible costs prior to seeking board-of-school-estimate or voter approval; or
5. Apply to the Commissioner for a transfer of general-fund surplus to the capital-projects fund to supplement the proceeds from a bond authorization or pre-EFCFA lease-purchase agreement greater than five years if determined and approved by the

Commissioner that a transfer is in the best interests of both students and taxpayers of the school district after consideration of alternative corrective actions.

- i. The school district application shall include a narrative on the need for the transfer and analysis of alternative corrective actions, including steps outlined in (a)1 through 4 above, a copy of the referendum question and detailed cost analysis of the capital project to support the need for the transfer request. The project cost analysis shall include, at a minimum, a comparison of the itemized budget as approved by the Division, including the determination of final eligible costs for a school facilities project; the itemized budget as approved by the voters, including pre-referendum and post-referendum costs; the itemized budget for the project upon bid award; and any change orders approved pursuant to these regulations or change orders pending approval.
- ii. The Commissioner's approval shall be based upon:
 - (1) A recommendation from the executive county superintendent that no further alternative corrective actions can be made after his or her review of the school district's application in consultation with the Division;
 - (2) The Division's recommendation that the capital project is within the facilities efficiency standards and necessary for educational adequacy after the Division's review of the school district's application. If the Division determines the project scope is beyond the facilities efficiency standards and the excess costs are greater than the transfer request, the Division shall take into consideration in its recommendation whether the excess costs are outside the control of the school district;
 - (3) School district certification that the transfer request is not due to contractor malfeasance subject to legal recourse. If the transfer request

is due to architect, engineer or contractor malfeasance, then the school district shall certify its intent to pursue all legal options. If the transfer request is approved by the Commissioner, any subsequent awards on the legal action shall be recorded as revenue in the general fund; and

(4) Other considerations as appropriate.

- iii. If the need for the transfer is due solely to inaccurate and/or insufficient project cost estimates, a district board of education may not request Commissioner approval for a transfer of general fund surplus without first seeking corrective action through board of school estimate or voter approval, as applicable, of additional funds and/or revised scope pursuant to (a)3 and/or 4 above.
- iv. The Commissioner shall not approve a transfer request if the district board of education did not include an adequate level of contingency at the time of contract award in accordance with N.J.A.C. 6A:26-4.8(c).
- v. If a capital project contains excess costs or is an other capital project, no transfer of general-fund surplus shall be approved by the Commissioner prior to a district board of education submission of the capital project for bids on at least two separate occasions.

(b) A district board of education shall have the following options for a school facilities project when the school district elects to receive a grant pursuant to N.J.S.A. 18A:76-15 and elects to fund the entire local share through a means other than school bonds if there are insufficient funds to complete the project upon opening initial project bids or any time thereafter. The district board of education shall:

- 1. Seek approval of the board of school estimate or voters, as applicable, for additional funds to complete the project. Sources that may be considered are:
 - i. The sale of bonds;

- ii. The transfer of general-fund surplus;
 - iii. A tax levy;
 - iv. Capital reserve; and/or
 - v. The unexpended proceeds of a capital-project authorization according to N.J.A.C. 6A:26-4.6(b); or
- 2. Transfer by district board of education resolution general-fund surplus in an amount not to exceed 20 percent of the school facilities project award price in response to change orders allowed pursuant to N.J.A.C. 6A:26-4.9; or
 - 3. Transfer from capital reserve pursuant to N.J.A.C. 6A:23A-14.1.

6A:26-4.5 Over-expending a capital project

- (a) Under the New Jersey Code of Criminal Justice, Title 2C of the New Jersey Statutes, it is a crime for a public official or employee to knowingly disburse, order, or vote for the disbursement of moneys or incur obligations in excess of appropriations or an amount limited by law. The Department shall notify the Office of Inspector General, and may notify the Director of the Division of Criminal Justice if an over-expenditure/deficit is detected in a capital project.
- (b) A district board of education over-expending the capital-projects fund also shall be subject to a reduction in its State aid and other actions pursuant to N.J.A.C. 6A:23A-16.10 and 6A:26-14.1, if applicable.

6A:26-4.6 Unexpended bond proceeds

- (a) A capital project shall be considered completed for the purposes of determining unexpended bond proceeds under this section when:
 - 1. The project has received its certificate of completion from the contractor;
 - 2. All retainage has been liquidated; and

3. A permanent certificate of occupancy has been received, if applicable.
- (b) Any school bonds proceeds that remain unspent upon completion of the capital project shall be disposed of by the school district in accordance with N.J.S.A. 18A:24-47 et seq. if issued by the school district for a school facilities project prior to July 18, 2000, and where the school district received no funding pursuant to EFCFA except for funding received pursuant to N.J.A.C. 6A:26-13.1(b), or issued for an other capital project.
1. Unexpended balances may remain in the capital projects fund for six years after the time of issuance or sale of bonds pursuant to N.J.S.A. 18A:24-48 and 51.
 2. Within six years of issuance or sale, if a new purpose(s) for the unexpended balances is determined, the board of school estimate, capital project review board, or voters may approve the change in purpose by resolution or ballot question pursuant to N.J.S.A. 18A:24-48 through 52.
 - i. The resolution or ballot question for the new purpose shall receive Commissioner approval pursuant to N.J.S.A. 18A:24-49 through 52 if the bonds mature beyond the period prescribed for the new purpose(s) by N.J.S.A. 18A:24-5.
 3. If no new purpose for the unexpended balances is determined within the six years from issuance or sale, the district board of education shall transfer by resolution the funds to either the general fund or debt-service fund.
 - i. To establish there is no new purpose, the school district's budgeted appropriations and actual expenditures for the transfer year may not reflect capital outlay spending.
 4. After six years from issuance or sale, unexpended balances shall be transferred by resolution to either the general fund or the debt-service fund.
- (c) Proceeds of school bonds issued by the school district or other revenue sources transferred to the capital-projects fund, pursuant to N.J.A.C. 6A:26-4.1, for the purpose

of funding all or part of the costs of ROD school facilities projects that remain unspent upon completion of the school facilities projects and/or other capital projects whose funding was authorized by the bonds shall be used by the school district to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt service principal payments. The provision shall apply if any school facilities project funded by the school bonds receives the State share of eligible costs.

1. If the unexpended proceeds are used annually to make debt-service-principal payments, the proceeds shall remain in the capital projects fund and be appropriated in each subsequent year's budget certified for taxes to reduce in full each year the debt-service-principal payment until the proceeds are exhausted.
2. Use of unexpended bond proceeds to make principal payments shall be used in the determination of State debt service aid pursuant to N.J.A.C. 6A:26-3.8, if applicable.

6A:26-4.7 Oversight of ROD constructed school facilities projects

- (a) Every district board of education shall be subject to the following for every approved school facilities project receiving State support under this chapter:
 1. To provide the Commissioner assurance that the contracting process for design and construction contracts for school facilities projects conforms to all requirements of Title 18A of the New Jersey Statutes and all other applicable laws and rules, the school district shall, in a separate certification for each contract awarded for a school facilities project pursuant to (a)3 below, certify that the school district has followed the provisions of law related to:
 - i. Authorization to prepare plans and specifications;
 - ii. Preparation and contents of bid specifications;
 - iii. Approval of plans and specifications;
 - iv. Advertising for bids;

- v. Review and evaluation of proposals; and
 - vi. Award and execution of contracts.
2. The design and construction contracting process, contract administration and the payment of claims, and change orders for school facilities projects shall be subject to audit by the Commissioner.
 3. Upon the award of each design or construction contract, the school district shall submit a Commissioner-provided form certifying that the procurement process conformed to all requirements of statute and rules, including, but not limited to, the matters covered in (a) above, and that all contracts procured for the school facilities project conformed to Title 18A of the New Jersey Statutes and all other applicable laws. The form shall be certified by the school business administrator and approved by resolution of the district board of education.
 4. The school district shall maintain a project file that shall include, but not be limited to, the following:
 - i. All documents related to the project-approval process, including project siting; land acquisition; real estate (deeds, leases, title report including searches for easements, mortgages, judgments, liens, unpaid taxes, water and sewer, property description by metes and bounds); surveys; district board of education resolutions; referendum ballot questions or municipal debt ordinances; and all public notices pursuant to the Open Public Meetings Act;
 - ii. All documents related to the financing of the project including:
 - (1) Selection and payment of professionals, such as bond counsel and other attorneys; underwriters; financial and investment advisors; trustees; official printers; and bond insurers;
 - (2) Structuring of the financing, such as the method(s) of borrowing considered, complete financing estimates and cash flows, all

- number runs, including escrow sufficiency, if applicable, and yield calculations; the rationale for the plan of financing (resulting in the issuance of obligations under terms most advantageous to the school district) long-range plans or models, computerized models, private uses, and costs of issuance; and
- (3) Issues of debt, such as general, series, and supplemental bond resolutions; trust indentures; trust agreement; preliminary official statement; all disclosure materials; Official Notice of Sale or Purchase Contract; arbitrage certificate; tax regulatory agreement; IRS Form 8083, as appropriate; Disclosure Agreement; and TEFRA Notice, if applicable;
- iii. All documents related to the bidding process, evaluation of bids, award and execution of contracts, the specifications, request for proposal or other invitations to bidders; advertisements or public notices of the bid opportunity; logs of the bids received and the bids opened; bid evaluation worksheets; notices of contract award; and the executed construction contract documents;
- iv. All documents related to the construction of school facilities, including documents required by the construction contract documents to be kept; specifications; change orders; alternate submissions; approvals or rejections; unit prices; product data; time of performance schedules; construction photographs; quality control management reports; value engineering information; up-to-date project accounting system; intermediate and final audits; “as built” or other drawings documenting the actual facilities built and fixtures installed; close-out documentation on forms provided by the Department; related correspondence; vouchers; and certifications;

- v. All payroll certifications filed with the school district by all contractors and subcontractors; and
 - vi. All documents a school district is legally required to make, maintain, or keep on file as part of a construction project.
- (b) The documents in (a) above shall be maintained in a readily accessible place for review and inspection by the Department, the Development Authority, the Department of Community Affairs, and the Office of Government Integrity for the duration of the school facilities project and three years thereafter, or until completion of all litigation concerning any aspect of the school facilities project, if any. Destruction of the documents shall be consistent with the record retention schedule adopted pursuant to N.J.S.A. 47:3-15 et seq.
- 1. A standardized voucher form, where provided to school districts by the Department, shall be fully executed by contractors, delivered to the school district prior to a school district providing any payment to a contractor and maintained by the school district in the project file. Prior to the school district providing any payment, the voucher form shall be countersigned, where indicated, by the school district.
 - 2. School district shall include standardized contract provisions, where provided by the Department, in all contracts for the design and construction of a school facilities project.
 - 3. All contractors, and subcontractors in the four areas listed in N.J.S.A. 18A:18A-18, utilized by school districts to construct school facilities projects shall be pre-qualified pursuant to the Development Authority pre-qualification process.
 - 4. Upon completion of a school facilities project that received State share in the form of a grant pursuant to N.J.S.A. 18A:7G-15 or N.J.S.A. 18A:7G-13(a), the school district shall submit to the Division a copy of the documents required for the final completion disbursement: the certification by the school business administrator and the design consultant certification upon final completion. Upon completion of a

school facilities project for which State support is in the form of debt-service aid pursuant to N.J.S.A. 18A:7G-9 or 10, the school district shall submit, on a form to be provided by the Commissioner, a certification of the school business administrator, which shall be approved by resolution of the district board of education, certifying that the school facilities project was constructed consistent with the approved plans and specifications for the school facilities project and all approvals provided by the Commissioner pursuant to EFCFA.

- (c) School districts are encouraged to report to the Division of Wage and Hour Compliance, Department of Labor, on the failure to receive from contractors and subcontractors certified payroll records, required pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. School districts receiving certified payroll records with suspected inaccuracies or receiving other indications of noncompliance with the New Jersey Prevailing Wage Act are also encouraged to report to the Division of Wage and Hour Compliance, Department of Labor, and, as well, to take other steps such as verifying the accuracy of these certified payroll records by comparing them against other payroll-related records and gathering site inspection information from construction managers on a spot check basis.

6A:26-4.8 Bidding and awarding of contracts for ROD capital projects

- (a) Bids shall be advertised and received, and contracts awarded only after final approval of plans and specifications from the Department of Community Affairs, Division of Codes and Standards or the local enforcing agency if it performs the UCC review. Bids may be advertised but contracts shall not be awarded before the school facilities project or other capital project has received approval from the Division for final educational adequacy, pursuant to N.J.A.C. 6A:26-5.4, if applicable. If the school facilities project is not subject to either final educational adequacy review or UCC review, bids shall be advertised and

received, and contracts awarded only after final eligible costs have been determined pursuant to N.J.A.C. 6A:26-3.6.

- (b) In accordance with N.J.S.A. 18A:18A-36, school districts shall award contracts within 60 days of receipt of bids, and may apply to the municipal construction enforcing official for the required building permits.
- (c) At the time of contract award, school districts shall encumber a contingency in an amount equal to no less than five percent of the total costs of construction of a capital project, against which change orders may be approved in accordance with N.J.A.C. 6A:26-4.9. However, school districts shall not encumber an amount that would result in the total contract award plus any contingency totaling more than the approved referenda amount if the capital project is funded wholly or in part by bond proceeds.
- (d) School districts shall award one or more contracts for the entire approved scope of the capital project, unless there is prior Division approval in accordance with the following:
 - 1. The bid documents include one or more bid alternates that the school district may opt not to award, provided there is no impact on the educational adequacy or the total costs of a capital project; or
 - 2. The school district demonstrates to the Division that extraordinary circumstances require an award of the entire approved project scope in separate phases, and the school district has demonstrated that adequate funds are available to complete the entire approved project scope.

6A:26-4.9 Submission of change orders for ROD projects

- (a) Contract change orders for capital projects shall be governed by the following:
 - 1. Change orders may be approved by district boards of education for no more than the approved referendum amount for a capital project funded in whole or in part by bond proceeds, when necessitated by one of the following:

- i. Emergencies consistent with N.J.S.A. 18A:18A-7;
 - ii. Unforeseeable physical conditions; or
 - iii. Minor modifications to project scope that achieve cost savings, improve service or resolve construction conditions.
2. Upon its determination that an extraordinary circumstance exists, the Division shall approve all other change orders, including, but not limited to, the following:
 - i. Change orders that increase in the aggregate by more than 20 percent the original-award amount of each contract or of the entire project but for no more than the approved referendum, including changes funded by project contingency in N.J.A.C. 6A:26-4.8(c);
 - ii. Change orders that eliminate or affect the project scope that was the basis of the Division's determination of the final eligible costs of a school facilities project pursuant to N.J.A.C. 6A:26-3.6; or
 - iii. Change orders that affect the number, size, configuration, location or use of educational spaces.
3. Before the school district or Division may authorize a change order that increases the contract amount, the availability of funds shall be certified by the board secretary, on a form prescribed by the Commissioner that indicates:
 - i. The original contract amount and funds allocated to each contract in the overall project;
 - ii. All payments made to date;
 - iii. All change orders approved and pending to date;
 - iv. The percentage of the project that is completed, and the percentage of the contract cost remaining; and
 - v. The funds available to complete the project, including all change orders that were executed or are pending.

4. For change orders that must be approved by the Division pursuant to (a)2 above, the school district shall file with the Division the following:
 - i. Two copies of the change-order request indicating in detail the scope of the change order and the basis upon which the proposed change order may be approved pursuant to this subchapter;
 - ii. A certification of the availability of funds per (a)3 above; and
 - iii. A certification that no other solution is possible when a proposed change order affects the final eligible costs of a school facilities project, and that no excess scopes are proposed for inclusion in the project in lieu of the final eligible costs.
- (b) Upon receipt of all materials required in (a) above, the Division shall promptly undertake its review and determine whether a proposed change order is necessary. If approved, a copy of the change order request marked "Approved" by the Division shall be sent to the school district.
- (c) When the aggregate value of change orders undertaken pursuant to (a)1 above exceeds 20 percent of the total contract-award amount or the total project cost, necessitating Division approval pursuant to (a)2iii above, the school district shall submit on a form prescribed by the Commissioner and certified by the district board of education secretary a summary of each change order approved, the justification for each change order, and the change in the contract amount.

6A:26-4.10 Change orders for Development Authority school facilities projects

- (a) For projects constructed by the Development Authority, only change orders that affect the approved number, size, configuration, location, or use of educational space shall be submitted to the Division for review and approval.
- (b) The Development Authority shall submit to the Division periodic reports on each project being constructed under its auspices, indicating the contract-award amounts, the nature

and scope of each approved change order, the revised project amounts, and the total costs of change orders approved to date.

Subchapter 5. Review of Capital Projects for Educational Adequacy

6A:26-5.1 General provisions

- (a) All capital projects that affect any of the following criteria for educational adequacy shall be reviewed and approved by the Division according to this subchapter. The criteria are the number, configuration, size, location, or use of educational spaces within a school facility. The review for educational adequacy shall take into consideration the suitability of the number, configuration, size, location, and use of educational spaces; built-in furniture and equipment; and provisions for the disabled. Capital projects that involve the following types of building construction work shall be approved for educational adequacy:
 - 1. New school facilities including pre-fabricated facilities;
 - 2. Additions to existing school facilities;
 - 3. Alterations to the total number, dimension in volume and/or area, configuration or location of educational spaces or the number of any one kind of educational space; and
 - 4. Installation of temporary facilities.
- (b) Both Development Authority and ROD school facilities projects, along with other capital projects, shall be subject to educational adequacy reviews. The review process and types of documents subject to review will differ somewhat depending on whether the project is a school facilities project or other capital project, and, if a school facilities project, on whether it is a Development Authority project or a ROD project.
 - 1. For a Development Authority school facilities project, the Development Authority on behalf of the school district shall apply for the review and approval for educational adequacy in conjunction with the application for approval of a school

facilities project pursuant to N.J.A.C. 6A:26-3. The application shall be made prior to the review and approval of capital projects for compliance with the UCC, N.J.A.C. 5:23, by the Division of Codes and Standards in the Department of Community Affairs, and prior to local share authorization. The educational-adequacy review shall cover the following types of project documents: educational specifications; schematic plans and related documents; detailed plans and specifications; and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the Development Authority on behalf of the school district at the time of project application. Detailed and final plans and specifications shall be forwarded to the Division by the Development Authority after project approval but prior to the Division determination of final eligible costs and Department of Community Affairs review for UCC compliance.

2. For a ROD school facilities project, school districts shall apply for the review and approval for education adequacy in conjunction with the application for approval of a school facilities project. The educational-adequacy review shall cover the following types of documents: educational specifications, schematic plans and related documents, and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the school district at the time of project application. Final plans and specifications shall be submitted by the school district after project approval but prior to the UCC-compliance review.
3. For an other capital project, school districts shall apply for the review and approval for educational adequacy in conjunction with the application for the Division review for consistency with the school district's approved LRFP. The educational adequacy review shall cover educational specifications, schematic plans and related

documents, and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the school district at the time the project is reviewed for consistency with the school district's approved LRFP. Final plans and specifications shall be submitted by the school district after the consistency review but prior to the UCC-compliance review.

- (c) The executive county superintendent shall approve any change of use of instructional space that is not a capital project.

6A:26-5.2 Educational specifications

- (a) Submissions of educational specifications for educational_adequacy reviews shall include the following:
 - 1. Details of the educational program activities and requirements for each space proposed in the capital project, and shall refer to the New Jersey Student Learning Standards wherever appropriate;
 - 2. An itemized list of furniture, equipment, and support spaces required to conduct the educational program specified for each space, together with their net areas in square feet, as well as the net of the total room area required for each space;
 - 3. Specific technical and environmental criteria, adjacencies, and other requirements for the educational program; and
 - 4. A building-space program that indicates the number and net area in square feet of each instructional, specialized instructional, administrative, and support space in each existing or proposed building included in the capital project and/or the temporary facility.

6A:26-5.3 Schematic plans and other related project documents

- (a) Submission of schematic plans for educational adequacy reviews shall include the following:

1. Four sets of schematic plans showing the entire existing and proposed building drawn to a scale of not less than 1/16 inch per foot. The approved use of each space, the proposed number of occupants, and the net square feet area, shall be clearly labeled on all existing and proposed spaces;
 2. Layouts of the built-in and moveable furniture and equipment for examples of all occupied spaces drawn to a scale of not less than 1/8 inch per foot;
 3. Information required to demonstrate compliance with the Facility Planning Standards at N.J.A.C. 6A:26-6, including dimensions, clearances, ceiling heights, and required equipment;
 4. Paths of travel for disabled persons;
 5. A completed plot plan when site work is required, including the intended location of the school and a layout of the locations of all other structures, multi-purpose physical education fields, playgrounds, walkways, roadways, access roads, buffer and set back zones, parking areas, deed restrictions, easements, protective covenants, right of ways, and environmentally sensitive areas. If the land for the site is being acquired, an application also shall be submitted for approval under N.J.A.C. 6A:26-7.1; and
 6. The signature and seal of a New Jersey licensed architect or professional engineer if there is an architect or engineer engaged for the project and signatures of the president of the district board of education and chief school administrator. In the case of Development Authority school facilities projects, schematic plans shall also be signed by the Development Authority, pursuant to N.J.S.A. 59:4-6.
- (b) Other project documents to be submitted with the schematic plans shall include:
1. A project cost estimate on a form provided by the Commissioner;
 2. A project schedule;

3. A copy of the dated transmittal letter to the executive county superintendent indicating project document submission to the Division; and
4. A copy of the transmittal letter indicating the date of plan submission to the local planning board, where required by N.J.S.A. 40:55D-31 and 18A:18A-16, including, but not limited to, whenever the project consists of a new building, the conversion of an existing building to school use, or the building footprint, volume, pedestrian or vehicular access are altered by the project.

6A:26-5.4 Detailed plans and specifications and final plans and specifications

- (a) In the case of a Development Authority school facilities project, the Development Authority on behalf of the school district shall apply upon completion of detailed plans and specifications for final approval of the project's educational adequacy. Detailed plans and specifications shall be considered adequate for calculations of final eligible costs if the plans and specifications are at least 60 percent complete. Final approval of the educational adequacy of the project shall occur prior to the calculation of the final eligible costs of the school facilities project, pursuant to N.J.A.C. 6A:26-3.5. The application for final approval shall include:
 1. Four individually packaged sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey licensed architect or professional engineer and signed by the president of the district board of education, chief school administrator, and the Development Authority, and specifications to sufficiently demonstrate the school facilities project conforms to schematic plans approved by the Division. To demonstrate such conformance, the submission shall include architectural floor plans, an architectural site plan, as applicable, and architectural drawings that will allow verification of ceiling heights and other applicable standards in N.J.A.C. 6A:26-6.3. If the Division determines the

documents are not sufficient to demonstrate conformity with the schematic plans, it may request additional drawings and/or technical specifications;

2. The fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5; and
3. In the event there is a change affecting the number, configuration, size, location, or use of educational spaces as set forth in the detailed plans and specifications submitted to the Department, the Development Authority shall submit to the Division the application with two sets of final plans and specifications, as set forth in (b)1 below. No additional fee shall be imposed.

(b) In the case of a ROD school facilities project or an other capital project, the school district shall apply upon the completion of final plans and specifications for final approval of the educational adequacy of the project. The application shall include:

1. Four individually packaged sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey licensed architect or professional engineer and signed by the president of the local district board of education and chief school administrator, and specifications to sufficiently demonstrate the capital project conforms to schematic plans approved by the Division as described in (a)1 above;
2. A properly executed copy of a “Request for Local Release of School Construction Plans” for a school district that chooses to have a municipal code enforcing agency review its plans for UCC conformance. The review shall include the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for application for a construction permit or for plan review, as appropriate. The school district’s chief school administrator and municipal code enforcing agency chief shall sign the form, which may be obtained from the Division; and
3. A check payable to the “Treasurer, State of New Jersey” for the fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5.

(c) In the case of a temporary facility, the school district, or the Development Authority on behalf of the school district for Development Authority school facilities projects, shall apply upon the completion of detailed plans and educational specifications for approval of the temporary facility's adequacy. Detailed plans and educational specifications shall be considered adequate for calculations of eligible costs if the plans and educational specifications are at least 60 percent complete unless otherwise provided in (c)9 below. The application shall include:

1. Four sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the district board of education and chief school administrator, as well as the Development Authority in the case of a temporary facility that is part of an Development Authority school facilities project, and educational specifications to sufficiently demonstrate the educational adequacy of the temporary facility and compliance with the temporary-facility standards at N.J.A.C. 6A:26-8;
2. A completed plot plan whenever site work is required for the temporary facility. On it shall be shown the intended location of the temporary facility and a layout of all other structures, play and recreation areas, athletic fields, walkways, roadways, access roads, buffer and set-back zones, and parking areas. It also clearly shall indicate the impact that placement of the temporary facility will have on the site of the permanent school facility;
3. A copy of the dated transmittal letter to the executive county superintendent indicating plan submission to the Division;
4. A copy of the transmittal letter indicating the date of plan submission to the local planning board, whenever required by N.J.S.A. 40:55D-31 and 18A:18A-16;

5. A temporary-facility schedule addressing the relationship to the school facilities project schedule, in the event that the temporary facility is part of a school facilities project;
6. The fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5. If the temporary facility is not part of a Development Authority school facilities project, payment shall be in the form of a check, payable to the “Treasurer, State of New Jersey”;
 - i. If the fee for the temporary facility is submitted to the Division prior to the submission of the fee for the final educational-adequacy review for the school facilities project, the amount paid for the temporary facility will be credited toward the fee for the school facilities project;
7. If the temporary facility is not part of a Development Authority school facilities project, a properly executed copy of a Request for Local Release of School Construction Plans for a school district that chooses to have a municipal code enforcing agency review its plans for conformance with the UCC. Such review shall require the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for application for a construction permit or for plan review, as appropriate. The school district’s chief school administrator and municipal code enforcing agency chief shall sign the form, which may be obtained from the Division; and
8. If the temporary facility was previously used for school purposes and a certificate of occupancy for Group E is in effect and no change of use is required, a floor plan with proposed occupancy in lieu of signed and sealed plans shall be submitted to the Division to meet the requirements of this section.

6A:26-5.5 Fee schedule

- (a) The Division shall collect fees for its reviews of detailed/final plans and specifications for educational adequacy in the case of Development Authority school facilities projects and

for its reviews of final plans and specifications for educational adequacy in ROD school facilities projects and other capital projects according to the following schedule:

Table 1 Educational Adequacy Project Review Fee Schedule

Construction Cost Estimate (CCE)	Educational Adequacy Project Review Fee
Up to \$1,000,000	0.5 percent of the CCE
\$1,000,001 to 10,000,000	\$5,000 plus 0.25 percent of the amount over \$1,000,000
Over \$10,000,000	\$27,500 plus 0.1 percent of the amount over \$10,000,000

- (b) For purposes of the table in (a) above, the construction cost estimate shall be as set forth in the final eligible cost of a school facilities project or in the cost estimate submitted for an other capital project.
- (c) The Division shall calculate the final educational-adequacy review fee for a school facilities project when it reviews and approves the school facilities project application pursuant to N.J.A.C. 6A:26-3.3 or reviews an other capital project application pursuant to N.J.A.C. 6A:26-3.12. If the Division approves an award of the project scope in separate phases, pursuant to N.J.A.C. 6A:26-4.8(d), the entire final educational-adequacy review fee shall be remitted to the Division when it reviews the first phase of the school facilities project or other capital project requiring final approval of its educational adequacy, pursuant to N.J.A.C. 6A:26-5.4.

6A:26-5.6 Capital projects not subject to educational-adequacy review

- (a) For a Development Authority school facilities project not subject to educational-adequacy review, the Division shall issue a preliminary project report and shall forward to the Department of Community Affairs for review the report along with drawings or narrative sufficient to delineate the scope of work, so the Department of Community

Affairs may review construction documents for UCC conformance. The review shall require the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for application for a construction permit or for plan review, as appropriate.

- (b) For a ROD school facilities project or other capital project not subject to educational-adequacy review, the Division shall make a determination of the project's final eligible costs and shall forward to the Department of Community Affairs for review the determination along with drawings or narrative sufficient to delineate the scope of work, so the Department of Community Affairs may review construction documents for UCC conformance. The review shall include the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for a construction-permit or plan-review application, as appropriate. If the school district has submitted to the Division a properly executed copy of a "Request for Local Release of School Construction Plans," pursuant to N.J.A.C. 6A:26-5.4(b)2, the Division shall forward the release form to the Department of Community Affairs for its action.

Subchapter 6. Planning and Construction Standards for School Facilities

6A:26-6.1 Application of the Uniform Construction Code

- (a) All school construction shall be done in accordance with the UCC, as administered and enforced by the Department of Community Affairs, and with this subchapter.
- (b) The UCC enhancements, enumerated at N.J.A.C. 5:23-3.11A(c), shall be required of all capital projects at public schools, and shall be administered and enforced by the Department of Community Affairs. Charter schools shall be required to comply with the UCC enhancements where the health and safety of the building occupants are affected.
- (c) The educational facility planning standards, at N.J.A.C. 6A:26-6.3 and 6.4, shall be administered by the Department and cooperatively enforced by the Department and by the Department of Community Affairs. Pursuant to N.J.S.A. 18A:36A-10, charter schools

shall not be required to comply with the educational-facility planning standards except where the health and safety of the building occupants are affected.

- (d) Among the standards incorporated by reference into the educational facility planning standards, and administered and enforced according to (c) above, is the Barrier Free Subcode of the UCC, at N.J.A.C. 5:23-7.

6A:26-6.2 Exceptions

- (a) No exceptions from the requirements of this subchapter shall be made, except upon the following findings:
 - 1. That strict compliance with any specific requirement would result in practical difficulty to the school district; and
 - 2. That the exception, if granted, will not jeopardize the health, safety and welfare of occupants or intended occupants and the public generally.
- (b) An application for an exception pursuant to this section shall be filed in writing with the Assistant Commissioner of the Division of Administration and Finance, and shall provide statements of the following:
 - 1. The subchapter requirements from which an exception is sought;
 - 2. The manner by which strict compliance with said provisions would result in practical difficulties;
 - 3. The nature and extent of the practical difficulties; and
 - 4. Feasible alternatives to the subchapter's requirements that would adequately protect the health, safety, and welfare of the occupants, intended occupants and the general public.
- (c) The Division shall review the application, and shall deny or grant it within 90 days by written order stating the reasons therefor.

6A:26-6.3 Educational facility planning standards

- (a) The educational facility planning standards delineated in (b) through (h) below, in conjunction with the UCC, shall form the requirements for the design and construction of public schools. Specific standards for school facilities housing preschool students are set forth at N.J.A.C. 6A:26-6.4.
- (b) General design and construction requirements shall be as follows:
1. School facilities shall afford space for general instruction, specialized instruction, administration, and student services, the adequacy of which shall be pursuant to the requirements of this section. In addition, school facilities shall afford accommodations for approved vocational and special education programs;
 2. Instructional rooms with windows shall have no exterior obstructing wall within 20 feet of the major window wall;
 3. Inner courts shall have a minimum width of 20 feet;
 4. Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;
 5. Power tools and machines in shops that generate dust shall be provided with dust-collecting equipment. The equipment shall be either single- or multi-use vacuum packs or a central dust-collection system. Installed systems shall comply with National Fire Protection Association (NFPA) Standard 664 "Standards for the Prevention of Fire and Explosion in Wood Processing and Woodworking Facilities" (1998), incorporated herein by reference, as amended and supplemented, and N.J.A.C. 7:27-8. Copies of the NFPA Standard 664 may be obtained by contacting NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.
 6. The ceiling height of an academic classroom or other instructional space containing more than 300 square feet in area shall average nine feet six inches, and no part of the ceiling or other obstruction shall be lower than eight feet. Instructional spaces of

less than 300 square feet and areas of larger spaces devoted to clothing alcoves, storage or work space shall have a minimum ceiling height of eight feet;

7. Height of the ceiling or other obstruction in other areas shall provide a minimum clearance as listed below:

Gymnasium	22 feet
Auxiliary gymnasium	14 feet
Weight room	12 feet
Music room (vocal or instrumental)	12 feet

The minimum height from overall highest riser to ceiling shall be eight feet.

Cafetorium	18 feet
Cafeteria	12 feet
Industrial arts and vocational shop	12 feet
Library/media center	9½ feet

8. Public school corridors and all other administrative spaces shall have a minimum ceiling height of eight feet;
9. A health unit shall be provided and shall include a nurse's area, a waiting area, an examination area, a rest area with privacy, drinking water, and toilet facilities sized and arranged so physically disabled persons requiring assistance will be able to receive aid;
10. Instructional greenhouses shall meet the following standards in addition to the requirements of the UCC and the Fire Prevention Code:
- All doors shall be a minimum of three feet wide;
 - Drinking fountains shall not be located inside greenhouses; and
 - Greenhouses may be either attached to a school building or located at least 20 feet from the school building.

11. Wherever chemicals are stored or used, an eyewash fountain or similar device capable of providing a 15-minute continuous water flow shall be provided.
Eyewash devices shall also be provided per N.J.A.C. 6A:26-12.5;
 12. The minimum dimension of an instructional space or specialized instructional space shall be 10 feet; and
 13. The designs of new schools shall incorporate the guidelines developed by the United States Green Building Council known as Leadership in Energy and Environmental Design (LEED), “LEED for Schools,” which is incorporated by reference herein, to achieve maximum energy efficiency and environmental sustainability in the design of schools. A copy of the guidelines may be obtained from the Office of School Facilities, PO Box 500, Trenton, NJ 08625-0500.
- (c) Entrance and exit requirements shall be as follows:
1. Pick-up and drop-off areas shall be designed to provide safe entrances and egress for students and adults;
 2. There shall be clearly marked walkways from drop-off areas into school facilities, and entrances to the school facility shall be clearly marked;
 3. Minimum clear widths for egress corridors serving more than 100 students in pre-kindergarten and elementary schools (kindergarten through fifth grade) shall be:
 - i. Seven feet, wall to wall without lockers or wardrobes;
 - ii. Eight feet, wall to locker face with lockers or wardrobes on one side; and
 - iii. Nine feet six inches, locker face to locker face with lockers or wardrobes on both sides.
 4. Minimum clear widths at any point in middle and high schools, grades six through 12, shall be:
 - i. Seven feet six inches, wall to wall without lockers;
 - ii. Eight feet six inches, wall to locker face with lockers or wardrobes on one side; and

- iii. Ten feet, locker face to locker face with lockers or wardrobes on both sides.
 - 5. Minimum clear widths for secondary egress corridors serving 100 or fewer occupants shall be five feet.
 - 6. Doors from all spaces used by students and school staff, excluding lavatories, storage rooms, janitors' closets, instructional spaces under 300 gross square feet, and locker rooms, shall swing into the corridor and shall have a safety vision panel of 1/4 inch glazing that is at least 100 square inches.
- (d) The environment requirements shall be as follows:
- 1. Windowless classrooms and other occupied instructional spaces that do not have operable windows equal to at least four percent of the floor space shall be air conditioned, excluding gymnasiums, industrial shops, kitchens, and locker rooms; and
 - 2. School facilities shall be designed, constructed, and renovated consistent with the standards of the UCC and other applicable State and Federal laws for radon, lead, asbestos, and other contaminants, and subject to the enforcement of such standards by the applicable State or Federal agency.
- (e) Safety requirements shall be as follows:
- 1. Glazing in fire-rated assemblies shall be in accordance with the UCC. All other interior glazing shall be safety glazing;
 - 2. A check valve shall be installed in the line supplying gas to each classroom, laboratory, shop or the other area where gas is used by students, except home economics rooms;
 - 3. Science rooms, laboratories, shops, and other instructional spaces in which an open flame and/or the use of hazardous chemicals occurs, with the exception of home-economic rooms, shall be equipped with an emergency safety cold-water shower and a floor drain or a self-contained water receptacle or catch basin;
 - 4. All construction or alteration of playgrounds, playground equipment, and surfacing, including materials provided at the base of playground equipment, shall

comply with the playground-safety subcode of the UCC at N.J.A.C. 5:23-11, and with N.J.A.C. 5:23-7, the Barrier Free Subcode of the UCC;

5. When provided, a ceiling paddle fan shall be located at least eight feet above the floor and be enclosed with a metal guard;
 6. Playground equipment shall not be constructed of chromated copper arsenate treated wood; and
 7. The storage of pesticides shall be in a locked metal cabinet and vented to the exterior.
- (f) Electrical power and communications requirements shall be as follows:
1. Push-type emergency cut-out switches shall be provided at appropriate locations within shops to de-energize the electrical supply to non-portable machinery and shall have a clear unobstructed access of a minimum of 36 inches. The switches shall be provided on the basis of one for each 1,000 square feet or fraction thereof of floor area in the shop, but in no case less than two per shop. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized, thereby being inoperative;
 2. All non-portable motorized equipment and machinery shall be provided with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the above emergency cut-off;
 3. Instructional spaces shall be provided with sufficient electrical power, communication and data outlets to satisfy the school district's program and equipment needs as defined in the school district's approved technology plan or equivalent document and educational specifications for a school facilities project, with not less than two duplex outlets remotely located per space;
 4. Large group areas such as assembly rooms, auditoriums and other large group instructional spaces shall be provided with electrical power, data, and

communications outlets at appropriate locations and at the location of portable projectors and built-in speaker cables at stage and platform areas; and

5. A communication system shall be installed in each classroom to allow for emergency communication to local authorities. The communication system may be in the form of a telephone system capable of placing 9-1-1 calls.

(g) Lighting requirements shall be as follows:

1. Installed artificial lighting intensity shall comply with the following minimum footcandles, which shall be maintained on the task at any time:

Installed Lighting Intensity	Minimum Acceptable
<u>Locations</u>	<u>Footcandles</u>
Classrooms and instructional areas - study halls, lecture rooms, art rooms, offices, libraries, conference rooms, work rooms, shops, laboratories, and secondary school cafeterias	50
Drafting, typing, and sewing rooms	70
Reception rooms, gymnasiums, auditoriums, primary school cafeterias, all-purpose rooms, and swimming pools	30
Locker rooms, washrooms, toilet rooms, corridors containing lockers, and stairways	10
Corridors without lockers and storerooms	5
Classrooms for the partially sighted	70

2. As an alternative to compliance with the above requirements, instructional spaces shall comply with the American National Standards Institute standard number ANSI/IES RP3-00, Guide for Educational Facilities Lighting, (2000) incorporated herein by reference, as amended and supplemented, which is available for review

at the Division. The document may be purchased from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.

(h) Plumbing requirements shall be as follows:

1. The number of plumbing fixtures and ventilation requirements shall conform with the provisions of this chapter and be calculated according to the UCC;
2. General student toilet rooms shall be designed and labeled for student use, contain at least two of each required fixture and be directly accessible from a corridor or an open plan instructional space. Students housed within an instructional space in excess of 300 square feet shall not be required to travel through any other space except a corridor to reach a general pupil toilet room;
3. There shall be at least one general toilet room for each sex on each floor occupied by students, or all instructional rooms shall have individual toilet rooms. Where classrooms, shops, or physical education rooms are provided with self-contained individual facilities (water closet, lavatory, and drinking fountains), the pupil capacity of the rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms;
4. Toilet facilities for preschool and kindergarten classrooms shall be provided as follows:
 - i. An individual toilet room shall be provided in each classroom and shall meet the following criteria:
 - (1) Be located and equipped in such a way as to ensure privacy for the students;
 - (2) Be accessible to physically disabled students and barrier free in design as per N.J.A.C. 5:23-7;
 - (3) Be equipped with an open front seat with a flood rim height no greater than 14 inches from the floor, and a lavatory (sink) with a flood rim height no greater than 26 inches from the floor.

- ii. In lieu of providing an individual toilet room in each classroom as required in (h)4i above, toilet rooms may be provided adjacent to or outside the classroom if the following criteria are satisfactorily addressed:
 - (1) No child or group of children shall be left unsupervised at any time when traveling to or from the facilities. Provisions shall be made for adult supervision in a manner that will not infringe upon instructional time;
 - (2) Toilet facilities shall be readily accessible and the toilet room and signage shall be visible to a child from the classroom door;
 - (3) Toilet facilities shall be provided for both boys and girls and shall meet the requirements of (h)4i(4) above.
- iii. If a school district chooses to provide toilet rooms adjacent to or outside the classroom in conformance with (h)4ii above, the chief school administrator shall certify to the executive county superintendent on forms prescribed by the Commissioner how the alternate method of compliance shall be addressed. The completed form and a copy of a resolution by the district board of education approving the alternate method of compliance shall be submitted to the executive county superintendent for approval. Thereafter, the chief school administrator annually shall resubmit the form certifying how the alternate method of compliance will be addressed. Any changes to the approved alternate method of compliance shall be submitted to the executive county superintendent for approval;
- 5. Entrance to toilet rooms and locker rooms shall be designed to prevent visibility into the room;
- 6. Water closets shall be separated by individual stall partitions, including doors that are of a smooth impervious material to permit effective cleaning;

7. Floors of all toilet, shower, and drying rooms shall be water-tight and impervious to moisture. Floors shall be provided with an integral cove base at least four inches high;
8. Flooring materials of ceramic tile, quarry tile, sheet vinyl, and plastic coatings designed for this purpose shall be deemed to meet the requirements of this subchapter except for use in showers. Resilient tiles or exposed concrete shall not be acceptable in toilet rooms;
9. Where showers are provided, shower heads shall be at least 30 inches apart, one shower head for each 10 students, with a shower head height of six feet, and 12 square feet of floor area shall be provided per shower head;
10. Preschool and kindergarten classrooms shall be equipped with a bubbler or water fountain; and
11. Arts and crafts classrooms shall be equipped with a water source, sink and appropriate sink trap.

6A:26-6.4 Educational facility planning standards for school facilities housing preschool students

- (a) The educational facility planning standards delineated in this subchapter shall apply to the design and construction of school facilities housing preschool students. Any standards not addressed in this section are addressed in N.J.A.C. 6A:26-6.3, in conjunction with the UCC. For community providers, the requirements of this section shall supplement but not supplant the requirement manual mandated by the Office of Licensing in the Department of Human Services, for community provider licensure. If this section's requirements exceed the requisites of the Department of Human Services' manual, the requirements of this section shall apply.
- (b) General design and construction requirements shall be as follows:

1. School facilities for preschool students shall afford space for instruction, administration, and student services, as set forth in the facilities efficiency standards in (h) below;
 2. Preschool classrooms shall be no higher than the second floor of a school facility;
 3. Preschool classrooms shall have a minimum of the square footage of usable space per child as set forth in the facilities efficiency standards, and usable space per child shall exclude storage, equipment, or furnishings that are either built-in or not easily movable;
 4. Each preschool classroom shall have an attached toilet room designed to accommodate the needs of physically handicapped students with features sized for the use of preschool students;
 5. Preschool classrooms shall have a resilient floor covering;
 6. Separate from the toilet room, each preschool classroom shall have access to an additional sink with a flood rim height no greater than 26 inches from the floor;
 7. Preschool classrooms shall be equipped with a bubbler or water fountain; and
 8. Preschool classrooms shall be designed to modulate interior noise and minimize exterior noise.
- (c) Entrances, egress, and security requirements shall be as follows:
1. All preschool classrooms shall have operable windows with inside locks and shall be equal to at least four percent of the floor space.
- (d) The outdoor play area requirement shall be sufficient to support the achievement of the New Jersey Preschool Teaching and Learning Standards of Quality as defined in N.J.A.C. 6A:13A and by the educational specifications under N.J.A.C. 6A:26-5, and evidenced by a sufficiency standard such as the following: 100 square feet of outdoor play space for each child using the space at one time.
- (e) The electrical power and communications requirement shall be as follows:

1. Child-safety receptacles shall be used throughout preschool classrooms and bathrooms and elsewhere in the school facility where applicable.
- (f) Lighting requirements shall be as follows:
1. Subject to the requirements of N.J.A.C. 6A:26-6.3(g), preschool classroom lighting shall be adjustable and varied across the space with a mixture of both natural and artificial light; and
 2. Preschool classrooms shall have child-safe windows to maximize natural light.
- (g) Plumbing requirements shall be consistent with N.J.A.C. 6A:26-6.3(h)4 except as follows:
1. Preschool classrooms toilet facilities shall be open to view as a safety precaution;
 2. Toilet facilities for preschool students shall be designated for their exclusive use and shall be so identified; and
 3. Preschool facilities shall provide a diaper/clothes changing area in the classroom.
- (h) The facilities efficiency standards for early childhood schools are the following:

Table 2 Early Childhood School Model for Three and Four Year Old Students

Early Childhood School Model

For Three and Four Year Old Students

Enrollment 294 FTE*

Utilization Factor 100% 1

<u>Room Designations</u>	Net	# of students	# of	# of	Net SF	Description
	SF**		students	rooms		
	per		per room			
	room					

Instructional Spaces

<u>Preschool Classroom</u>	950	270	15	18.00	17,100	See notes below

<u>Preschool Classroom</u>	950	24	12	2.00	1,900

Special Education

19,000	Subtotal Net SF of Instructional Spaces

1.00	Utilization Factor

19,000	Subtotal Net SF for Instructional Spaces w/Utilization Factor

Specialized Spaces

Kitchen	1,200			1.00	1,200

Multi-Purpose room /	3,400			1.00	3,400

Gross motor skills

Small Group	400			2.00	800

Instruction Room

(SGI)

5,400	Subtotal Net SF for Specialized Spaces

Administrative

Spaces

Nurse	400			1.00	400

Reception/Main	400			1.00	400

Office

Principal/Director	200			1.00	200

Office	125			2.00	250

Conference Room	300			1.00	300

Teacher Work Room	300			1.00	300

1,850	Subtotal Net SF for Administrative Spaces
26,250	Total Net SF
89.29	Net SF per student
1.4	Grossing Factor***
125.00	Gross SF per student
36,750	Total Gross SF for population of 294 FTE
\$143.00	Area Cost Allowance per SF
\$5,255,250	Cost of new Early Childhood School for population of 294 FTE

*Full time equivalent
(FTE)

**Square Feet (SF)

***Grossing factor = 40% of Total net SF for circulation, toilet rooms, storage, mechanical, receiving, communications, electrical, Adult handicapped accessible bathroom, etc.

Notes:

750 SF of floor area provided, 150 SF of casework and 50 SF of toilet room

A. Indoor Storage: There shall be varied and ample types of storage that meets the general classroom needs of both children and staff. Each classroom shall have open, accessible storage, such as cubbies for each child for coat storage, personal papers, and change of clothing.

B. Teacher Storage: Each classroom shall have a space allocated for the teacher's coat and personal items.

C. Classroom Storage: Additional storage shall include an area, inaccessible to children, to store cots, bedding, and storage of classroom materials such as manipulatives, puzzles and art supplies. Hanging mats are a reasonable option for small storage spaces.

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

- (a) This section shall govern review of project documents for capital projects at private schools for disabled students which are approved or seeking approval pursuant to N.J.A.C. 6A:14-7 and schools for disabled students operated by the Department of Human Services. Review and approval by the Division is required for the type of work set forth in N.J.A.C. 6A:26-5.1(a).
- (b) Submission and review of plans and specifications shall be conducted as follows:
 - 1. Educational specifications shall be prepared and submitted pursuant to N.J.A.C. 6A:26-5.2, and schematic plans shall be prepared and submitted pursuant to N.J.A.C. 6A:26-5.3 except that they shall be signed by the executive director and board president of the private schools for disabled students or the New Jersey Department of Human Services.
 - 2. A New Jersey registered architect or licensed engineer, as required by N.J.A.C. 5:23-2.15, shall submit project documents for the temporary and permanent construction, alteration, and rehabilitation of facilities to the Division on behalf of either the private schools for disabled students or the New Jersey Department of Human Services for review and subsequent approval for compliance with this chapter.
 - 3. For review and subsequent approval for compliance with the Uniform Construction Code (UCC), N.J.A.C. 5:23:

- i. Plans and specifications shall be submitted to the local construction official of the municipality in which the facility will be constructed, in the case of private schools for disabled students; and
 - ii. Plans and specifications shall be submitted to the New Jersey Department of Community Affairs, in the case of private schools for disabled students operated by the Department of Human Services.
- 4. The project documents shall be submitted to the Division and reviewed pursuant to N.J.A.C. 6A:26-5.
- (c) Acquisition of land shall be according to N.J.A.C. 6A:26-7.
- (d) Disposal of land shall be according to N.J.A.C. 6A:26-7.4.
- (e) Reviews of project documents for facilities of private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services shall be done by the Division to assure that the design adheres to:
 - 1. School site sizes, N.J.A.C. 6A:26-7.1; and
 - 2. Educational facility planning standards, N.J.A.C. 6A:26-6.3 and 6.4.
- (f) Provisions for accommodation of students in temporary school facilities operated by private schools for the disabled or the New Jersey Department of Human Services shall be according to N.J.A.C. 6A:26-8.

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

6A:26-7.1 Approval of the acquisition of land

- (a) A school district may obtain voter approval pursuant to N.J.A.C. 6A:26-3 or 9 for funding of land acquisition prior to Division approval of the land acquisition. A school district shall not take any action to acquire the land prior to obtaining Division approval.
- (b) A school district, or the Development Authority on behalf of a school district, shall submit to the Division the following information to obtain approval under (a) above for

land in connection with a school facilities project. The following requirements do not address requirements of other State agencies having approval or permitting jurisdiction over land acquisition.

1. The following information shall be provided by the school district:
 - i. A written request for that shall include a statement, signed by the board president and the chief school administrator, indicating the immediate and ultimate proposed uses of the site, in terms of building use, grade organization, and potential maximum enrollment, and whether the land is, or will be, part of a school facilities project indicated in the school district's LRFP;
 - ii. A map of the school district showing the location of the land, the location of existing schools in the school district, the attendance area to be served by the school, and the number of students who reside within the attendance area;
 - iii. Data regarding the impact of the acquisition upon racial balance within the school district's public schools;
 - iv. A full, detailed appraisal of the market value of the property prepared by a licensed professional;
 - v. A title report on the property produced by any reputable title insurer licensed in the State of New Jersey evidencing that title is good and marketable;
 - vi. A feasibility study evidencing that school-district-owned land within the attendance area to be served by the school is not available, suitable, or sufficient to be used for school purposes, but only if the school district is required to use the Development Authority and seeking approval for a new acquisition of land and not merely a new use for already school district-owned land; and
 - vii. For a school district required to use the Development Authority and seeking approval for the acquisition of land, evidence that the school district has not indemnified the seller of the land for the costs arising from

the environmental remediation required for the property to be used for school purposes; acquired the land in its "as is" condition; or acquired the land under terms and conditions that would invalidate the statutory immunity of the school district from liability for the remediation costs associated with pre-existing contamination, whether discovered pre-closing or post-acquisition, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

2. The following information shall generally be provided by a licensed architect, professional engineer, or professional planner:
 - i. A statement from the licensed architect, professional engineer, or professional planner indicating whether the land is subject to regulation under the Coastal Wetlands Act (N.J.S.A. 13:9A-1 et seq.); the Freshwater Wetlands Act (N.J.S.A. 13:9B-1 et seq.); the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.); the Waterfront Development Act (N.J.S.A. 12:5-3); the Green Acres Acts (N.J.S.A. 13:8A-1 et seq., 13:8A-19 et seq., 13:8A-35 et seq., and 13:8C-1 et seq.); or other statutes, regulations or executive orders administered by agencies of State or Federal government.
 - (1) If so subject, the statement shall address the steps necessary to obtain approval from the agencies, and include adequate documentation to demonstrate to the Division the approvals will be obtained and not affect the educational adequacy of the site, as set forth in (d) and (e) below;
 - ii. A statement from a New Jersey licensed architect, professional engineer, or professional planner indicating whether the proposed use of the land to be acquired is consistent with the goals and strategies of the New Jersey State Development and Redevelopment Plan (State Plan). If inconsistent

with such goals and strategies, the statement shall include adequate documentation to demonstrate to the Division there are no alternative suitable sites available in the school district that are consistent with the State Plan's goals and strategies;

- iii. A statement from a New Jersey licensed architect, professional engineer, or professional planner indicating the land to be acquired is suitable for the proposed use;
- iv. A completed, signed and sealed plot plan of the land to be acquired showing topographical and contour lines; adjacent properties indicating current land uses; access roads; deed restrictions; easements; protective covenants; right of ways; and environmentally sensitive areas such as waterways and wetlands. The acreage and dimensions of the tract proposed for acquisition shall be included as per the application of the standards for minimum acceptable school site sizes in (d) below;
- v. If existing buildings or structures are located on the land to be acquired, the intended use and/or disposition of these buildings. Any building to be acquired and used shall comply with the requirements of the UCC for educational occupancy and N.J.A.C. 6A:26-5 that apply to the construction of a new building;
- vi. Adequate documentation to demonstrate to the Division that soil conditions for structural integrity and drainage have been examined by the New Jersey licensed architect or professional engineer; and
- vii. Adequate documentation to demonstrate to the Division that soil and groundwater conditions have been examined by a New Jersey licensed architect or professional engineer for suitability for septic systems, if applicable.

- 3. The following shall be submitted by the school district:

- i. A statement from a local or regional water purveyor or alternatively, a statement from a geologist or professional engineer if the source of water is groundwater, certifying that:
 - (1) The land can be adequately provided with the necessary water for the proposed maximum enrollment, and if the source of water is groundwater, that there will be sufficient groundwater available for the proposed maximum enrollment; and
 - (2) Potable water infrastructure is, or is not, in place to service the site;
- ii. A statement from a local or county sewerage agency certifying that:
 - (1) The land can be adequately provided with the necessary and acceptable sewage disposal system for the proposed maximum enrollment, as evidenced, for example, by consistency with the locally approved wastewater management plan; and
 - (2) Sewer infrastructure is, or is not, in place to service the site. If such infrastructure is not in place, adequate documentation from a professional engineer or licensed geologist to demonstrate that soil and groundwater conditions are suitable for a septic system or discharge to groundwater; and
- iii. Recommendations from the New Jersey Department of Environmental Protection (NJDEP) that there are no substantial reasons why the land acquisition should not proceed within 45 days of its receipt of an environmental site report submitted by the school district or the Development Authority on behalf of the school district addressing the items below, or evidence that 45 days have passed since the NJDEP's receipt of the environmental site report, whichever is earlier:
 - (1) A sewer service consistency determination;

- (2) Potable water supply;
- (3) Coastal and freshwater wetlands;
- (4) Green Acres land;
- (5) Stream encroachment;
- (6) Historical or archeological resources;
- (7) Endangered plant species;
- (8) Threatened or endangered animal species; and
- (9) An environmental site assessment to determine whether there is potential contamination on the land, submitted on a form provided by the Department.

4. The following shall be submitted by the school district:

- i. Recommendations of the planning board of the municipality in which the land is situated, and that has an approved master plan as required by N.J.S.A. 40:55D-31 and 18A:18A-16, or evidence that the applicable 45 or 55 days have passed, whichever is earlier, from the planning board's receipt of the land acquisition application. The recommendations shall be sent to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, NJ 08625-0500, and forwarded promptly to the Division at the above address if received by the school district or its architect;
- ii. The recommendation of the executive county superintendent based on the requirements specified in this subchapter; and
- iii. Prior approvals of other agencies, such as the New Jersey Department of Agriculture, NJDEP, and the Pinelands Commission, where such approval is reasonably obtainable prior to acquisition.

(c) A school district that intends to acquire land not in connection with a school facilities project shall submit all of the information required under (b) above except (b)1ii and iii,

and shall further be excepted from the requirements of (d) and (e) below. If the school district later intends to change the use of the land and use as a school site, the school district shall be required to submit all of the information required under this section and the aforementioned exceptions shall no longer apply.

- (d) School site sizes shall be directly related to the acreage required for the structures and activities to be situated thereon. Except where specifically noted for multiple or shared use, the acreage shall be considered for single use.
- (e) All school sites shall have sufficient acreage for the following:
 - 1. The placement of the school facility;
 - 2. Expansion of the building to its maximum potential enrollment;
 - 3. The placement of all other structures, such as greenhouses; storage buildings; school-bus maintenance buildings or garages; and any other above- or below-ground structure that is to be placed thereon;
 - 4. Multi-purpose physical education field(s) and, for preschool-through-grade-five school facilities, a playground required to support the achievement of the New Jersey Student Learning Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model;
 - 5. Disabled-accessible pedestrian walkways, roadways and parking areas on which people and vehicles access the building;
 - 6. Public- and service-access roads onto the site including, where warranted, a one-way school-bus road of 30-foot width and a two-way road of 36-foot width; a school bus drop-off area; and 18-foot-wide posted fire lanes for fire apparatus; and
 - 7. A 30-foot-wide access around the entire building.
- (f) Land owned by a district board of education that does not meet the standards of this section may be supplemented by adjacent municipally-owned land if it is formally leased

on a long-term basis to the district board of education for exclusive use during school hours and there are no deed restrictions that prohibit school district use.

- (g) The Division's approval shall remain effective for three years, after which time Division approval shall again be required to be obtained prior to acquiring the land.

6A:26-7.2 Approval of the acquisition of land in certain school districts under the Development Authority's auspices

The Development Authority may acquire land on behalf of a school district eligible for 100 percent State support of final eligible costs for school facilities projects that are consistent with the school district's approved LRFP. For such school districts, the Department shall require submission of all information set forth in N.J.A.C. 6A:26-7.1(b) to demonstrate compliance with this subchapter. The Development Authority may submit the required information on behalf of such school districts.

6A:26-7.3 Approval for the acquisition of existing facilities

- (a) A district board of education planning to acquire an existing facility through purchase, gift, lease, or otherwise shall comply with all procedures and rules pertaining to the appropriation and use of capital funds as required by N.J.S.A. 18A:20-4 and 4.2. The school district shall also have the facility approved in accordance with N.J.A.C. 6A:26-3, which applies to the acquisition of a school site and for the construction of a new facility.
- (b) Facilities to be procured for temporary use shall comply with N.J.A.C. 6A:26-8 if subject to educational-adequacy review pursuant to N.J.A.C. 6A:26-5.4(c) because the facilities will house students.

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

- (a) The school district shall make to the Division a written request for school district-owned land to be altered or disposed of through sale, transfer, or exchange of all or part of the total acreage, including rights or interest therein and/or improvements thereon, such as facilities, if applicable.
1. A copy of the request shall be sent by the school district to the executive county superintendent, who shall make recommendations to the Division. The executive county superintendent shall provide to the district board of education a copy of the recommendations.
 2. The request shall indicate whether the school district intends to convey the site, rights or interest therein, and/or improvements thereon under an exception to the public sale requirements per N.J.S.A. 18A:20-6.
 3. The request shall indicate whether the school district intends to convey the site, rights, or interest therein, and/or improvements thereon that had been conveyed to the school district from the Development Authority or funded in whole or in part by State share under EFCFA.
 4. If the land, rights, or interest therein, and/or improvements thereon have been conveyed to the school district from the Development Authority, the request shall provide evidence acceptable to the Department that the property has not reverted to the Development Authority as authorized under N.J.A.C. 19:34-3.6.
 5. If a school district seeks to dispose of land, rights, or interest therein, and/or improvements thereon funded in part with debt service aid pursuant N.J.S.A. 18A:7G-9 or 10, and the land and/or improvements are either not needed or not being used for the purposes for which the bonds were issued, any proceeds from the disposal shall be used by the school district first to reduce the outstanding

principal amount at the earliest call date or to annually reduce the debt-service principal payments. A district board of education may request approval from the Commissioner to apply the proceeds over the term of the outstanding debt or by some other distribution mechanism if, for example, it is beneficial to stabilizing the school district's debt-service tax levy.

- (b) The Division shall determine whether the disposal is consistent with the school district's approved LRFP or has a negative impact on the educational adequacy of an individual site.
- (c) The Division shall notify the school district of its approval or disapproval and send a copy to the executive county superintendent. If the disposal includes a site, rights, or interest therein and/or improvements thereon conveyed to the school district from the Development Authority, is funded in whole or in part by State share under EFCFA, or is in a school district that is required to use the Development Authority, the Division shall also notify the Development Authority.
- (d) A school district may convey and transfer, without consideration, its right, title, and interest in and to any trunk or other sewer lines to a municipality, pursuant to N.J.S.A. 18A:20-9.1 without requiring approval from the Division.

6A:26-7.5 Approval for the closing of a school facility

- (a) To receive approval for the closing of a school, the district board of education shall provide the Division and the executive county superintendent with the following assurances:
 - 1. The proposed closing is consistent with the school district's approved LRFP because:
 - i. The school district has demonstrated that sufficient school-building capacity exists to house students for the five years following the closing; or
 - ii. The school district has demonstrated through a feasibility study that the benefits of undertaking new construction outweigh those of rehabilitating the school proposed for closure.

2. The use of temporary facilities in the remaining schools does not result or increase from an overall facilities shortage caused by the school closing; and
 3. The re-assignment of students to other schools in the school district does not produce, sustain, or contribute to unlawful segregation, separation, or isolation of student populations on the basis of race or national origin.
- (b) A request for approval from the Division for the school closing shall include the recommendation of the executive county superintendent.
 - (c) A letter of approval from the Division based on the information in (a) above shall be required before the school's closing.
 - (d) The Division shall notify in writing the school district of its determination with respect to the requested school closing, with a copy provided to the executive county superintendent.
 - (e) Starting in August 2017, the Division of Executive Services shall maintain a list of closed, unused, or unoccupied school facilities, consistent with N.J.A.C. 6A:26-2.2, and make it available on the Department's website.

Subchapter 8. Temporary School Facilities

6A:26-8.1 Temporary facilities standards

- (a) This subchapter sets forth the standards that apply to temporary facilities, whether included as part of a school facilities project, funded as an other capital project, or provided by an approved private school for the disabled. It addresses the applicability of the facilities efficiency standards to temporary facilities, compliance monitoring by the county superintendent of schools, budgeting for deficiencies, and the construction and design standards for a variety of types of temporary facilities, such as leased buildings and pre-manufactured temporary classroom units. Any temporary facility to be used as a school shall comply with the applicable requirements of the UCC, evidenced by a valid certificate of occupancy for the use. If the building currently is not classified as Group E

pursuant to the UCC, then it is to comply with the UCC requirements for a change of use at N.J.A.C. 5:23-6.31. If the building is a school that predates the UCC, then it shall comply with the applicable requirements of the Uniform Fire Code.

- (b) When considering educational adequacy, the Division and the executive county superintendent shall apply the minimum-square-foot standards permitted under the facilities efficiency standards. If a district board of education or approved private school for the disabled seeks relief from the minimum-square-foot requirements of the facilities efficiency standards, relief shall be determined upon application to the Division under the procedures for requesting an exception set forth in N.J.A.C. 6A:26-6.2.
- (c) Executive county superintendents shall annually monitor the temporary facilities of school districts and approved private schools for the disabled for compliance with the standards in this subchapter. District boards of education or approved private schools for the disabled shall provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the executive county superintendent on or before October 1 annually. If the correction of the deficiencies is part of a school facilities project and eligible for the State share, State share shall be applied to meet this budgetary requirement. Failure to budget for the correction of deficiencies and to implement the corrections by the next September 1 following the October 1 notice shall result in the executive county superintendent, in consultation with the Division, ordering that the facility be abandoned immediately.
- (d) In making a determination about an application for the use of temporary facilities, the following factors shall be taken into account:
 - 1. Accommodations of students in temporary spaces in an existing public school, in other school-district-owned facilities or in rented or leased buildings not on a school-district-owned site shall comply with the following:
 - i. Safety factors:

- (1) The floors, walls, and ceilings of rooms used for instruction shall be free of moisture, peeling paint, and potentially hazardous materials;
 - (2) The hardware on doors of any space occupied by students shall permit egress from the room at all times. Key-operated locks, thumb-turn locks, hasps or similar types of locking devices shall not be permitted;
 - (3) Instructional room doors opening into the corridor shall have vision panels;
 - (4) Directions for exiting from the building in case of emergency shall be posted in each space by the exit;
 - (5) Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;
 - (6) All educational spaces shall be equipped with a telephone connected to the main office and capable of emergency communication to local authorities. Such communication system may be in the form of a telephone system capable of placing 9-1-1 calls; and
 - (7) Provision shall be made for storage of students' clothing in other than a corridor or exitway.
- ii. The average ceiling height shall be at least eight feet for instructional spaces in temporary facilities in an existing public school, in a school-district-owned facility, and in rented or leased buildings not on school-district-owned sites.
 - iii. Heating and ventilation requirements shall be as set forth in N.J.A.C. 6A:26-6.3 and the UCC;
 - iv. Toilet facilities shall meet existing UCC requirements for the E Use Group as determined by the construction official. Toilet facilities shall be available within a reasonable distance not more than one floor away, and shall be equipped with an exterior operable window sash or mechanical exhaust

- ventilation. Toilet facilities shall be provided for students in preschool and kindergarten programs as per N.J.A.C. 6A:26-6.3 and/or 6.4;
- v. Potable water shall be available and drinking fountains shall be provided for students in preschool and kindergarten programs in accordance with N.J.A.C. 5:23-7;
 - vi. At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas;
 - vii. Furniture and equipment that is in good condition and suitable for the age and size of the students and purposes of instruction shall be provided;
 - viii. Instruction:
 - (1) Chalkboard, or other appropriate writing surface, and a display board suitable for the instructional program shall be provided; and
 - (2) Sufficient electrical duplex outlets shall be provided to satisfy the program needs as provided in N.J.A.C. 6A:26-6.3; and
 - ix. The outside physical education area for students shall include, but not be limited to, sufficient space, equipment, and safe surfaces for the temporary facility enrollment and program needs and be protected from hazards or traffic conditions.
2. Pre-manufactured temporary classroom units, vans, and other mobile units shall comply with the following:
- i. Pre-manufactured temporary classroom units shall be reviewed and approved by the Division for educational adequacy pursuant to N.J.A.C. 6A:26-5.4(c). The Department of Community Affairs or the local construction official shall review and approve the installation and shall issue the certificate of occupancy. Each pre-manufactured temporary classroom unit shall:

- (1) Have a seal affixed by the manufacturer that indicates it meets the requirements for construction and certification of industrialized/modular buildings for educational use at N.J.A.C. 5:23-4A;
- (2) Contain square footage appropriate to its use as specified in this chapter;
- (3) Meet code requirements for educational facilities as specified in the UCC and in N.J.A.C. 6A:26-6.3 and 6.4, to the extent the latter code requirements are applicable to temporary facilities;
- (4) A pre-manufactured temporary classroom unit in excess of 20 feet in length shall have two means of clear and unobstructed egress that are remote from each other, consistent with the UCC;
- (5) Have sturdy steps that include a handrail and are barrier free, consistent with the UCC;
- (6) Have heat that provides a temperature of 68 degrees Fahrenheit;
- (7) Have a ceiling height as follows:
 - (A) Vans and other mobile units – seven feet minimum;
 - (B) Temporary classroom unit – seven feet six inches minimum.
- (8) Have provisions for the storage of students' clothing;
- (9) Have a chalkboard and display board appropriate to the instructional program;
- (10) Have floor covering of either carpet that meets UCC requirements or asbestos-free resilient flooring;
- (11) Have interior ceiling and wall materials that are certified free of toxic materials;
- (12) Be provided with an electric smoke detection unit that has an audible alarm for each 900 square feet, or portion thereof, or for each instructional space and that is tied in to the main building fire alarm system; and

- (13) Be situated on a site approved by the Division pursuant to N.J.A.C. 6A:26-5.4(c) and approved by the Division pursuant to N.J.A.C. 6A:26-7.1 if land is acquired for the temporary facility.
- ii. Nonconformance to requirements in (d)2i(1) through (13) above that is found during an evaluation of any pre-manufactured unit placed in service after June 4, 1986, or in a subsequent inspection of a unit approved according to (d)2i(1) through (13) above, shall be corrected within 30 days of the evaluation. Staff of the Division or county offices of education shall order a unit immediately abandoned if the school district fails to correct deficiencies with respect to such requirements.
- iii. A self-propelled van or other pre-manufactured mobile unit used for instruction shall:
 - (1) Have mechanical ventilation and exhaust that provides air change per occupant per hour in accordance with the UCC;
 - (2) Have interior ceiling and wall materials that are certified non-toxic and non-combustible;
 - (3) Contain a minimum of 100 square feet;
 - (4) Have electric heat that provides a temperature 68 to 72 degrees Fahrenheit;
 - (5) Provide at least 50 footcandles of uniformly distributed artificial illumination;
 - (6) Have a minimum ceiling height of seven feet;
 - (7) Have two means of clear and unobstructed egress that are remote from each other;
 - (8) Be provided with door hardware that is lever-operated and fully operable at all times from the interior and exterior;

- (9) Be provided with an electric smoke-detection unit that has an audible alarm that can be heard clearly within the unit;
 - (10) Be furnished with an electric hook-up cable that is copper, a maximum of 28 feet in length and contains a 220 volt four-prong receptacle that is plugged into an approved twist-type outlet;
 - (11) Be furnished with a 2A-10BC fire extinguisher that is maintained in operating order at all times;
 - (12) Be furnished with electrical fixtures that meet the UCC;
 - (13) Have electrical wire of a minimum size to meet the UCC;
 - (14) Have floor covering of either carpet that meets UCC requirements or asbestos-free resilient flooring;
 - (15) Be furnished with furniture and equipment that is stabilized while in transit;
 - (16) Pass an annual inspection by the New Jersey Motor Vehicle Commission;
 - (17) Be evaluated and approved annually by the executive county superintendent; and
 - (18) Be furnished with wheel chocks to assure the unit will not move in any direction when parked.
- iv. Nonconformance to requirements in (d)3iii(1) through (18) above that is found during an evaluation of any van and/or mobile unit place in service after June 4, 1986, or a subsequent inspection of a van and/or mobile unit approved according to the standards set forth in this subsection, shall be corrected within 30 days of the evaluation. Staff of the Division or the county offices of education shall order a van and/or other mobile unit immediately abandoned if the school district fails to correct deficiencies.
- v. Pre-manufactured vans or mobile units in service longer than five years shall be evaluated by the executive county superintendent in consultation

with the Division. The unit shall be abandoned if the evaluation indicates it cannot meet the provisions of this subsection.

Subchapter 9. (Reserved)

Subchapter 10. Lease-Purchase and Lease Agreements

6A:26-10.1 Use of lease-purchase agreements

- (a) A school district may acquire improvements or additions to school facilities through lease-purchase agreements of five years or less provided that the lease-purchase agreement provides for the funding in full to the school district upon commencement of construction of the school facilities project. School districts shall not enter into lease purchase agreements of more than five years' duration.
- (b) Subject to (a) above, a school district may utilize a lease-purchase agreement to fund the local share or total costs of a school facilities project receiving State debt service aid or to provide the local funding for an other capital project as long as:
 - 1. There are no contingencies pursuant to which such funding could be withheld in whole or in part; and
 - 2. In funding the local share or total costs of a Development Authority-constructed school facilities project, the school district does not encumber what has been lease purchased in favor of another party, such as the lender or trustee unless said interest is subordinated to the Development Authority.
- (c) Lease-purchase agreements in excess of five years duration entered into prior to July 18, 2000, may continue in effect through the term of the agreement. However, as of July 18, 2000, no lease-purchase agreement entered into by a school district for improvements or additions to school buildings or for equipment shall exceed five years' duration.

- (d) A school district may acquire equipment, as provided in N.J.A.C. 6A:26-3.2(a), through lease-purchase agreements that are not subject to the ground-lease requirements of N.J.A.C. 6A:26-10.5. Lease-purchase agreements for acquisition of equipment do not require Commissioner approval, but shall be filed with the executive county superintendent and shall include:
1. The lease-purchase agreement, which shall contain the following provision:
“Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f)”;
 2. A resolution of the district board of education approving the application on a Commissioner-prescribed form and authorizing submission to the executive county superintendent; and
 3. Evidence acceptable to the Department that the school district has procured the equipment in accordance with N.J.S.A. 18A:18A-1 et seq.

6A:26-10.2 Costs of lease-purchase agreements of five years or less

- (a) All payments by a school district and other costs arising from a lease-purchase agreement of five years or less shall not be considered to constitute debt service and shall not be eligible for State debt service aid under EFCFA and/or this chapter.
- (b) Payments of lease-purchase agreements of five years or less shall be recorded as an expenditure of the school district’s general fund.

6A:26-10.3 Approval of lease-purchase agreements for improvements or additions to school facilities

- (a) School districts shall submit to the Division for approval pursuant to this section all lease-purchase agreements to fund the local share or a portion of the total costs of a school facilities project for improvements or additions to a school facility that has no excess

costs. No lease-purchase agreement that will fund excess costs of a school facilities project for improvements or additions to a school facility or the local funding of an other capital project shall be submitted to the Division for approval. If the Division does not approve a lease-purchase agreement, the school district shall frame a separate question to authorize the lease-purchase agreement and obtain voter or board of school estimate approval to enter into the agreement. No lease-purchase agreement for a capital project shall be executed by a school district unless it has received written approval of the Division, voters, or board of school estimate, as appropriate.

- (b) School districts shall file with the Division a copy of all lease-purchase agreements approved by voters or the board of school estimate.
- (c) A school district shall not enter into a lease-purchase agreement until the Division has notified the school district of the final eligible costs of a school facilities project or the consistency of an other capital project with the school district's approved LRFP and other applicable standards, as set forth in N.J.A.C. 6A:26-3.11.
- (d) The Division shall approve a lease purchase-agreement for local share or total costs of a school facilities project receiving State debt service aid payments that does not include excess costs only upon a demonstration by the school district that the payments for a lease-purchase agreement and any operating expenses related to the agreement can be included within the school district's net budget spending growth limitations and will not result in the need for approval by voters or the board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities.
- (e) All requests for approval of lease-purchase agreements for capital projects that are required to be filed with, and approved by, the Division shall include the following:
 - 1. A copy of the Department's approval letter for the school facilities project and calculation of final eligible costs;
 - 2. The lease agreement in accordance with N.J.A.C. 6A:26-10.4;

3. If applicable, an intercept agreement among the school district, the lessor and the State, executed by the school district and the lessor, providing that the State shall have the right to withhold the portion of State support owed to the school district necessary to make timely payments under the lease-purchase agreement and the agent agreement if the school district should fail to make timely payment of amounts owed under the lease-purchase and agent agreements, and apply the withheld State support to pay the school district's obligation, subject to available State appropriation;
 4. The ground lease in accordance with N.J.A.C. 6A:26-10.5, except for the lease-purchase of equipment only;
 5. Evidence of clear title to the proposed building site(s) and any land stated in the ground lease except for the lease-purchase of equipment only;
 6. A resolution of the district board of education approving the application and authorizing submission to the Division of an application on a form prescribed by the Commissioner;
 7. A copy of the newspaper advertisement for the public hearing;
 8. A copy of the newspaper advertisement for request for proposals;
 9. A copy of detailed board minutes for the public hearing resolution and vote on the approval of the lease-purchase concept, approval of the projected maximum funding level, assurance that annual lease payments can be included within the school district's base budget spending growth limitation, and authorization for the chief school administrator or board secretary to advertise for proposals for the selection of underwriter/lessor; and
 10. Any additional information that a school district deems relevant for the Division's review of the lease purchase agreement.
- (f) Upon receipt of an application for approval of a lease-purchase agreement for a capital project, the Division shall review the application and inform the school district in writing

whether the application is complete. If the application is determined incomplete, the Division shall request additional information from the school district.

- (g) After reviewing and assessing a complete application, the Division shall notify the school district in writing whether the lease purchase is approved and, if the lease purchase is not approved, the reason(s) for not approving it.
- (h) For lease-purchase agreements that must be submitted to the Division, a district board of education shall conduct a minimum of one public hearing prior to adoption of a resolution endorsing the lease-purchase concept and approving the submission of an application to the Division. All provisions of the Open Public Meetings Act (N.J.S.A. 10:4-6 through 21) shall be followed for the public hearing. In addition, notice of the public hearing shall be published not less than seven days prior to the date fixed for each public hearing in at least one newspaper published in the school district or circulating in the school district if no newspaper is published therein. The notice shall fix a date, place, and time for holding the public hearing and shall include a description of the proposed capital project, the estimated cost and the proposed method of project financing.
 - 1. The public hearing shall provide taxpayers and other interested persons an opportunity to present to the district board of education questions or other commentary with respect to the proposed capital project, the estimated cost thereof and the proposed financing method.
 - 2. After the public hearing, a district board of education shall adopt by affirmative vote of at least two-thirds of the full board membership a resolution that includes the following provisions:
 - i. Approval of the lease purchase concept;
 - ii. Approval of the projected maximum funding level;
 - iii. An assurance that annual lease payments and any operating expenses related to the agreement can be included within the school district's net

budget spending growth limitations and will not result in the need for approval by the voters or board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities; and

- iv. Authorization for the chief school administrator and board secretary to advertise and solicit proposals for the selection of a lessor and underwriter in connection with a lease-purchase agreement and to request Departmental approval of a lease-purchase agreement not including excess costs.
- (i) A district board of education having entered into a lease-purchase agreement for a capital project shall not terminate, materially change, or alter the approved lease-purchase agreement and accompanying legal documents without first obtaining the Division's written approval.
- (j) Upon completion of the transaction, the school district shall file with the Division an opinion from the school district's legal counsel stating the following:
 - 1. The transaction is in conformance with local, State and Federal law; and
 - 2. The parties hereto are properly organized; are in good standing; have the requisite power; and have been properly authorized to enter into the transaction.
- (k) Upon completion of a lease-purchase agreement, a district board of education shall file with the Division the Official Statement (Prospectus) of the transaction.

6A:26-10.4 Contents of lease-purchase agreement

- (a) Lease-purchase agreements shall contain the following provisions:
 - 1. Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f);

2. All construction contracts let by public school districts, developers, or owners of property used for school purposes shall be competitively bid pursuant N.J.S.A. 18A:20-4.2(f); and
3. The district board of education may refinance the lease-purchase agreement or purchase the leased premises, by defeasance or otherwise, at any time during the lease period.

6A:26-10.5 Contents of ground lease

- (a) A ground lease shall contain the following provisions:
 1. A legal description of the land;
 2. Lease of the land and the term of the lease;
 3. A warranty that the district board of education has good and marketable title to the land;
 4. A warranty that the land is properly zoned for school purposes including the proposed project;
 5. A warranty that the leased land and current land uses comply with all local, State, and Federal environmental laws;
 6. Termination; and
 7. Use of land.

6A:26-10.6 Approval procedures to refinance a lease-purchase agreement

- (a) A district board of education proposing to refinance a lease-purchase agreement entered into at any time, including lease-purchase agreements in excess of five years, shall adopt a resolution requesting the Division's approval of the transaction.
- (b) A district board of education requesting approval to refinance a lease-purchase agreement shall submit to the Division on a Commissioner-prescribed form an application for refinancing. A district board of education shall also file with the Division the following documents:

1. A copy of the district board of education resolution requesting approval of the refinancing and the board's vote;
2. An opinion of counsel stating that the refinancing is permitted under the original or modified lease-purchase agreement and is in conformance with local, Federal, and State statutes;
3. The list of persons and/or firms the district board of education contacted concerning the refinancing, the one selected and the specific reasons for the selection;
4. A copy of the amended rent payment schedule;
5. A schedule of sources and uses of the lease-purchase agreement refinancing proceeds;
6. An analysis of the escrow account under the proposed refinancing;
7. A copy of the documents in final draft form with amendments and modifications to the lease-purchase, ground lease, trustee or agent, and assignment agreements, if necessary, that effect the refinancing;
8. A copy of the updated insurance or other credit-enhancement commitment, modified to cover refinancing, if applicable;
9. Proposed credit ratings on the issue and credit-rating agencies; and
10. A detailed analysis of the percentage of net present value cost savings to the school district of at least three percent using the effective interest cost method as the discount rate based on an analysis of the total refunding issue that includes the following for each payment:
 - i. Date;
 - ii. Prior debt service;
 - iii. New debt service;
 - iv. Savings (prior debt service minus new debt service);
 - v. Present value factor;
 - vi. Present value savings (savings times present value factor);

- vii. Cumulative present value savings; and
 - viii. Totals of items in (b)10ii through vii above.
- (c) After the receipt of the refinancing application on a Commissioner-prescribed form and related documents, the Division shall endorse the application if satisfied that the refinancing is in the school district's best interest.

6A:26-10.7 Approval procedures for a defeasance of lease-purchase agreements

- (a) A district board of education proposing to seek voter or board of school estimate approval for the defeasance of a lease-purchase agreement entered into at any time, including lease-purchase agreements in excess of five years, through the issuance of general-obligation bonds shall adopt a resolution requesting the Division's approval of the transaction.
- (b) A district board of education requesting approval for the defeasance of a lease-purchase entered into at any time, including lease-purchase agreements in excess of five years, shall submit to the Commissioner an application for defeasance on a Commissioner-prescribed form and the following documents:
 - 1. A copy of the district board of education resolution requesting the Division's approval of the defeasance of the lease-purchase agreement through the issuance of general obligation bonds and the district board of education's vote;
 - 2. An opinion of counsel stating that the prepayment of the lease-purchase agreement is in conformance with local, State, and Federal statutes;
 - 3. A copy of the documents in final draft form with amendments and modification to the lease-purchase, ground lease, trustee or agent, and assignment agreements, if necessary, that effect the defeasance;
 - 4. A schedule of sources and uses of bond issue proceeds; and
 - 5. A detailed analysis of the percentage of net present value cost savings to the school district using the effective interest cost method as the discount rate based

on an analysis of the total new bond issue to include the following for each payment:

- i. Date;
- ii. Prior debt service;
- iii. New debt service;
- iv. Savings (prior debt service minus new debt service);
- v. Present value factor;
- vi. Present value savings (savings times present value factor);
- vii. Cumulative present value savings; and
- viii. Totals of items in (b)5ii through vii above.

- (c) The application shall support a net present value cost savings and shall be reviewed strictly on the merits of the cost savings without consideration of any debt service aid to which the district board of education may be entitled.
- (d) After the receipt of the application for defeasance and related documents, the Division shall endorse the application, if the Division determines the defeasance of the lease-purchase agreement is in the school district's best interest. Approval shall be contingent upon board of school estimate approval or voter adoption of the specific ballot question, as applicable.

6A:26-10.8 Lease-purchase agreements entered into prior to July 18, 2000

- (a) Approved lease-purchase agreements in excess of five years duration shall be accorded the same accounting treatment as school bonds. The payments by a school district on such lease-purchase agreements shall be considered debt service and may be eligible for State debt service aid under EFCFA.
- (b) The provisions of N.J.A.C. 6A:26-10.6 and 10.7 shall apply to lease-purchase agreements entered into prior to July 18, 2000.

- (c) A district board of education having entered into a lease-purchase agreement prior to July 18, 2000 for a capital project shall not terminate, change, or alter the approved lease-purchase agreement and accompanying legal documents without first obtaining the Division's written consent.
- (d) Upon completion of a lease-purchase agreement entered into prior to July 18, 2000, a district board of education shall file with the Division the Official Statement (Prospectus) of the transaction.
- (e) A school district that entered into a lease-purchase agreement prior to July 18, 2000, and applies for a State support under EFCFA for any school facilities project relating to a site or school building subject to the lessor's lien under the lease-purchase agreement shall be required to enter into an intercept agreement with the State and the lessor that provides the State shall have the right to withhold that portion of State support owed to the school district necessary to make timely payments under the lease-purchase and agent agreements if the school district fails to make timely payment of amounts owed under agreements. The State also shall have the right to apply the withheld State support to pay the school district's obligation, subject to available State appropriation. The Division's receipt of an intercept agreement executed by the school district and lessor, and acceptable to the Division, shall constitute a prior condition for the school district to receive State support under EFCFA for any school facilities project relating to a site or school facility subject to the lessor's lien under the lease-purchase agreement.

6A:26-10.9 Approval of lease agreements for facilities to be used for school purposes

Without authority first obtained from voters, the board of school estimate or the capital project review board, as appropriate, a school district may rent facilities to use for school purposes on a year-to-year basis or for up to five years in case of emergency. "Emergency" for the purposes of this section shall include an emergent condition or the circumstances that warrant emergency stabilization as defined in N.J.A.C. 6A:26-1.2.

6A:26-10.10 Limitation on multiyear leases of facilities

All multiyear leases of facilities, including one- or two-year extensions, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or shall contain an annual cancellation clause.

6A:26-10.11 Public hearing for facility leases in excess of five years

- (a) A district board of education shall conduct a minimum of one public hearing prior to adoption of a resolution endorsing a facility lease in excess of five years. All provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 through 21, shall be followed for the public hearing. In addition, notice of the public hearing shall be published not less than seven days prior to the date fixed for each public hearing in at least one newspaper published in the school district, or circulating in the school district if no newspaper is published therein. The notice shall fix a date, place, and time for holding the public hearing and shall include a description of the proposed facilities to be leased, the estimated cost, and the proposed method of funding the lease.
- (b) The public hearing shall provide taxpayers and other interested persons an opportunity to present to the district board of education questions or other commentary with respect to the proposed lease, the estimated cost, and the proposed funding method.
- (c) After the public hearing, a district board of education shall adopt by affirmative vote of at least two-thirds of its full membership a resolution that includes the following provisions:
 - 1. Approval of the lease concept;
 - 2. Approval of the projected maximum funding level;
 - 3. An assurance that annual lease payments and any operating expenses related to the lease agreement can be included within the school district's net budget spending growth limitations and will not result in the need for approval by the voters, board of school estimate, or capital project review board as appropriate, of

additional spending proposals to maintain existing instructional programs or extracurricular activities; and

4. Authorization for the district board of education to request approval of an amendment of the LRFP to reflect the leased facility and request any other approvals needed to enter into the lease.
- (d) In the case of an SDA district, the district board of education shall provide the Department with a copy of the proposed lease and a copy of detailed board minutes for the public hearing resolution and vote on the approval of the lease concept.

Subchapter 11. County Vocational School District Facilities Rehabilitation Fund

6A:26-11.1 County vocational school district facilities rehabilitation fund

Subject to appropriation and availability of funds, a county vocational school district may apply to the Commissioner for a maximum grant of \$500,000 to be matched dollar for dollar by the school district to fund health and safety school facilities rehabilitation projects. The grant and matching funds shall be maintained by the school district in a special revenue fund as certified by the district board of education and its chief financial officer and shall be subject to annual audit. A project funded through the grant fund shall not require the Commissioner's approval pursuant to N.J.S.A. 18A:7G-5 but shall meet all other requirements of EFCFA and this chapter pertaining to school facilities projects.

6A:26-11.2 Application for funds

- (a) Any county vocational school district seeking a grant from the County Vocational School District Facilities Rehabilitation Fund shall apply to the Commissioner on a Commissioner-provided form. The application shall, at a minimum, contain the following information:
1. A description of the school facilities project to be undertaken with the funds;

2. A schematic drawing of the project or, at the option of the school district, preliminary plans and specifications for the project to be funded;
 3. A delineation and description of each of the functional components of the project to be funded;
 4. The estimated cost to complete the project as determined by the school district on a form prescribed by the Commissioner; and
 5. Any additional information the Commissioner deems relevant for the project's review.
- (b) The Division shall review an application for funds. If the project conforms with the requirements of EFCFA and regulations for approval of school facilities projects, the Division shall notify the county vocational school district of the amount of any grant within 90 days of receiving a grant application.
- (c) Any county vocational school district that receives grant funding pursuant to N.J.S.A. 18A:7G-32 and N.J.A.C. 6A:26-11.1 shall not be eligible to receive State support pursuant to any other provision of EFCFA for a period of five years from the school district's receipt of the grant, except that the school district may receive debt service aid pursuant to N.J.S.A. 18A:7G-10; and any county vocational school district that receives aid under any provision of EFCFA other than N.J.S.A. 18A:7G-10 shall not receive a grant pursuant to this subsection for five years after approval of a project that is otherwise funded under EFCFA.

Subchapter 12. Safety Requirements for School Facilities

6A:26-12.1 Facilities maintenance requirements

All facilities and structures and parts thereof shall be maintained in a safe, healthy, and energy-efficient condition. All service equipment, means of egress, devices, and safeguards that are required by the UCC in a building or structure, when erected, altered, or repaired, shall be maintained in good working order.

6A:26-12.2 Policies and procedures for school facility operation

- (a) District boards of education shall adopt written policies and procedures regarding the following:
 - 1. Safe and sanitary operation and maintenance of school facilities and grounds according to the provisions of this chapter;
 - 2. Supervision of pupil safety in school facilities that shall include:
 - i. Safe storage and use of potentially hazardous materials on school property;
 - ii. Compliance with community right-to-know requirements;
 - iii. Prevention of accidents, panic, and fire; and
 - iv. Provision and maintenance of suitable and safe equipment;
 - 3. Organization of school safety patrols pursuant to N.J.S.A. 18A:42-1, if the decision is made to organize safety patrols; and
 - 4. Prohibition of smoking in public school buildings pursuant to P.L. 1989, c.96.

6A:26-12.3 Health facilities, equipment and supplies

District boards of education shall provide the necessary facilities, equipment, and supplies for the performance of the duties required under State law and rules by health services personnel.

6A:26-12.4 Safe drinking water

- (a) The rules in this subchapter for the provision of safe drinking water shall apply to all New Jersey public school districts, charter schools, renaissance schools, jointure commissions, educational services commissions, approved private schools for students with disabilities acting under contract to provide educational services on behalf of New Jersey public school districts, State-funded early childcare facilities pursuant to N.J.A.C. 6A:13A, and receiving schools as defined by N.J.A.C. 6A:14-7.1(a). Throughout this subchapter, “district board of education” refers to the governing authority for all of the entities identified in this subsection, unless otherwise indicated.

- (b) District boards of education shall assure the availability of potable drinking water through sanitary means in school facilities or upon school grounds in accordance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and 6A:26-6, Planning and Construction Standards for School Facilities.
- (c) Testing of school drinking water quality shall be in accordance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and 6A:26-6, Planning and Construction Standards for School Facilities.
- (d) All district boards of education shall conduct lead sampling and analysis, as described in (d)1 and 2 below, in all drinking water outlets to which a student or staff member has, or may have, access, in each school facility, other facility, or temporary facility, as those terms are defined in this chapter. Any district board of education granted an extension of time to conduct initial testing beyond the July 13, 2017, deadline shall complete the initial testing no later than July 13, 2018. District boards of education that completed initial testing prior to July 13, 2017, shall perform follow-up testing in accordance with the schedule in (g) below.
 - 1. Sampling shall be conducted in accordance with a lead sampling plan, which shall include:
 - i. A plumbing survey for each facility that identifies how water enters and flows through each facility, the types of plumbing materials used in the facility, such as the service line, piping, solder, fixtures, drinking water outlets where students or staff have or may have access, and point of use treatment, such as drinking water filters;
 - ii. The names and responsibilities of all individuals involved in sampling; and
 - iii. The following sampling procedures:
 - (1) Samples shall be taken after water has sat, undisturbed in the school pipes for at least eight hours but no more than 48 hours before the sample is taken.

- (A) 24-hour school facilities shall collect first-draw samples at drinking water outlets following a stagnation time that would likely result in the longest standing time;
 - (2) At least eight hours prior to sampling, signs shall be posted to indicate that water shall not be used and access to the buildings subject to the sampling shall be restricted to all but authorized staff members;
 - (3) Existing aerators, screens, and filters shall not be replaced or removed prior to or during sampling; and
 - (4) All samples shall be collected in pre-cleaned high-density polyethylene (HDPE) 250 milliliter (mL) wide-mouth single-use rigid sample containers that are properly labeled.
2. Analysis of samples shall be conducted as follows:
- i. Analysis shall be conducted by a certified laboratory to analyze for lead in drinking water;
 - ii. The laboratory shall use an approved analytical method pursuant to the Federal Safe Drinking Water Act at 40 CFR 141.23(k)(1); and
 - iii. Sample analysis shall be conducted in accordance with a Quality Assurance Project Plan (QAPP), which shall be signed by the district board of education, the certified laboratory, and the individual responsible for conducting sampling. The QAPP shall include the identification of analytical methods, chain of custody procedures, data validation and reporting processes, detection limits, reporting to three significant figures, field blanks, and quality control measures required by the certified method.
3. The Department, in consultation with the Department of Environmental Protection (DEP), will develop a technical guidance manual to assist district boards of education in complying with the sampling and analysis requirements of this subchapter.

- (e) The district board of education, or its designee, shall complete a review of final laboratory results within 72 hours of receipt. Within 24 hours after the district board of education, or its designee, has reviewed the final laboratory results, the district board of education shall:
1. Make the test results of all water samples publicly available at the school facility in accordance with (f) below and make the results from the most recent required Statewide testing available on the district board of education's website; and
 2. If any results exceed the permissible lead action level, provide written notification to the parents/guardians of all students attending the facility, facility staff, and the Department. This written notification shall also be posted on the district board of education's website and shall include a description of the following:
 - i. Measures taken by the district board of education, or its designee, to immediately end use of each drinking water outlet where water quality exceeds the permissible lead action level;
 - ii. Any additional remedial actions taken or planned by the district board of education;
 - iii. The measures taken to ensure that alternate drinking water has been made available to all students and staff members at the school(s) where the water outlet(s) is located; and
 - iv. Information regarding the health effects of lead.
- (f) The district board of education's test results of all water samples shall remain publicly available in accordance with the timeline established by the Department of the Treasury in the [Records Retention Schedule under record series number 0021-0000](#), which is available at https://www.nj.gov/treasury/revenue/rms/pdf/m700104_001.pdf.
- (g) Notwithstanding the results or date of any prior testing, all district boards of education shall continue to test drinking water outlets as provided below in the designated

Statewide required testing year, which shall be every third school year beginning with the 2021-2022 school year and subsequently occurring in the 2024-2025 school year:

1. By no later than June 30 of the designated Statewide required testing year, all district boards of education shall test all drinking water outlets. Sampling shall be prioritized, such that buildings and facilities that previously had outlets with results above the action level or identified in the plumbing profile as high risk for lead shall be sampled first in accordance with the sampling plan; and
 2. All district boards of education shall sample for lead after the replacement of any drinking water outlet or any other alteration to plumbing or service lines that may impact lead levels at the outlet.
- (h) If district boards of education test drinking water outlets for lead more frequently than the three-year cycle set forth at (g)1 above, the notification requirements set forth in (e) and (f) above shall apply.
1. District boards of education that test drinking water outlets more frequently in accordance with (h) above shall make the most recent results for each facility available on the district board of education's website.
- (i) All district boards of education shall submit to the Department by June 30 each year a statement of assurance that lead testing was completed in accordance with this section, that notifications were provided consistent with this section, and that alternate drinking water continues to be made available to all students and staff in accordance with this section.
- (j) District boards of education may request an exemption from the testing requirements set forth in (d) above if they can demonstrate that they do not use any drinking water outlets for consumption or food preparation in any of their facilities. District boards of education seeking an exemption pursuant to this provision shall submit an application to the Department documenting that no drinking water outlets are used in their facilities and the provisions for an alternative source of drinking water. A district board of education that

receives an exemption from the Department from testing pursuant to this subsection shall make available for public inspection at the school facility and on the district board of education's website, if applicable, confirmation that the district board of education is exempt from testing. No later than June 30 of each Statewide required testing school year as set forth in (g) above, a district board of education shall either begin testing procedures in accordance with (g) above or reapply for an exemption under this subsection.

- (k) All district boards of education shall be eligible to be reimbursed for the water supply testing and analysis conducted pursuant to (g) above after July 1, 2021, as approved by the Department and subject to available funds. To be eligible to receive reimbursement, the district board of education shall complete and submit to the Department a reimbursement application on a form, or in a format, supplied by the Department. The Department will make the reimbursement application available on its website. Nonpublic schools that conducted testing in accordance with (g) above after July 1, 2021, may submit a reimbursement application to the Department, approval of which is subject to available funds. A school district that conducts additional testing in a year other than the Statewide required testing school year as set forth in (g) above shall not be eligible for reimbursement.
- (l) A district board of education's failure to comply with any requirement in this section may result in any of the following:
 - 1. The district board of education's disqualification for reimbursement pursuant to (k) above;
 - 2. The Department's initiation of an investigation by the Office of Fiscal Accountability and Compliance; and
 - 3. The Commissioner's withholding of State aid pursuant to N.J.A.C. 6A:2-1.2.

6A:26-12.5 Eye protection in schools

- (a) Each district board of education shall require each student, staff member, and school visitor, including individuals present for evening adult-school programs, to wear appropriate eye

protective devices while participating in educational activities and programs as defined in N.J.A.C. 6A:7-1.3 that use caustic or explosive chemicals or materials, hot liquids, or solids, or molten materials, or that engages in welding operations of any type, repairing, or servicing of vehicles, heat treatment or tempering of metals, the shaping of solid materials, laser-device operation and experimentation, or any similar process or activity is engaged in, exposure to which might have a tendency to cause damage to the eyes.

- (b) The term "appropriate eye protective device" shall include plain or prescription lenses provided the lenses and other portions of the device meet or exceed the prescribed specifications for the device. Specifications for appropriate eye protection for various activities shall meet or exceed standards described in (b)1 and 2 below. The standards, with all subsequent amendments and supplements, are hereby adopted as rules and incorporated herein by reference.
 - 1. American National Standard Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1989.
 - 2. American National Standard Practice for the Safe Use of Lasers, ANSI Z136.1-1986 and eye protective procedures recommended by the manufacturer of the laser device.
- (c) The documents in (b)1 and 2 above are available for review at the Office of School Facilities, 200 River View Plaza, Trenton, New Jersey. The documents can be purchased from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.
- (d) Emergency eye wash fountains, or similar devices capable of a minimum 15 minutes continuous flow of eye-wash solution, shall be provided in classrooms, shops, laboratories, or other area where pupils or instructors are exposed to caustic materials that can cause damage to the eyes.
- (e) The following types of eye protective devices shall be used to fit the designated activities or processes:

1. Caustic or explosive - Goggles, flexible fitting, hooded ventilation; add plastic-window face shield for severe exposure;
 2. Dust-producing operations - Goggles, flexible fitting, hooded ventilation;
 3. Electric arc welding - Welding helmet in combination with spectacles with eye cup or semi- or flat-fold side shields;
 4. Oxyacetylene welding - Welding goggles, eye-cup type with tinted lenses; welding goggle, coverspec type with tinted lenses or tinted plate lenses;
 5. Hot liquids and gases - Goggles, flexible fitting, hooded ventilation; add plastic-window face shield for severe exposure;
 6. Hot solids - Clear or tinted goggles or spectacles with side shields;
 7. Molten materials - Clear or tinted goggles and plastic- or mesh-window face shield;
 8. Heat treatment or tempering - Clear or tinted goggles or clear or tinted spectacles with side shields;
 9. Glare operations - Tinted goggles; tinted spectacles with side shields or welding goggles, eye cup or coverspec type with tinted lenses or tinted plate lenses;
 10. Shaping solid materials - Clear goggles, flexible or rigid body; clear spectacles with side shields; add plastic-window face shield for severe exposure;
 11. Laser device operation or experimentation - Appropriate for specific hazard;
 12. Vehicle repair or servicing - Clear goggles, flexible or rigid body; clear spectacles with side shields;
 13. Other potentially eye-hazardous processes or activities - Appropriate for specific hazard.
- (f) Each district board of education shall establish and implement a specific eye protective policy and program to assure:
1. No staff member, student or visitor shall be subjected to any hazardous environmental condition without appropriate eye protection;
 2. The detection of eye hazardous conditions shall be continuous;

3. Eye protection devices shall be inspected regularly and adequately maintained;
 4. Shared eye protective devices shall be disinfected between uses by a method prescribed by the local school medical inspector;
 5. All eye protective devices shall meet or exceed the appropriate specifications for the various types of devices and suppliers of eye protective devices shall certify, in writing, that the devices meet or exceed said specifications;
 6. Specific policy and procedures shall be established to deal with individuals who refuse to abide by established eye-safety practices and procedures;
 7. The use of contact lenses shall be restricted in learning environments that entail exposure to chemical fumes, vapors, or splashes, intense heat, molten metals, or highly particulate atmospheres. When permitted, contact lenses shall be worn only in conjunction with appropriate eye protective devices, and the lens wearer shall be identified for appropriate emergency care in eye hazardous learning environments;
 8. All spectacle-type eye protective devices shall have side shields of the eye-cup, semi- or flat-fold type; and
 9. Pupils, staff members, or visitors wearing personal corrective eyewear shall be required to wear cover goggles or similar devices unless a competent authority can certify the personal eyewear meets or exceeds standards identified in (b) above.
- (g) Each school district shall provide annual training and appropriate supplies and equipment to all school personnel responsible for implementing the eye-safety policies and program. The training shall cover all aspects of eye protection in schools as described in (a) through (f) above.

Subchapter 13. (Reserved)

Subchapter 14. Withholding of State Support for Non-Compliance

6A:26-14.1 Withholding of State support for non-compliance

- (a) Pursuant to N.J.S.A. 18A:55-2, the Commissioner shall direct the State Treasurer to withhold funds payable by the State from any school district that fails to obey the law, or the rules or directions of the State Board or the Commissioner. “Funds payable by the State” include State support under EFCFA. A failure to obey the rules shall include non-compliance with this chapter. The non-compliance may:
1. Constitute a default under a grant agreement between the Development Authority and the school district for school districts receiving State support under N.J.S.A. 18A:7G-5 (preconstruction activities), 13(a), or 15. It also may subject the school district to Development Authority remedies for the default, including the reimbursement or withholding of State support under EFCFA. If the Development Authority refers the matter to the Department in lieu of withholding State support under EFCFA, the Department may upon review of the matter direct the State Treasurer to withhold funds payable by the State from the school district;
 2. Result in reducing to zero the “M” factor in the debt-service-aid formula in N.J.A.C. 6A:26-3.8 pursuant to N.J.S.A. 18A:7G-9.b(1) and (2) and/or subject the school district to a withholding of State support under EFCFA if the school district receives debt service aid under N.J.S.A. 18A:7G-9 or 10; or
 3. Subject a school district for which the Development Authority constructs the school facilities project to a withholding of funds payable by the State, including State support under EFCFA.
- (b) Pursuant to N.J.S.A. 18A:4-23, the Commissioner shall enforce these rules by any means permitted by law, including, but not limited to, issuing to the school district under N.J.A.C. 6A:3-3.1 an order to show cause why the reimbursement or withholding of State support should not be imposed.

Subchapter 15. (Reserved)

Subchapter 16. Certified Educational Facilities Manager

6A:26-16.1 Certified educational facilities manager

- (a) Effective September 1, 2002, no person shall be employed by a district board of education to supervise buildings and grounds unless he or she meets the criteria established in N.J.S.A. 18A:17-49 et seq.
- (b) An applicant for certification as an educational facilities manager shall submit to the Division documentation demonstrating compliance with one of the criteria in N.J.S.A. 18A:17-49 et seq. After verifying compliance with one of the criteria, the Division shall issue to the applicant an authorization to serve as an educational facilities manager and shall add the applicant to the Division's master list of certified educational facilities managers.
- (c) When a vacancy occurs in a position in which the duties of a supervisor of buildings and grounds are performed, a district board of education may select a person who is not a certified educational facilities manager to perform the duties of a supervisor of buildings and grounds for a period not to exceed two years commencing on the vacancy date. At the expiration of the two-year period, the district board of education shall employ to supervise its buildings and grounds a person certified by the Division as an educational facilities manager.

Subchapter 17. Appeals

6A:26-17.1 Appeals of Commissioner determinations

- (a) All appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the Appellate Division of the Superior Court.
- (b) Appeals arising from decisions of the Department's Division of Administration and Finance may be requested in writing, and an opportunity given for an informal hearing before the

Assistant Commissioner or other designated official. A written request for an informal hearing shall be made within 30 days of the school district's receipt of the Division's decision.

- (c) In the event of an adverse decision after an informal hearing under (b) above, or if a school district determines not to seek an informal hearing, a school district may request, within 90 days of the decision of the Assistant Commissioner or the Division's determination if an informal hearing is not sought, a formal hearing pursuant to N.J.S.A. 18A:6-9 and 18A:6-24 and N.J.A.C. 6A:3, Controversies and Disputes.

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

6A:26-18.1 Eligibility for section 15 grants for RODs, not including county vocational school districts

- (a) Any ROD applying for a section 15 grant shall conform at a minimum with the requirements of this subchapter, as applicable.
- (b) Any eligibility determination for a section 15 grant shall be subject to the availability of funds.
- (c) If the school facilities project or a portion of it is eligible for State support, the ROD may request State debt service aid pursuant to N.J.S.A. 18A:7G-9 in lieu of a section 15 grant.
- (d) All of the following conditions shall apply regarding eligibility for a section 15 grant:
 - 1. A ROD shall have an approved LRFP, pursuant to N.J.A.C. 6A:26-2.1(b).
 - 2. The school facilities project has been approved pursuant to N.J.A.C. 6A:26-3.3 and has no excess costs.
 - 3. The proposed school facilities project shall fall within one or more of the priority project categories described below.
 - i. Level 1 are school facilities projects that address the most critical operational building needs, including health and safety issues, and program mandates. The projects shall consist of one or more of the following:

- (1) Upgrades to essential building systems;
 - (2) Repair or replacement of a building skin element;
 - (3) Fire or life safety building code issues;
 - (4) Upgrades consistent with the Americans with Disabilities Act;
 - (5) Hazardous materials abatement;
 - (6) Security and communication systems;
 - (7) Site drainage to correct existing conditions;
 - (8) Upgrades to existing elementary school playgrounds as per N.J.A.C. 6A:26-3.2(a)5;
 - (9) Renovated or up to a maximum of six new early childhood classrooms; or
 - (10) Special population needs.
- ii. Level 2 are school facilities projects that address the rehabilitation of existing buildings, the easing of overcrowding, and/or improving the quality of existing instructional spaces. The projects shall consist of one or more of the following:
- (1) Repair or replacement of existing building systems and components not included in Level 1;
 - (2) Existing site upgrades excluding upgrades to athletic fields or tracks; or
 - (3) Renovation or new construction of capacity-generating classrooms to address overcrowding or a substandard condition.
- iii. Level 3 are school facilities projects that are either new construction or rehabilitation that also qualifies as reconstruction. For purposes of this subsection, “reconstruction” means reconstruction as defined in the UCC, N.J.A.C. 5:23-6.3. Reconstruction and/or new construction projects shall be evaluated based upon the following attributes:
- (1) Districtwide unhoused students and overcrowding;

- (2) Early childhood program accommodations;
 - (3) Compliance with facilities efficiency standards;
 - (4) Use of temporary or leased facilities;
 - (5) Building age;
 - (6) Project scope; and
 - (7) Prior section 15 funding.
- (e) If the school facilities project fits into more than one of the priority project categories, the entire school facilities project shall be deemed to fall within the lowest category for which it qualifies.
- (f) If a ROD submits more than one application for a section 15 grant for a school facilities project that includes new construction, all applications for section 15 grants shall not have any excess costs to qualify for a section 15 grant.
- (g) A ROD shall be eligible to receive a section 15 grant for a school facilities project involving the replacement of a building system that was all or part of a school facilities project that previously received State support, provided the building system to be replaced has approached or exceeded its life expectancy. The school district shall provide documentation concerning the building system's life expectancy, including, but not limited to, the original installation date or the building system manufacturer's warranty.
- (h) A ROD may request on a Department-supplied form a preliminary ROD grant eligibility determination for the scope of work of a school facilities project.
- (i) RODs may take one of the following actions, as applicable, for a school facilities project that has been submitted to the Department for approval or has received approval from the Department prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a):
 - 1. A ROD that has submitted to the Office of School Facilities an application for approval of a school facilities project but has not yet received project approval may submit an application for a section 15 grant pursuant to this subchapter in

accordance with the grant deadlines set forth in this subchapter.

2. If a ROD plans to submit an application for a section 15 grant pursuant to this subchapter for a project that previously was reviewed pursuant to N.J.A.C. 6A:26-3.12 as an “other capital” project, the ROD shall withdraw from the Office of School Facilities the prior application and resubmit a new one.
 3. If a ROD plans to submit a school facilities project for a section 15 grant pursuant to this subchapter for a school facilities project that previously was approved for State debt service aid and has accepted the preliminary eligible costs as the final eligible costs prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a), the ROD shall withdraw from the Office of School Facilities the prior application and resubmit a new one.
 4. If a ROD plans to submit a school facilities project for a section 15 grant pursuant to this subchapter for a school facilities project that previously was approved for State debt service aid but has not accepted the preliminary eligible costs as the final eligible costs prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a), the ROD may request that the school facilities project be considered for a section 15 grant instead of State debt service aid.
 5. If a school facilities project is cancelled pursuant to this subsection and an application for a section 15 grant for the project is then submitted, the school facilities project must meet the eligibility requirements and deadlines set forth in this subchapter.
 6. Any submission by a ROD for a section 15 grant pursuant to this section shall include a resolution from the school board of the district requesting the cancellation of the prior application and submission of a new application for a section 15 grant for the specified school facilities project.
- (j) A school facilities project or other capital project shall not be eligible for a section 15 grant pursuant to this subchapter where:

1. A construction contract has been awarded in connection with the school facilities project or other capital project; or
2. The local share for the school facilities project or other capital project has already been approved pursuant to N.J.A.C. 6A:26-3.7.

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

- (a) If the school facilities project met the criteria for inclusion in one of the three priority project categories but was not awarded funding in a grant cycle, the ROD may resubmit in a subsequent grant cycle an application for a section 15 grant for the school facilities project.
- (b) If the school facilities project did not fall into one of the three priority project categories or contained work that prevented its placement in a higher priority project category, and was not awarded funding, the ROD may revise and resubmit in a subsequent grant cycle an application for a section 15 grant for the school facilities project.
- (c) If a ROD does not obtain a section 15 grant for the school facilities project and also does not want State debt service aid, the ROD may instruct the Office of School Facilities to consider its application for the school facilities project as an other capital project and fully fund the project without State support.

6A:26-18.3 Deadlines for submission of section 15 grant applications for RODs, not including county vocational school districts

- (a) The Commissioner annually shall determine the amount of funds allocated to section 15 grants for the year, and shall notify the RODs regarding the amount of funds allocated, and the date on which the Commissioner shall begin to receive applications for the funding.
- (b) Applications for section 15 grants shall be submitted by school districts within 90 days of the date upon which the Commissioner indicates applications may be filed.

- (c) Within any grant cycle, section 15 grants shall be awarded first to school facilities projects that fall within Level 1. If the total amount of section 15 grants approved in any grant cycle for Level 1 school facilities projects is less than the amount of the annual allocation, section 15 grants shall be awarded to school facilities projects that fall within Level 2. If the total amount of section 15 grants approved in any grant cycle for Level 2 school facilities projects is less than the amount of the annual allocation, section 15 grants shall be awarded to school facilities projects that fall within Level 3. If the total amount of section 15 grants approved in any grant cycle is less than the amount allocated by the Commissioner for grant cycle, the amount remaining shall be added to the allocation for the next grant cycle.
- (d) A ROD shall obtain the local share pursuant to N.J.A.C. 6A:26-3.7 within 18 months of notification by the Department of the final eligible costs. If the local share is not obtained within such time period, the award of a section 15 grant shall be rescinded. The ROD may resubmit a grant application for reconsideration in a future grant cycle.
- (e) Changes to a school facilities project after notification of the final eligible costs shall be submitted to the Department for its approval. The school facilities project shall meet the eligibility requirements to continue to be eligible for the section 15 grant.

6A:26-18.4 Section 15 grants for county vocational school district school facilities projects

- (a) A county vocational school district school facilities project shall be eligible for a section 15 grant provided the school district has an approved LRFP pursuant to N.J.A.C. 6A:26-2.1(b), there are no excess costs, and the project falls within either the Level 1 or Level 2 priority project categories described as follows:
 - 1. Level 1 county vocational school district school facilities projects.
 - i. Level 1 county vocational school district school facilities projects address the most critical operational building needs, including health and safety

issues. The projects must consist of one or more of the following:

- (1) Capital maintenance projects (maintenance intended to extend the useful life of a school facility, including upgrades and replacement of building systems such as structure, enclosure, mechanical, plumbing, and electrical systems, and can be considered to constitute or be part of a school facilities project);
- (2) Projects that address handicapped accessibility, including site and building access, toilet room renovations, or program expansion or educational adequacy for special population needs;
- (3) Building code issues; or
- (4) Technology infrastructure for classroom instruction in accordance with the Department's Technology Plan, not including equipment.

2. Level 2 county vocational school district school facilities projects.

i. Level 2 county vocational school district school facilities projects must consist of one or more of the following:

- (1) Upgrades to existing vocational instructional space to meet certification requirements;
- (2) Renovations to existing vocational instructional space to support new programs approved by the Office of Career and Technical Education; or
- (3) Additions for existing vocational instructional space to meet industry certification standards.

ii. Level 2 projects shall be evaluated based upon attributes that include, but are not limited to, the following:

- (1) Industry certification requirements or standards;
- (2) Gap analysis between existing facilities and industry requirements or standards;

- (3) Enrollment or anticipated enrollment;
 - (4) Priority of the related career cluster in the State and local approved Carl D. Perkins Career and Technical Education five-year plan; and
 - (5) Labor market demand.
- (b) Section 15 grants shall be allocated to school facilities projects in the county vocational school districts that fall first within Level 1 and then Level 2 in the following order of priority until the entire allocation has been awarded:
 - 1. County vocational school districts that received no State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects. If the total amount requested by county vocational school districts in this category exceeds the amount available, the State share of the preliminary eligible costs approved shall be adjusted on a pro rata basis calculated by multiplying the eligible State share by the ratio of the available funds divided by the total eligible State share. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.
 - 2. County vocational school districts that received less than \$1,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.
 - 3. County vocational school districts that received greater than \$1,000,000 but less than \$5,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county

vocational school district school facilities projects. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.

4. County vocational school districts that received greater than \$5,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects.
 5. If the entire \$50 million available for school facilities projects in county vocational school districts has not been allocated pursuant to (c)1 through 4 above, additional allocations shall be made based on the same order of funding indicated in (c)1 through 4 above₂ and on the total of new funding received from the allocation and funding received from the original allocation.
- (c) If a school facilities project has been previously approved by the Department and the county vocational school district would like it to be considered for section 15 grant funding, one of the following options may be selected based on the type of project approval:
1. If the project was approved as an other capital project, the county vocational school district may cancel the project application and resubmit to the Department a new project application in accordance with the grant deadlines established pursuant to N.J.A.C. 6A:26-18.3(a) and (b).
 2. If the project was approved for State debt service aid, two options shall be available:
 - i. If the county vocational school district has accepted the preliminary eligible costs as the final eligible costs, it may cancel the project and submit to the Department a new project application.

- ii. If the county vocational school district has not accepted the preliminary eligible costs as the final eligible costs, it may request the school facilities project to be considered for a section 15 grant.
- 3. All cancellation requests and resubmissions shall include a resolution from the county board of chosen freeholders requesting the cancellation and resubmission of the specified project and shall meet the grant application deadlines established pursuant to N.J.A.C. 6A:26-18.3(a) and (b).
- (d) If a county vocational school district elects to cancel a project and apply for a section 15 grant, the school facilities project shall meet the eligibility requirements listed in (a) above.
- (e) If a school facilities project in a county vocational school district does not receive section 15 grant funding, the county vocational school district shall have one of the options listed below, depending upon the type of school facilities project.
 - 1. If the proposed school facilities project is not included in Level 1 or Level 2 project priority categories per (a) above, the county vocational school district may revise and resubmit the school facilities project.
 - 2. If the school facilities project has eligible costs for State support, the county vocational school district may request State debt service aid instead of a section 15 grant pursuant to N.J.S.A.18A:7G-9.
 - 3. If the county vocational school district does not want State debt service aid, it may revise and resubmit an application for an other capital project pursuant to N.J.A.C. 6A:26-3.1(b) and for full funding without State support.

Subchapter 19. Management of A School Facilities Project by A Schools Development

Authority (SDA) District

6A:26-19.1 Purpose

The rules in this subchapter are adopted to implement subsection 13.e(1) of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, as amended by section 24 of P.L. 2007, c. 137, to set forth the requirements that a Schools Development Authority district must satisfy to be considered eligible by the Development Authority to manage a school facilities project or projects. N.J.S.A. 18A:7G-13, as amended, requires the Commissioner, in making this determination to consider the school district's fiscal integrity and operations, the school district's performance in each of the five key components of school district effectiveness under Quality Single Accountability Continuum (QSAC), N.J.S.A. 18A:7A-10 et seq.; N.J.A.C. 6A:30; and other relevant factors.

6A:26-19.2 Determination of eligibility by the Commissioner

- (a) An SDA district, upon authorization by its district board of education, may request in writing that the Commissioner determine whether it has satisfied the requirements necessary to be considered eligible by the Development Authority to manage its own school facility project(s) pursuant to N.J.S.A. 18A:7G-13.e. The school district's written request shall include:
1. A resolution or certified minutes of the district board of education authorizing the request;
 2. A description of the SDA district personnel who will be managing the school facilities project(s), including the individual(s)' title, certification held, and minimum experience in managing projects of similar scope and complexity to the projects for which the school district might be eligible; and

3. A statement that the school district has not received an adverse opinion or a disclaimer of opinion by its independent audit in its annual audit required pursuant to N.J.S.A. 18A:23-1 for the school year prior to the request for a determination of eligibility.
- (b) The Commissioner shall determine whether an SDA district that submitted a request pursuant to (a) above is eligible to be considered by the Development Authority to manage a school facilities project(s). The determination shall be based upon review of the school district's submission of the items in (a) above and its performance in each of the five key components of school district effectiveness under QSAC in accordance with N.J.S.A. 18A:7A-10 at the time of the application, and other relevant factors as set forth in this subchapter.
1. To be eligible for consideration by the Development Authority to manage a school facilities project(s), the SDA district shall attain the high-performing school district designation for QSAC as defined in N.J.A.C. 6A:30-1.1.
 2. In determining whether an SDA district is eligible to be considered by the SDA to manage a school facility project or projects, the Commissioner may also consider whether the district meets the criteria to have a fiscal monitor appointed to the district pursuant to N.J.S.A. 18A:7A-55.
- (c) A school district determined eligible by the Commissioner for consideration by the Development Authority to manage a school facilities project(s) shall be presumed to be eligible during the intervening years between QSAC reviews. If the Commissioner orders a comprehensive review pursuant to N.J.A.C. 6A:30-3.1, the Commissioner may re-evaluate the school district's continued ability to manage school facilities projects.

6A:26-19.3 Notification of SDA districts

- (a) The Commissioner shall notify the school district regarding the results of the eligibility determination. If determined eligible, the Department shall notify SDA that the school

district was determined eligible to be considered by the Development Authority to manage a schools facilities project(s).

- (b) A school district that the Commissioner determines to be ineligible for consideration by the Development Authority to manage a school facilities project may request that the Commissioner review its eligibility determination upon the school district satisfying the requirements described in N.J.A.C. 6A:26-19.2.
- (c) If the Commissioner orders a comprehensive review pursuant to N.J.A.C. 6A:30-3.1 of any school district previously found eligible to manage a school facilities project, and finds that the school district is no longer able to manage school facilities projects, the Commissioner shall notify the Development Authority that the school district has lost its eligibility based on the Commissioner's assessment as per N.J.A.C. 6A:30-3.1. The Commissioner may rescind at any time a school district's eligibility determination if circumstances arise such that the school district no longer meets the eligibility requirements.

6A:26-19.4 Limitation of the subchapter's applicability

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

Subchapter 20. Comprehensive Maintenance Plans

6A:26-20.1 Purpose

The rules are intended to implement the provisions of EFCFA, specifically N.J.S.A. 18A:7G-3, 9.b(3), and 13.d, which require the Commissioner to promulgate rules requiring school districts to have comprehensive maintenance plans for school facilities and to make the appropriate investment in the maintenance of school facilities.

6A:26-20.2 Scope

- (a) The rules in this subchapter shall apply to every school district that owns school facilities or operates school facilities owned by another party, when the operating school district is responsible for maintenance of the school facilities.
- (b) Each school district that operates school facilities owned by other school districts shall include the school facilities in the operating school district's comprehensive maintenance plan, and shall forward a copy of the comprehensive maintenance plan to the owning school district.

6A:26-20.3 Required maintenance activities

- (a) Required maintenance activities shall include, but are not limited to, the following:
 - 1. Periodic inspection, testing, and certification of building systems or components required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
 - 2. Periodic service required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
 - 3. Periodic replacement of consumable parts required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
 - 4. Repairs or localized replacements of system components resulting from breakage, misuse, or vandalism;
 - 5. Refinishing of interior floors and walls, including preparation, stripping, painting, and refinishing;
 - 6. Consulting services needed to determine required maintenance; and
 - 7. Tests to monitor indoor air quality.

- (b) Each school district shall determine the required maintenance activities to reasonably maintain each school facility in the school district, and shall report the activities in its annual comprehensive maintenance plan pursuant to N.J.A.C. 6A:26-20.5.

6A:26-20.4 Required maintenance expenditures

- (a) Expenditures for required maintenance activities set forth in N.J.A.C. 6A:26-20.3 shall qualify as investments in maintenance for purposes of calculating the required maintenance expenditure in (d) and (e) below, the annual required maintenance budget amount pursuant to N.J.A.C. 6A:26-20.8, and the maintenance factor (M) in N.J.S.A. 18A:7G-9.
- (b) Expenditures that qualify as required maintenance include supplies and materials, contracted labor, and salaries of school district employees who are exclusively dedicated to the performance of required maintenance activities or for the payment of contracts for required maintenance.
 - 1. When school district personnel who are not exclusively dedicated to the performance of required maintenance activities perform required maintenance activities, school districts may credit that portion of the salaries of such personnel to required maintenance expenditures where task-specific documentation of such activities is available and subject to audit.
- (c) School districts shall maintain their accounting records for required maintenance at the school-facility level and report the final expenditures by school facility in the school district's comprehensive annual financial report. School districts shall have available the expenditure records, detailed by school facility, for verification by the school district auditor.
- (d) Beginning in the fourth year after occupancy of a school facility that was funded as a school facilities project under EFCFA, the required maintenance expenditure shall be equal to or exceed 0.2 percent of the related school facility's replacement cost per year.

- (e) For existing school facilities for which a school district seeks State facilities aid pursuant to EFCFA for rehabilitation or alteration, the required maintenance expenditure shall be equal to or exceed two percent of its replacement cost over the previous 10 years.

6A:26-20.5 Requirements for comprehensive maintenance plans

- (a) Each school district shall develop a comprehensive maintenance plan to document prior-year required maintenance activities and expenditures, and the school district's planned required maintenance activities and budgeted costs for the filing year and one subsequent year. The plan shall incorporate the requirements of N.J.A.C. 6A:26-3.9(h) or 3.10(c), as applicable. The plan shall not include activities for capital maintenance or routine maintenance.
 - 1. The comprehensive maintenance plan shall be submitted to the executive county superintendent by November 15 of every school year accompanied by a district board of education resolution approving the submission of the plan.
- (b) Each school facility in the school district shall be included in the comprehensive maintenance plan. Other facilities shall not be included in the comprehensive maintenance plan. However, school districts are encouraged to maintain other facilities.
- (c) The comprehensive maintenance plan shall contain the following information:
 - 1. For the year prior to the filing year, a list of the completed maintenance activities for each school facility that corresponds to the actual expenditure for each school facility as reported in the school district's most recent comprehensive annual financial report (CAFR) on the schedule of required maintenance expenditures. A copy of the CAFR's schedules of required maintenance expenditures shall be attached to the activities list.
 - i. The expenditures for required maintenance activities for the years prior to the filing year shall be reported by school facility in the school district;

2. A worksheet in a Commissioner-provided format of total expenditures for required maintenance by school facility for 10 years prior to the filing year, compared to each school facility's required maintenance expenditure amount under N.J.A.C. 6A:26-20.4(d) and (e), as applicable;
3. For the filing year, the required maintenance activities planned for each school facility and estimated costs included in the filing-year budget;
4. For the year subsequent to the filing year:
 - i. The required maintenance activities planned for each school facility and estimated costs; and
 - ii. The required annual maintenance budget amount for each school facility pursuant to N.J.A.C. 6A:26-20.8;
5. Asbestos abatement activities planned for the year, in conformance with the school district's asbestos management plan pursuant to Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §§ 2641 et seq.;
6. A schedule for required radon testing for each school facility specifying the spaces to be tested every five years pursuant to N.J.S.A. 18A:20-40 and safe drinking-water testing per N.J.A.C. 7:10; and
7. A plan to correct deficiencies identified in the approved LRFP regarding substandard spaces, temporary classroom units, and dual-use spaces approved by the executive county superintendent for use in the school district pursuant to N.J.A.C. 6A:26-8.1(d).

6A:26-20.6 Submission and review of comprehensive maintenance plans

- (a) The comprehensive maintenance plans shall be submitted to the executive county superintendent by district board of education resolution every school year.

- (b) The district board of education resolution shall include a certification that the comprehensive maintenance plan:
 - 1. Is complete and in compliance with this chapter; and
 - 2. Includes activities and expenditures for each school facility that qualify as required maintenance pursuant to N.J.A.C. 6A:26-20.3, are reasonable to ensure the facilities are kept open and safe for use or in their original condition, and maintain the validity of warranties.
- (c) The executive county superintendent shall notify a school district if a comprehensive maintenance plan is found to be deficient based upon the standards set forth in this chapter. In response to the notification, the school district shall submit to the executive county superintendent a revised comprehensive maintenance plan that addresses the identified deficiencies. The revised comprehensive maintenance plan shall be submitted within 30 days from the date of notification. The plan shall be deemed approved if a school district does not receive notification from the executive county superintendent within 90 days from submission date.
- (d) The executive county superintendent shall review the implementation of the comprehensive maintenance plans in each school district at the time of cyclical evaluations of the school district pursuant to N.J.S.A. 18A:33-1 et seq. and N.J.A.C. 6A:30-2 to ensure the plan addresses required maintenance activities and the reported activities actually occurred.

6A:26-20.7 Requirements for a maintenance package for newly completed school facilities projects

- (a) As a condition for the completion of a school facilities project, the school district shall obtain from the architect or engineer, or the Development Authority in the case of an SDA project, a certification that the contractor for the school facilities project has provided a maintenance package containing all of the following:

1. Manufacturer's warranties;
 2. Owner's and training manuals;
 3. Required maintenance and testing instructions; and
 4. A summary of (a)1 through 3 above.
- (b) The maintenance package shall cover the useful life of the school facilities project and be incorporated into the school district's comprehensive maintenance plan.
- (c) At the completion of a school facilities project, the school district shall certify in writing to the Office of School Facilities that the architect, engineer, or contractor provided all of the required items listed in (a) above to close out the school facilities project.

6A:26-20.8 Required maintenance budget amount

- (a) The required annual maintenance budget amount for each school district, as reported in its comprehensive maintenance plan, shall be included in the school district's annual budget certified for taxes in the required maintenance line-item accounts and/or as a deposit into the maintenance reserve in accordance with N.J.A.C. 6A:23A-14.2.
- (b) The required annual maintenance budget amount shall be calculated by totaling the sum of the replacement cost as of the current year for each school facility multiplied by 0.002 and shall correspond to the amount reported in the most recent comprehensive maintenance plan submitted pursuant to N.J.A.C. 6A:26-20.6.
1. The required annual budget amount may be adjusted up or down, with the executive county superintendent's approval, based upon prior-year expenditures to ensure an overall expenditure of two percent on required maintenance per school facility over 10 years.
 2. The replacement cost of the current year of a school facility shall be calculated by multiplying the area cost allowance by the current gross square footage of the building.
- (c) If a school district does not annually include in the budget certified for taxes the required amount calculated pursuant to this section, the executive county superintendent shall not

approve the school district's budget unless he or she determines that the school district may budget less than the full amount as follows:

1. If a school district determines it cannot budget the required amount, the school district shall submit to the executive county superintendent along with its budget acceptable proof of its inability to budget the required amount. The proof shall be accompanied by a plan to ensure that the required two percent will be expended over 10 years pursuant to EFCFA and this chapter.
 - i. If the executive county superintendent concurs with the school district's explanation of its inability to budget the full amount and approves its plan, the school district may budget less than the full amount as approved. The executive county superintendent shall not reject the school district's budget on this ground.
 - ii. If the executive county superintendent does not concur with the school district's explanation of its inability to budget the full amount or does not approve of its plan, the school district shall budget the full amount. The executive county superintendent shall not approve a budget that does not comply with this section.

6A:26-20.9 The maintenance factor in State debt service aid

- (a) State debt service aid shall be calculated pursuant to N.J.A.C. 6A:26-3.8. The Maintenance Factor "M," pursuant to N.J.A.C. 6A:26-3.8(a), shall be 1.0 except when one of the following conditions applies, in which case the maintenance factor shall be as specified:
 1. The maintenance factor for aid for reconstruction, remodeling, alteration, modernization, renovation, or repair, or for an addition to a school facility, shall be zero for all school facilities projects for which the school district fails to demonstrate that over the 10 years preceding issuance of the school bonds it incurred a net investment in maintenance of the related school facility of at least two percent of the replacement cost of the school facility, pursuant to N.J.S.A.

18A:7G-7.b and N.J.A.C. 6A:26A-4.1, using the area cost allowance of the year

10 years preceding the year in which the school bonds are issued; or

2. For new construction, additions, and school facilities aided under N.J.S.A. 18A:7G-7.b supported by financing issued for projects approved by the Commissioner after July 18, 2000, beginning in the fourth year after occupancy of the school facility, the maintenance factor shall be reduced according to the schedule in (b) below for all school facilities projects for which the school district fails to demonstrate in the prior fiscal year an investment in maintenance of the related school facility of at least 0.002 percent of the replacement cost of the school facility, determined pursuant to N.J.S.A. 18A:7G-7.b and N.J.A.C. 6A:26-20.8.

- (b) A school district's failure to make the required expenditures for maintenance for existing or new facilities pursuant to (a) above shall result in a Maintenance Factor (M) of less than one, and shall reduce debt service aid as follows:

Table 3 Maintenance Factor (MF)

Annual Maintenance Percentage	Maintenance Factor (M)
.199 percent to .151 percent	75 percent
.150 percent to .100 percent	50 percent
Less than .100 percent	Zero

N.J.A.C. 6A:14, Special Education

Table of Contents

Subchapter 1. General Provisions

[6A:14-1.1 General requirements](#)

[6A:14-1.2 District board of education eligibility for assistance under IDEA Part B](#)

[6A:14-1.3 Definitions](#)

Subchapter 2. Procedural Safeguards

[6A:14-2.1 General requirements](#)

[6A:14-2.2 Surrogate parents, wards of the State, and resource family parents](#)

[6A:14-2.3 Parental consent, notice, participation, and meetings](#)

[6A:14-2.4 Native language](#)

[6A:14-2.5 Protection in evaluation procedures](#)

[6A:14-2.6 Mediation](#)

[6A:14-2.7 Due process hearings](#)

[6A:14-2.8 Discipline/suspension/expulsion](#)

[6A:14-2.9 Student records](#)

[6A:14-2.10 Reimbursement for unilateral placement by parents](#)

Subchapter 3. Services

[6A:14-3.1 General requirements](#)

[6A:14-3.2 Case manager](#)

[6A:14-3.3 Location, referral, and identification](#)

[6A:14-3.4 Evaluation](#)

[6A:14-3.5 Determination of eligibility for special education and related services](#)

[6A:14-3.6 Determination of eligibility for speech-language services](#)

[6A:14-3.7 Individualized education program](#)

[6A:14-3.8 Reevaluation](#)

[6A:14-3.9 Related services](#)

Subchapter 4. Programs and Instruction

[6A:14-4.1 General requirements](#)

[6A:14-4.2 Placement in the least restrictive environment](#)

[6A:14-4.3 Program options](#)

[6A:14-4.4 Program criteria: speech-language services](#)

[6A:14-4.5 Program criteria: supplementary aids and services](#)

[6A:14-4.6 Program criteria: supplementary instruction and resource programs](#)

[6A:14-4.7 Program criteria: special class programs, secondary programs, and vocational rehabilitation](#)

[6A:14-4.8 Program criteria: home instruction](#)

[6A:14-4.9 Exceptions](#)

[6A:14-4.10 Statewide assessment](#)

[6A:14-4.11 Graduation](#)

Subchapter 5. Providing Educational and Related Services

[6A:14-5.1 General requirements](#)

[6A:14-5.2 Approval procedures for clinics or agencies](#)

Subchapter 6. Requirements for Services in Nonpublic Schools

[6A:14-6.1 Equitable participation under IDEA Part B](#)

[6A:14-6.2 Provision of programs and services under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.](#)

[6A:14-6.3 Fiscal management provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.](#)

[6A:14-6.4 End of the year report provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.](#)

[6A:14-6.5 Placement in accredited nonpublic schools that are not specifically approved for the education of students with disabilities](#)

Subchapter 7. Receiving Schools

[6A:14-7.1 General requirements](#)

[6A:14-7.2 Approval procedures to establish a new approved private school for students with disabilities](#)

[6A:14-7.3 Amendment procedures for receiving schools](#)

[6A:14-7.4 Annual procedures for approved private schools for students with disabilities](#)

[6A:14-7.5 Responsibilities of district boards of education](#)

[6A:14-7.6 Provision of programs](#)

[6A:14-7.7 Termination or withdrawal from a receiving school](#)

[6A:14-7.8 Fiscal management](#)

[6A:14-7.9 Records](#)

[6A:14-7.10 Monitoring and corrective action](#)

Subchapter 8. Programs Operated by The Departments of Corrections and Human Services, and The Juvenile Justice Commission

6A:14-8.1 General requirements

6A:14-8.2 Procedural safeguards

6A:14-8.3 Provision of programs

Subchapter 9. Monitoring, Corrective Action, and Complaint Investigation

6A:14-9.1 Monitoring and corrective action

6A:14-9.2 Complaint investigation

Subchapter 10. Early Intervention Programs

6A:14-10.1 Early intervention programs serving children between birth and age three

6A:14-10.2 General requirements when district boards of education contract with early intervention programs under contract with the Department of Health and Senior Services for students age three

N.J.A.C. 6A:14, Special Education

Subchapter 1. General Provisions

6A:14-1.1 General requirements

- (a) The rules in this chapter supersede all rules in effect prior to September 5, 2006, pertaining to students with disabilities.
- (b) The purpose of this chapter is to:
 - 1. Ensure that all students with disabilities as defined in this chapter, including students with disabilities who have been suspended or expelled from school, have available to them a free, appropriate public education as that standard is set under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.);
 - 2. Ensure that the obligation to make a free, appropriate public education available to each eligible student begins no later than the student's third birthday and that an individualized education program is in effect for the student by that date;
 - 3. Ensure that a free, appropriate public education is available to any student with a disability who needs special education and related services, even though the student is advancing from grade to grade;
 - 4. Ensure that the services and placement needed by each student with a disability to receive a free, appropriate public education are based on the student's unique needs and not on the student's disability;
 - 5. Ensure that students with disabilities are educated in the least restrictive environment;
 - 6. Ensure the provision of special education and related services;

7. Ensure that the rights of students with disabilities and their parents are protected;
 8. Assist public and private agencies providing educational services to students with disabilities; and
 9. Ensure the evaluation of the effectiveness of the education of students with disabilities.
- (c) The rules in this chapter shall apply to all public and private education agencies providing publicly funded educational programs and services to students with disabilities.
1. Programs and services shall be provided to students age three through 21.
 2. Programs and services may be provided by a district board of education at its option to students below the age of three and above the age of 21.
 3. Each district board of education shall provide information regarding services available through other State, county, and local agencies to parents of children with disabilities below the age of three.
- (d) Each district board of education is responsible for providing a system of free, appropriate special education and related services to students with disabilities age three through 21 that shall:
1. Be provided at public expense, under public supervision, and with no charge to the parent;
 2. Be administered, supervised, and provided by appropriately certified and qualified professional staff members;
 3. Be located in facilities that are accessible to students with disabilities; and
 4. Meet all requirements of this chapter.

- (e) With the exception of students placed in nonpublic schools according to N.J.A.C. 6A:14-6.5, all students with disabilities shall be placed in facilities or programs that have been approved by the Department of Education according to N.J.S.A. 18A:46-14 and 15.
- (f) Each district board of education shall ensure that the hearing aids worn by students who are deaf and/or hard of hearing are functioning properly.
- (g) All special education programs and services provided under this chapter shall be subject to review and approval by the Department of Education.
- (h) All public and private agencies that provide educational programs and services to students with disabilities shall maintain documentation demonstrating compliance with this chapter.
- (i) A school district shall not require a student to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. §§ 801 et seq.) as a condition of attending school, receiving an evaluation for eligibility for special education and related services, or for receiving special education and related services.

6A:14-1.2 District board of education eligibility for assistance under IDEA Part B

- (a) For the purposes of this section, each district board of education and State agency program that acts as a district board of education is eligible for assistance under IDEA Part B for a fiscal year by having a special education plan that demonstrates to the satisfaction of the Department of Education, through the county office of education (county office), that the plan meets the conditions of (b) through (f) below.
 - 1. If a district board of education has on file with the Department of Education through the county office, a plan consisting of policies and procedures that have been approved by the county office, including policies and procedures approved under Part B of the IDEA in effect before December 3, 2004, the district board of

education shall be considered to have met the requirements for receiving assistance under Part B.

2. Amendments to policies, procedures, and programs shall be made according to the following:

- i. The approved policies, procedures, and programs submitted by a district board of education shall remain in effect until the county office approves amendments the district board of education deems necessary; or
- ii. If the provisions of the IDEA Amendments of 2004 or its regulations are amended, or there is a new legally binding interpretation of the IDEA by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the Department of Education, through the county office, shall require the district board of education to modify its policies, procedures, and programs only to the extent necessary to ensure compliance with Federal and/or State requirements.

(b) Each district board of education shall have policies, procedures, and programs that are approved by the Department of Education, through the county office, that are in effect to ensure the following:

1. A free, appropriate public education according to N.J.A.C. 6A:14-1.1(b)1 is available to all students with disabilities between the ages of three and 21, including students with disabilities who have been suspended or expelled from school;
2. Full educational opportunity is provided to all students with disabilities;
3. All students with disabilities who are in need of special education and related services, regardless of the severity of their disabilities, including students with

disabilities attending nonpublic schools, are located, identified, and evaluated according to N.J.A.C. 6A:14-3.3;

4. Homeless students who are located, identified, evaluated, and determined eligible are provided special education and related services in accordance with the IDEA, including the appointment of a surrogate parent for unaccompanied homeless youths as defined at 42 U.S.C. §§ 11431 et seq.;
5. An individualized education program (IEP) is developed, reviewed, and, as appropriate, revised according to N.J.A.C. 6A:14-3.6 and 3.7;
6. To the maximum extent appropriate, students with disabilities are educated in the least restrictive environment according to N.J.A.C. 6A:14-4.2;
7. Students with disabilities are afforded the procedural safeguards required by N.J.A.C. 6A:14-2;
8. Students with disabilities are evaluated according to N.J.A.C. 6A:14-2.5 and 3.4;
9. The compilation, maintenance, access to, and confidentiality of student records are in accordance with N.J.A.C. 6A:32-7, Student Records;
10. Children with disabilities participating in early intervention programs assisted under IDEA Part C who will participate in preschool programs under this chapter experience a smooth transition and, by the student's third birthday, an IEP has been developed and is being implemented according to N.J.A.C. 6A:14-3.3(e);
11. Services are provided to students with disabilities who are placed by their parents in nonpublic schools according to N.J.A.C. 6A:14-6.1 and 6.2;
12. Students with disabilities who are placed in approved private schools for students with disabilities or in schools pursuant to N.J.S.A. 18A:46-14 by the district board of education are provided special education and related services at no cost to their parents;

13. All personnel serving students with disabilities are appropriately certified and licensed, where a license is required, in accordance with State and Federal law;
14. The professional development needs for professional and paraprofessional staff who provide special education, general education, or related services are identified and appropriate in-service training is provided;
 - i. The district board of education shall maintain information to demonstrate its efforts to:
 - (1) Prepare general and special education personnel with the content knowledge and collaborative skills needed to meet the needs of students with disabilities;
 - (2) Enhance the ability of teachers, paraprofessionals, and related service providers to use strategies, such as positive behavioral supports and interventions, to address the conduct of students with disabilities that impedes student learning;
 - (3) Acquire and disseminate to teachers, administrators, district board of education members, and related services personnel, significant knowledge derived from educational research and other sources and how the school district will, if appropriate, adopt promising practices, materials, and technology;
 - (4) Ensure that the in-service training is integrated to the maximum extent possible with other professional development activities; and
 - (5) Provide joint training activities for parents and special education, related services, and general education personnel;
15. Students with disabilities are included in all Statewide and districtwide assessment programs with appropriate accommodations, where necessary;

16. Instructional materials will be provided to students who are blind or have print disabilities in a timely manner, consistent with a plan developed by the school district;
 17. For students with disabilities who are potentially eligible to receive services from the New Jersey Children's System of Care, within the Division of Children and Families (formerly provided by the Division of Developmental Disabilities in the Department of Human Services), the school district will provide to parents, pursuant to the Developmentally Disabled Uniform Application Act, N.J.S.A. 30:4-25.10 et seq., the necessary materials to apply for such services;
 18. When the school district utilizes electronic mail, parents are informed as to whether they may use electronic mail to submit requests to school officials regarding referral, identification, evaluation, classification, and the provision of a free, appropriate public education. If this is permitted, parents shall be informed of the procedures to access the electronic mail system; and
 19. A plan is in effect to establish stability in special education programming. The plan shall take into account the consistency of the location, curriculum, and staffing in the provision of special education services.
- (c) Each district board of education shall provide the Department of Education written assurance of its compliance with the requirements of (b)1 through 19 above.
 - (d) In accordance with instructions from the Department of Education, each district board of education shall describe annually how it will use the funds under Part B of the IDEA during the next school year.
 - (e) Annually, each district board of education shall provide the Department of Education:
 1. A report of the numbers of students with disabilities according to their Federal disability category, age, racial-ethnic background, and placement;

2. A report of the staff, including contracted personnel, providing services to identify, evaluate, determine eligibility, and develop IEPs, and providing related services and/or instruction to students with disabilities, as well as the full-time equivalence of their assignments and relevant information on current and anticipated personnel vacancies and shortages; and
 3. Any additional data reports as required by the Department of Education to comply with the IDEA (20 U.S.C. §§ 1400 et seq.), including, but not limited to, the number of students with disabilities who:
 - i. Are exiting education;
 - ii. Are subject to suspensions and expulsions;
 - iii. Have been removed to interim alternative education settings;
 - iv. Are participating in Statewide assessments; and
 - v. Have achieved preschool and postsecondary transition outcomes.
- (f) In addition to the reports in (e) above, each district board of education shall submit to the Department of Education other reports upon request, including, but not limited to, the number of students with disabilities by racial-ethnic group identified as potentially disabled, evaluated, and newly classified.
- (g) The district board of education shall make available to parents of students with disabilities and to the general public, all documents relating to the eligibility of the district board of education under Part B of the IDEA.
- (h) Each district board of education shall ensure that a special education parent advisory group is in place in the school district to provide input to the school district on issues concerning students with disabilities.

6A:14-1.3 Definitions

Words and terms, unless otherwise defined below, when used in this chapter, shall be defined in the same manner as those words and terms are defined and used in the IDEA (20 U.S.C. §§ 1400 et seq.) and its implementing regulations at 34 CFR Part 300, which terms are incorporated by reference herein.

"Adaptive behavior" means the ability to demonstrate personal independence and social responsibility according to age and socio-cultural group expectations.

"Adult student" means a person who has attained age 18, who is not under legal guardianship, and who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Alternate assessment" means the same as "alternative assessment for students with disabilities" as defined at N.J.A.C. 6A:8-1.3.

"Approved private school for students with disabilities" means an incorporated entity approved by the Department of Education according to N.J.A.C. 6A:14-7.2 or 7.3 to provide special education and related services to students with disabilities placed by the district board of education responsible for providing their education.

"Assistive technology device" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations at 34 CFR Part 300, incorporated by reference herein, and reproduced at N.J.A.C. 6A:14 Appendix F.

"Assistive technology service" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations at 34 CFR Part 300, incorporated by reference herein, and reproduced at N.J.A.C. 6A:14 Appendix G.

"Consent" means agreement in writing that is required by this chapter. Consent shall be obtained from the parent having legal responsibility for educational decision making. The district board of education shall ensure that the parent:

1. Has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language or other mode of communication;
2. Understands and agrees, in writing, to the implementation of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom;
3. Understands that the granting of consent is voluntary and may be revoked at any time; and
4. If the parent revokes consent, that revocation is not retroactive (that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked).

"Custody" means that a child has been removed from the care of his or her parent(s) by the State agency empowered to do so and the right of the parent(s) to make educational decisions on behalf of the child has been terminated by a court of appropriate jurisdiction.

"Department of Education" means the New Jersey Department of Education.

"District board of education" means, except as defined otherwise, the school district of residence, the charter school board of trustees, the renaissance school project board of trustees, the State agency, or other public education agency that acts as the school district of residence for the location, identification, evaluation, determination of eligibility, development of an IEP and the provision of a free, appropriate public education to students with disabilities.

“Dyslexia” means a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"Early childhood program" means a general education program for students ages three through five operated by an agency other than a district board of education. The early childhood program shall be licensed or approved by the Department of Children and Families.

"Extended school year services" means special education and related services that are provided to a student with a disability beyond the normal school year in accordance with the student's IEP at no cost to the parent.

"Individualized education program" (IEP) means a written plan that sets forth a student's present levels of academic achievement and functional performance, measurable annual goals, and short-term objectives or benchmarks and describes an integrated, sequential program of individually designed instructional activities and related services necessary to achieve the stated goals and objectives. This plan shall establish the rationale for the student's educational placement, serve as the basis for program implementation, and comply with the mandates set forth in this chapter.

"IEP team" means the group of individuals who are responsible for the development, review, and revision of a student's IEP. The members of the IEP team are listed at N.J.A.C. 6A:14-2.3(k)2.

"Native language" means the language or mode of communication normally used by a person with a limited ability to speak or understand the English language. In the case of a student, the

native language is the language normally used by his or her parents. Except that in all direct contact with a student (including evaluation of the child), the native language is the language normally used by the student in the home or in the learning environment. The IEP team shall determine a student's native language.

"Nonpublic school" means an elementary or secondary school, other than a public school, within the State providing education in kindergarten through grade 12, or any combination of grades in which a student age five through 20 may fulfill compulsory school attendance and that complies with Title VI of the Civil Rights Act of 1964 (P.L. 88-352).

"Nonpublic school student" means any student who is enrolled full time in a nonpublic school. A student who boards at a nonpublic school shall be considered a resident of the school district in which the parent resides.

"Office" means the Office of Special Education Policy and Dispute Resolution in the Department of Education.

"Parent" means the natural or adoptive parent, the legal guardian, resource family parent when willing to so serve, a surrogate parent who has been appointed according to N.J.A.C. 6A:14-2.2, or a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student's welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter. For the purposes of this chapter, the term "parent" shall include an adult student.

"Referral" means the written request for an initial evaluation to determine whether a student is eligible for services under this chapter.

"Related services" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, incorporated by reference herein, and reproduced at N.J.A.C.

6A:14 Appendix B.

"Special education" is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, incorporated by reference herein, and reproduced at N.J.A.C.

6A:14 Appendix C.

"Speech-language specialist" means speech-language specialist or speech-language specialist-equivalent.

"Statewide assessment" means the same as "assessment" as defined at N.J.A.C. 6A:8-1.3 and includes the alternate assessment.

"Student" means a person age three through 21 who is entitled to receive educational programs and services in accordance with Federal or State law or regulation.

"Student age" means the school age of a student as defined by the following:

1. "Age three" means the attainment of the third birthday. Children with disabilities attaining age three shall have a free, appropriate public education available to them provided by the district board of education.
2. "Age five" means the attainment of age five by the month and day established by the district board of education as the kindergarten entrance cutoff date. Students with disabilities attaining age five after the kindergarten entrance cutoff date shall continue to be provided preschool services for the balance of that school year.
3. "Age 21" means the attainment of the 21st birthday by June 30 of that school year. Students with disabilities attaining age 21 during the school year shall continue to be provided services for the balance of that school year.

"Student with a disability" means a student who has been determined to be eligible for special education and related services according to N.J.A.C. 6A:14-3.5 or 3.6.

"Transition services" for students age 16 or older is defined in accordance with the definition of the term set forth in IDEA and its implementing regulations, incorporated by reference herein, and reproduced at N.J.A.C. 6A:14 Appendix D. For students under age 16, "transition services" is defined as set forth at N.J.A.C. 6A:14-3.7(e)11.

"Ward of the State" means a student who, pursuant to an order of a court of competent jurisdiction, is under the guardianship of a State agency, is a child in resource family care for whom the resource family parent is not the student's parent, or is a student who, pursuant to an order of a court of competent jurisdiction, is in the custody of the State child welfare agency.

Subchapter 2. Procedural Safeguards

6A:14-2.1 General requirements

- (a) Prior to receiving a high school diploma, a student with a disability age 16 through 21 who voluntarily leaves a public school program may reenroll at any time up to and including the school year of his or her 21st birthday.
- (b) Upon request by a parent, each district board of education shall provide copies of special education statutes (N.J.S.A. 18A:46-1 et seq.), special education rules (N.J.A.C. 6A:14), student records rules (N.J.A.C. 6A:32), and/or low cost legal or other services relevant to a due process hearing and due process rules (N.J.A.C. 1:6A).

6A:14-2.2 Surrogate parents, wards of the State, and resource family parents

- (a) Each district board of education or responsible State agency shall ensure that the rights of a student are protected through the provision of an individual to act as surrogate for the parent and assume all parental rights under this chapter when:
1. The parent cannot be identified;
 2. The parent cannot be located after reasonable efforts;
 3. An agency of the State of New Jersey has guardianship of the student or the student is determined a ward of the State and, if the student is placed with a resource family parent, the resource family parent declines to serve as the student's parent; or
 4. The student is an unaccompanied youth as that term is defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434(a)(6) and N.J.A.C. 6A:17-1.2.
- (b) A district board of education shall make reasonable efforts to appoint a surrogate parent within 30 days of the determination that a surrogate parent is needed for a student.
- (c) If the district board of education fails to appoint a surrogate parent for a ward of the State, a judge may appoint a surrogate parent if the judge determines a surrogate parent is necessary for such student.
- (d) Each district board of education or responsible State agency shall establish a method for selecting and training surrogate parents.
- (e) The person serving as a surrogate parent shall:
1. Have no interest that conflicts with the interest of the student he or she represents;
 2. Possess knowledge and skills that ensure adequate representation of the student;
 3. Not be replaced without cause;
 4. Be at least 18 years of age; and

5. Complete a criminal history review, pursuant to N.J.S.A. 18A:6-7.1, if the person serving as the surrogate parent is compensated.
- (f) The person(s) serving as a surrogate parent may not be an employee of the Department of Education, the district board of education, or a public or nonpublic agency that is involved in the education or care of the child. A surrogate parent may be paid solely to act in that capacity.
 - (g) When a student who is or may be a student with a disability is in the care of a resource family parent, and the resource family parent is not the parent of the student, the district board of education where the resource family parent resides shall contact the student's case manager at the Division of Child Protection and Permanency (DCP&P) in the Department of Children and Families to:
 1. Determine whether the parent retains the right to make educational decisions; and
 2. Determine the whereabouts of the parent.
 - (h) If the parent retains the right to make educational decisions and the parent's whereabouts are known to the district board of education, the district board of education shall obtain all required consent from, and provide written notices to, the parent.
 - (i) If the district board of education cannot ascertain the whereabouts of the parent, the resource family parent shall serve as the parent, unless that person is unwilling to do so. If there is no resource family parent, or the resource family parent is unwilling to serve as the student's parent, the district board of education shall consult with the student's case manager at DCP&P to assist in identifying an individual to serve as a surrogate parent, appointing a surrogate parent, and obtaining all required consent from, and providing written notices to, the surrogate parent.

6A:14-2.3 Parental consent, notice, participation, and meetings

- (a) Consent shall be obtained:
1. Prior to conducting any assessment as part of an initial evaluation;
 2. Prior to implementation of the initial IEP resulting from (a)1 above;
 3. Prior to conducting any assessment as part of a reevaluation, except that consent is not required if the district board of education can demonstrate that it had taken reasonable measures, consistent with (k)7 below, to obtain consent and the parent failed to respond;
 4. Prior to the release of student records in accordance with N.J.A.C. 6A:32-7;
 5. Each time a district board of education seeks to access private insurance covering a student with a disability;
 6. Prior to the first time a district board of education seeks to access a child's or parent's public benefits or insurance covering a student with a disability in accordance with 34 CFR 154(d);
 7. Whenever a member of the IEP team is excused from participating in a meeting pursuant to (k) below;
 8. Whenever an IEP is amended without a meeting pursuant to N.J.A.C. 6A:14-3.7(d); and
 9. Whenever a parent and district board of education agree to waive a reevaluation pursuant to N.J.A.C. 6A:14-3.8(a).
- (b) For a ward of the State, a district board of education shall make reasonable efforts to obtain parental consent for an initial evaluation. If, after reasonable efforts, the parent cannot be found, or parental rights have been terminated, or subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed, parental consent need not be obtained for an initial evaluation.

- (c) When a parent refuses to provide consent for implementation of the initial IEP, no IEP shall be finalized and the district board of education may not seek to compel consent through a due process hearing. However, if a parent refuses special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services, nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents refused to provide consent for implementation of the initial IEP. For the action set forth in (a)1, 3, and 4 above, if a parent refuses to provide consent and the district board of education and the parent have not agreed to other action, the district board of education may request a due process hearing according to N.J.A.C. 6A:14-2.7(b) to obtain consent.
- (d) Upon receipt of consent, the district board of education shall implement without delay the action for which consent was granted.
- (e) Written consent may be revoked by the parent, in writing, at any time.
1. Revocation of consent shall not be retroactive, and revocation shall not negate any action that occurred after consent was provided and before consent was revoked.
 2. If consent for special education and related services is revoked by the parent, the district board of education shall not file for a due process hearing or otherwise institute any legal proceeding seeking to overturn the parent's determination.
 3. When a parent revokes consent for special education and related services, the district board of education shall provide written notice to the parent within 10 days of receipt of the written revocation of consent. The district board of education shall cease providing special education and related services to the

student after the expiration of the 15-calendar-day notice period unless the parent rescinds the revocation of consent, in writing, within that time period.

4. If a parent revokes consent for special education and related services on behalf of a student, the district board of education shall not be determined to have denied the student a free, appropriate public education because the student failed to receive necessary special education and related services, nor shall the district board of education be determined in violation of its child-find obligation solely because it failed to provide special education or related services to a student whose parents revoked consent for implementation of services.
- (f) Written notice that meets the requirements of this section shall be provided to the parent when a district board of education:
1. Proposes to initiate or change the identification, classification, evaluation, or educational placement of the student or the provision of a free, appropriate public education to the student; or
 2. Declines to initiate or change the identification, classification, evaluation, or educational placement of the student or the provision of a free, appropriate public education to the student.
- (g) Written notice shall be in language understandable to the general public, and shall be provided in the native language of the parent, unless it is clearly not feasible to do so according to N.J.A.C. 6A:14-2.4. Written notice shall include:
1. A description of the action proposed or denied by the district board of education;
 2. An explanation of why the district board of education is taking such action;
 3. A description of any options the district board of education considered and the reasons why those options were rejected;

4. A description of the procedures, tests, records or reports, and factors used by the district board of education in determining whether to propose or deny an action;
 5. A description of any other factors that are relevant to the action proposed or denied by the district board of education;
 6. A statement that the parents of a student with a disability have protection under the procedural safeguards of this chapter, the means by which a copy of a description of the procedural safeguards can be obtained, and sources for parents to contact to obtain assistance in understanding the provisions of this chapter; and
 7. A copy of the procedural safeguards statement published by the Department of Education that contains a full explanation of the procedural safeguards available to parents shall be provided only one time per year, except that a copy shall also be provided:
 - i. Upon referral for an initial evaluation;
 - ii. Upon request by a parent;
 - iii. When a request for a due process hearing is submitted to the Department of Education;
 - iv. When a request for a complaint investigation is submitted to the Department of Education; and
 - v. When a student is removed for disciplinary reasons and the removal constitutes a change in placement as described in N.J.A.C. 6A:14-2.8.
- (h) Written notice according to (g) above shall be provided to the parent as follows:
1. The district board of education shall provide written notice no later than 15 calendar days after making a determination;
 2. The district board of education shall provide written notice at least 15 calendar days prior to the implementation of a proposed action so that the parent may

consider the proposal. The proposed action may be implemented sooner, if the parent agrees in writing;

3. The district board of education shall implement the proposed action after the opportunity for consideration in (h)2 above has expired unless:
 - i. The parent disagrees with the proposed action and the district board of education takes action in an attempt to resolve the disagreement; or
 - ii. The parent requests mediation or a due process hearing according to N.J.A.C. 6A:14-2.6 or 2.7. A request for mediation or a due process hearing prior to the expiration of the 15th calendar day in (h)2 above shall delay the implementation of the proposed action according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u).
4. The school district of residence may provide written notice less than 15 calendar days prior to the implementation of a disciplinary action according to N.J.A.C. 6A:14-2.8(b) when the IEP team and other appropriate personnel of the district board of education determine that disciplinary action requires immediate implementation. Such written notice shall be provided in accordance with the following:
 - i. The notice shall specify when the disciplinary action will be implemented and shall meet all other requirements according to (g) above.
Documentation of the notice shall be maintained and shall include the reason(s) that notice for less than 15 calendar days was warranted.
 - ii. During the pendency of mediation or due process related to the disciplinary action, the student shall be placed in accordance with 20 U.S.C. § 1415(k) and N.J.A.C. 6A:14-2.8.

5. Upon receipt of any written parental request to initiate or change the referral, identification, classification, evaluation, educational placement, or the provision of a free, appropriate public education, a response that meets the requirements of written notice in (g) above shall be provided to the parent within 20 calendar days, excluding district board of education holidays but not summer vacation.
 - i. When a meeting is required to make the determination and respond to the parental request, the meeting shall be conducted, and a determination made, within 20 calendar days, excluding district board of education holidays but not summer vacation. Written notice of the determination shall be provided within 15 calendar days of the meeting.
- (i) When a determination is made to conduct or not to conduct an initial evaluation, the parent shall be provided with copies of the special education rules (N.J.A.C. 6A:14) and due process hearing rules (N.J.A.C. 1:6A) in addition to the notice required in (g) above.
- (j) A district board of education shall take steps to ensure that the parent is given the opportunity to participate in meetings regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, the student.
- (k) Meetings to determine eligibility and develop an IEP shall be combined, if feasible, as long as the requirements for notice of a meeting according to (g) above and (k)3 through 5 below are met.
 1. Any eligibility meeting for students classified according to N.J.A.C. 6A:14-3.5(c) shall include the following participants:
 - i. The parent;
 - ii. A teacher who is knowledgeable about the student's educational performance or, if there is no teacher who is knowledgeable about the

- student's educational performance, a teacher who is knowledgeable about the school district's programs;
 - iii. The student, where appropriate;
 - iv. At least one child study team member who participated in the evaluation;
 - v. The case manager;
 - vi. Other appropriate individuals at the discretion of the parent or district board of education; and
 - vii. For an initial eligibility meeting, certified district board of education personnel referring the student as potentially having a disability, or the school principal or designee, if they choose to participate.
2. Meetings of the IEP team shall include the following participants:
- i. The parent;
 - ii. At least one general education teacher of the student, if the student is or may be participating in the general education classroom;
 - (1) If the student has no general education teacher, a general education teacher who is knowledgeable about the school district's programs shall participate;
 - (2) As a member of the IEP team, the general education teacher must participate, to the extent appropriate, in the development, review, and revision of the student's IEP;
 - (3) The general education teacher shall assist in the determination of appropriate positive behavioral interventions and strategies; and
 - (4) The general education teacher shall assist in the determination of supplementary aids and services, program modifications, or

supports for district board of education personnel that will be provided for the student;

- iii. At least one special education teacher of the student or, where appropriate, at least one special education provider of the student;
 - (1) If there is no special education teacher or special education provider of the student, a special education teacher or provider who is knowledgeable about the school district's programs shall participate;
- iv. At least one child study team member who can interpret the instructional implications of evaluation results;
- v. The case manager;
- vi. A representative of the responsible district board of education who:
 - (1) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
 - (2) Is knowledgeable about the general education curriculum;
 - (3) Is knowledgeable about the availability of resources of the district board of education; and
 - (4) Shall be the child study team member or other appropriate district board of education personnel, including the special education administrator or principal;
- vii. At the discretion of the parent or district board of education, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;

- (1) The determination of the special knowledge or expertise shall be made by the party (parent or district board of education) who invited the individual;
 - viii. The student where appropriate;
 - ix. At the request of the parent, the Part C Service Coordinator for a student transitioning from Part C to Part B; and
 - x. If a purpose of the meeting is to consider transition services, the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services shall be invited to attend the IEP meeting.
3. Parents shall be given written notice of a meeting early enough to ensure that they will have an opportunity to attend.
 4. Meetings shall be scheduled at a mutually agreed upon time and place. If a mutually agreeable time and place cannot be determined, the parent(s) shall be provided the opportunity to participate in the meeting through alternative means, such as videoconferencing and conference calls.
 5. Notice of meetings shall indicate the purpose, time, location, and participants.
 - i. The notice of an IEP meeting shall inform the parents of the provisions in (k)2vii and (k)2vii(1) above relating to the participation of other individuals on the IEP team who have knowledge or special expertise.
 - ii. When a purpose of an IEP meeting for a student with a disability beginning at age 14, or younger, if appropriate, is a discussion of transition services, the notice of the IEP meeting shall indicate that:
 - (1) A purpose of the meeting will be the development of the transition services for the student; and

- (2) The district board of education will invite the student;
 - iii. When a purpose of an IEP meeting for a student with a disability beginning at age 16, or younger, if appropriate, is a discussion of needed transition services, the notice of the IEP meeting shall:
 - (1) Indicate that a purpose of the meeting is the consideration of transition services for the student;
 - (2) Indicate that the district board of education will invite the student; and
 - (3) Identify any other agency that will be invited to send a representative.
- 6. If the parent cannot attend the meeting(s), the chief school administrator or designee shall attempt to ensure parental participation. Parental participation may include the use of electronic conference equipment to conduct a videoconference or conference call.
- 7. A meeting may be conducted without the parent in attendance if the district board of education can document that it is unable to secure the participation of the parent. The district board of education shall maintain a record of its attempts to arrange the meeting, including, but not limited to:
 - i. Detailed records of telephone calls made or attempted and the results of those calls;
 - ii. Copies of correspondence sent to the parents and any responses received; and
 - iii. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

8. Participants at the IEP meeting shall be allowed to use an audio-tape recorder during the meeting, provided notice is given to the other participants prior to the start of the meeting that such a device is being utilized.
9. A member of the IEP team whose area of the curriculum or related services is not being modified or discussed may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
 - i. All requests for consent for excusal of an IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.
10. A member of the IEP team whose area of the curriculum or related services is being modified or discussed may be excused from participation in the meeting, in whole or in part, provided the parent and district board of education agree that the IEP team member need not attend the meeting and the parent consents to such excusal in writing.
 - i. If there is a request to excuse a team member from the meeting, such member shall provide written input with respect to their area of the curriculum or related services. The written input shall be provided to the parent with the notice of the IEP meeting date and participants to ensure sufficient time for the parent to review and consider the request.
 - ii. All requests for consent for excusal of IEP team member shall be included with the notice of the meeting date and participants to ensure sufficient time for the parent to review and consider the request.

- (l) The following activities shall not be considered a meeting that requires parental participation:
1. Informal or unscheduled conversations involving district board of education personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP; and
 2. Preparatory activities that district board of education personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (m) Except when a parent has obtained legal guardianship, all rights under this chapter shall transfer to the student upon attainment of the 18th birthday. The district board of education shall provide the adult student and the parent with written notice that the rights under this chapter have transferred to the adult student. The adult student shall be given a copy of the special education rules (N.J.A.C. 6A:14), the due process hearing rules (N.J.A.C. 1:6A), and the procedural safeguards statement published by the Department of Education.
1. An adult student shall be given notice and shall participate in meetings according to (a) through (k) above. The district board of education or the adult student may invite the parent to participate in meetings regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, the adult student.
 2. Consent to conduct an initial evaluation or reevaluation, for initial implementation of a special education program and related services, or for release of records of an adult student shall be obtained from the adult student.

3. The district board of education shall provide any notice required under this chapter to the adult student and the parent.
 4. When there is a disagreement regarding the identification, evaluation, classification, or educational placement of, or the provision of a free, appropriate public education to, an adult student, the adult student may request mediation or a due process hearing or authorize, in writing, his or her parent to request mediation or a due process hearing and, while participating in such proceedings, to make educational decisions on his or her behalf.
- (n) The Department of Education shall disseminate the procedural safeguards statement to parent training and information centers, protection and advocacy centers, independent living centers, and other appropriate agencies.

6A:14-2.4 Native language

- (a) Written notice to the parent shall be provided and parent conferences required by this chapter shall be conducted in the language used for communication by the parent and student unless it is clearly not feasible to do so.
1. Foreign language interpreters or translators and sign language interpreters for the deaf shall be provided, when necessary, by the district board of education at no cost to the parent.
- (b) If the native language is not a written language, the district board of education shall take steps to ensure that:
1. The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 2. The parent understands the content of the notice; and

3. There is written documentation that the requirements of (b)1 and 2 above have been met.

6A:14-2.5 Protection in evaluation procedures

- (a) In conducting an evaluation, each district board of education shall:
 1. Use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information:
 - i. Provided by the parent that may assist in determining whether a child is a student with a disability and in determining the content of the student's IEP; and
 - ii. Related to enabling the student to be involved in and progress in the general education curriculum or, for preschool children with disabilities, to participate in appropriate activities;
 2. Not use any single procedure as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and
 3. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (b) Each district board of education shall ensure:
 1. That evaluation procedures including, but not limited to, tests and other evaluation materials according to N.J.A.C. 6A:14-3.4:
 - i. Are selected and administered so as not to be racially or culturally discriminatory; and
 - ii. Are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do

- academically, developmentally, and functionally unless it is clearly not feasible to do so; and
- iii. Measure the extent to which a student who is an English language learner has a disability and needs special education, rather than measure the student's English language skills;
- 2. Any standardized tests that are administered:
 - i. Have been validated for the purpose(s) for which they are administered; and
 - ii. Are administered by certified personnel trained in conformance with the instructions provided by the standardized tests' producer(s);
 - 3. The student is assessed in all areas of suspected disability;
 - 4. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student are provided;
 - 5. Tests are selected, administered, and interpreted, so that when a student has sensory, manual, or communication impairments, the results accurately reflect the ability that the procedure purports to measure, rather than the impairment, unless that is the intended purpose of the testing;
 - 6. The evaluation is conducted in accordance with the procedures at N.J.A.C. 6A:14-3 by a multi-disciplinary team of professionals consisting of at least two members of the child study team and, where appropriate, other specialists. At least one evaluator shall be knowledgeable in the area of the suspected disability; and
 - 7. In evaluating each student with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the suspected eligibility category.

(c) Upon completion of an initial evaluation or reevaluation, a parent may request an independent evaluation if there is disagreement with the initial evaluation or a reevaluation provided by a district board of education. A parent shall be entitled to only one independent evaluation at the district board of education's expense each time the district board of education conducts an initial evaluation or reevaluation with which the parent disagrees. The request shall specify the assessment(s) the parent is seeking as part of the independent evaluation.

1. Such independent evaluation(s) shall be provided at no cost to the parent, unless the district board of education initiates a due process hearing to show that its evaluation is appropriate and, following the hearing, a final determination to that effect is made.

i. Upon receipt of the parental request, the district board of education shall provide the parent with information about where an independent evaluation may be obtained and the criteria for independent evaluations according to (c)2 and 3 below. In addition, the district board of education shall take steps to ensure that the independent evaluation is provided without undue delay; or

ii. Not later than 20 calendar days after receipt of the parental request for the independent evaluation, the district board of education shall request the due process hearing.

2. Any independent evaluation obtained at the district board of education's expense shall:

i. Be conducted according to N.J.A.C. 6A:14-3.4; and

ii. Be obtained from another public district board of education, educational services commission, jointure commission, a clinic or agency approved

pursuant to N.J.A.C. 6A:14-5, or a private practitioner who is appropriately certified and/or licensed, where a license is required.

3. An independent medical evaluation may be obtained according to N.J.A.C. 6A:14-5.1(e).
4. Any independent evaluation submitted to the district board of education, including an independent evaluation obtained by the parent at private expense, shall be considered in making decisions regarding special education and related services.
5. If a parent requests an independent evaluation, the district board of education may ask the parent to explain why he or she objects to the district board of education's evaluation. However, the district board of education shall not require an explanation and the district board of education shall not delay either providing the independent evaluation or initiating a due process hearing to defend the district board of education's evaluation.
6. For any independent evaluation, whether purchased at the district board of education's or private expense, the district board of education shall permit the evaluator to observe the student in the classroom or other educational setting, as applicable.
7. If an administrative law judge orders that an independent evaluation be conducted, the independent evaluation shall be obtained by the district board of education in accordance with the decision or order of the administrative law judge, and the district board of education shall pay the cost of the independent evaluation.

6A:14-2.6 Mediation

- (a) Mediation is a voluntary process that is available to resolve disputes arising under this chapter. Mediation shall be available for students age three through 21 when there is a disagreement regarding identification, evaluation, classification, educational placement, or the provision of a free, appropriate public education.
 - 1. A request for mediation shall not be used to deny or delay the right to request a due process hearing.
 - 2. Mediation may be agreed to by a parent and district board of education in place of the resolution meeting described at N.J.A.C. 6A:14-2.7.
- (b) The district board of education may establish procedures that require a parent who chooses not to use the mediation process to meet with a State mediator to discuss the benefits of mediation. This meeting may take place by telephone or through the use of electronic conference equipment.
- (c) Either party may be accompanied and advised at mediation by legal counsel or other person(s) with special knowledge or training with respect to the needs of students with disabilities or with respect to the student who is the subject of the mediation.
- (d) Mediation is available from the Department of Education through the Office. Mediation shall be provided as follows:
 - 1. To initiate mediation through the Office, a written request shall be submitted to the Director of the Office;
 - 2. The party initiating the request for mediation shall send a copy of the written request to the other party. The written request shall note that a copy has been sent to the other party. The mediation request shall specify the student's name, student's address, student's date of birth, name of the school the student is attending, the issue(s) in dispute, and the relief sought;

3. A mediation conference, consistent with State law and rules, shall be scheduled within 15 calendar days after receipt of a written request and completed within 30 days of the date of the request. At the mediation conference, issues shall be discussed and options for resolution shall be explored;
4. The role of the mediator is to:
 - i. Facilitate communication between the parties in an impartial manner;
 - ii. Chair the meeting;
 - iii. Assist the parties in reaching an agreement and, if an agreement is reached, the mediator shall prepare the document setting forth the agreement of the parties at the mediation conference;
 - iv. Assure that the agreement prepared by the mediator complies with Federal and State law and regulation;
 - v. When appropriate, adjourn the mediation to a date certain that is not more than 45 days from the date of the request for a mediation conference, at the request of the parties to obtain additional information or explore options; and
 - vi. Terminate mediation if, in the mediator's judgment, the parties are not making progress toward resolving the issue(s) in dispute;
5. The mediation conference shall be held at a time and place that is reasonably convenient to the parties in the dispute;
6. If the mediation results in agreement, the conclusions shall be incorporated into a written agreement that shall be prepared by the mediator at the mediation conference and signed by each party. Mediation agreements shall not address special education or related services for more than one school year. If the mediation does not result in agreement, the mediator shall document the date and

the participants at the meeting. No other record of the mediation, including audio recording, shall be made;

7. Discussions that occur during the mediation process shall be confidential and shall not be used as evidence in any subsequent due process hearings or civil proceedings;
8. Prior to commencement of the mediation conference, the mediator may, at his or her discretion and upon request of a party, require that the parties sign a confidentiality pledge to ensure that all discussions that occur during the mediation remain confidential;
9. The mediator shall not be called as a witness in any subsequent proceeding to testify regarding any information gained during the course of mediation;
10. Pending the outcome of mediation, no change shall be made to the student's classification, program, or placement, unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to N.J.A.C. 6A:14-2.7 as provided at 20 U.S.C. § 1415(k) (see N.J.A.C. 6A:14 Appendix A); and
11. Signed agreements resulting from mediation conducted according to this section are binding on the parties. If either party fails to comply with any provision of the agreement, either party may seek enforcement of the agreement in a court of appropriate jurisdiction. If the parent believes the mediation agreement is not being implemented as written, the parent may request enforcement of the agreement provisions addressing the student's program or services. The request shall be filed no later than the 90th calendar day from the date that the action set forth in the mediation agreement that is the subject of the enforcement request was required to have occurred or have been completed. A request for enforcement

of a mediation agreement shall be made by writing to the Director of the Office. If there are multiple clauses in the agreement, the 90-day time frame to seek enforcement shall be measured separately for each clause, based on the date by which each is required by the agreement to occur. Upon receipt of this request, the Office shall make a determination regarding the implementation of the agreement. If it is determined that the district board of education has failed to implement the agreement or part of the agreement, the Office shall order the district board of education to implement the agreement or part of the agreement, as appropriate. If any part of the mediation agreement is modified by subsequent accord of the parties, enforcement may not be sought with respect to that part of the agreement.

6A:14-2.7 Due process hearings

- (a) A due process hearing is an administrative hearing conducted by an administrative law judge. For students age three through 21, a due process hearing may be requested when there is a disagreement regarding identification, evaluation, reevaluation, classification, educational placement, the provision of a free, appropriate public education, or disciplinary action. For students above the age of 21, a due process hearing may be requested while the student is receiving compensatory educational or related services.
 - 1. A request for a due process hearing shall be filed within two years of the date the party knew, or should have known, about the alleged action that forms the basis for the due process petition. The two-year period for filing for a due process hearing may be extended by an administrative law judge if:
 - i. A district board of education specifically misrepresented to the parent that the subject matter of the dispute was resolved to the parent's satisfaction;
 - or

- ii. The district board of education withheld information that was required by law to be provided to the parent.
- (b) In addition to the issues specified in (a) above, the district board of education or public agency responsible for the development of the student's IEP may request a due process hearing when the district board of education is unable to obtain required consent to conduct an initial evaluation or a reevaluation, or to release student records. The district board of education shall request a due process hearing when the district board of education denies a written parental request for an independent evaluation in accordance with N.J.A.C. 6A:14-2.5(c).
- (c) A request for a due process hearing shall be made in writing to the Director of the Office. The party initiating the due process hearing shall send a copy of the request to the other party. The written request shall note that a copy has been sent to the other party. The written request shall include the student's name, student's address, the student's date of birth, and the name of the school the student is attending. The written request also shall state the specific issues in dispute, relevant facts, and the relief sought and, in the case of a homeless child, available contact information for the child and the name of the school the child is attending.
- (d) Except when a response is required to be filed by a district board of education pursuant to (e) below, the party against whom a request for a due process hearing is directed shall provide, within 10 days of the filing of a request for a due process hearing, a written response specifically addressing the issue(s) raised in the request for a due process hearing to the party that requested the due process hearing.
- (e) When a parent requests a due process hearing, or an expedited due process hearing (for disciplinary issues), and the district board of education has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request,

the district board of education shall send a written response to the parent within 10 days of receiving the petition. The written response shall include:

1. An explanation of why the district board of education proposed or refused to take the action raised in the request for a due process hearing;
 2. A description of other options that the IEP team considered and the reasons those options were rejected;
 3. A description of each evaluation procedure, assessment, record, or report the district board of education used as the basis for the proposed or refused action; and
 4. A description of the factors that are relevant to the district board of education's proposed or refused action.
- (f) A request for a due process hearing, or expedited due process hearing (for disciplinary issues), serves as notice to the respondent of the issues in the due process complaint. The respondent may assert that the notice does not meet the requirements of 20 U.S.C. § 1415 and, therefore, the notice is not sufficient. The notice for a hearing will be considered sufficient unless the respondent notifies the Office and the complaining party (petitioner), in writing, within 15 days of receipt of the request for a due process hearing.
1. The sufficiency challenge will be forwarded to the Office of Administrative Law (OAL) within five days of receipt of the written objection. An administrative law judge will determine whether the notice meets the requirements of 20 U.S.C. § 1415 and will notify the parties, in writing, of the determination.
 2. If the notice is determined sufficient, the timelines for resolution activities and for conducting a due process hearing will continue. If the notice is deemed insufficient, the administrative law judge may dismiss the case and the petitioner may re-file with the Office, or the administrative law judge may grant permission

to amend the request.

- i. If the case is dismissed and the petitioner files a new request for a due process hearing, all applicable timeframes and procedures set forth in these rules shall commence anew.
- ii. If the administrative law judge allows the petitioner to amend the request for a due process hearing as part of a sufficiency challenge, the applicable timeframes and procedures shall commence to run from the time of the administrative law judge's determination.

- (g) When the Office receives a request for a due process hearing, the matter shall be processed and, as appropriate, mediation and a due process hearing in accordance with this chapter will be made available to the parties.
- (h) When a parent requests a due process hearing or expedited due process hearing, the district board of education shall have an opportunity through a resolution meeting to resolve the matter before proceeding to a due process hearing. The district board of education shall conduct a resolution meeting with the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the request.
 1. The resolution meeting shall include a representative of the district board of education who has authority to make decisions on behalf of the district board of education.
 - i. The district board of education shall not include its attorney unless the parent is accompanied by an attorney.
 - ii. An advocate shall not be considered an attorney for purposes of determining whether a district board of education shall be entitled to bring its attorney to a resolution meeting.

2. For a due process hearing, the resolution meeting shall be held within 15 days of receiving the parents' request. For an expedited due process hearing, the resolution meeting shall be held within seven days of receiving the request.
3. The resolution meeting shall not be audio or video recorded by either party unless both the district board of education and the parent agree to record the resolution meeting.
4. If a due process hearing request is not resolved to the satisfaction of the parents within 30 days of the receipt of the petition, the Office shall transmit the case to the Office of Administrative Law for a due process hearing.
5. If an expedited due process hearing request is not resolved to the satisfaction of the parents within 15 days of receipt of the request, the Office shall transmit the case to the Office of Administrative Law for an expedited due process hearing.
6. If an agreement is reached at the resolution meeting, the terms of the agreement shall be incorporated into a written document and signed by the parties.
 - i. Either party may void the agreement, in writing, within three business days of signing the agreement.
 - ii. If the agreement is not voided within the three business days, it is legally binding.
 - iii. If either party fails to implement the written agreement, it is enforceable in any State court of competent jurisdiction or in the United States District Court.
 - iv. If a dispute arises over the voiding of a resolution meeting agreement, the matter shall be transmitted to the Office of Administrative Law for a due process hearing.

7. If the requirements of this subsection with respect to scheduling and conducting a resolution meeting are not adhered to, issues concerning adherence to such procedures shall be raised in a due process hearing, and shall not be raised in a request for a complaint investigation pursuant to N.J.A.C. 6A:14-9.2.
8. In place of a resolution meeting, the parties may agree to participate in mediation conducted by a mediator from the Office of Administrative Law in accordance with N.J.A.C. 6A:14-2.6.
 - i. Parents shall indicate on their request for a due process hearing whether mediation is also requested.
 - ii. If the district board of education agrees to mediation in lieu of a resolution meeting, a representative of the district board of education shall contact the Office to facilitate the scheduling of the mediation conference.
 - iii. If the parties fail to participate in mediation within 30 days of the date the request for a due process hearing is submitted, the matter shall be transmitted to the Office of Administrative Law for a due process hearing with a notation that the parties declined a resolution meeting and requested mediation, but that the mediation conference failed to occur.
9. The parties may agree, in writing, to waive the resolution meeting and proceed directly to a due process hearing.
 - i. Parents may indicate on the request for a due process hearing that they desire to waive the resolution meeting.
 - ii. If the parent and a representative of the district board of education with decision-making authority agree in writing to waive the resolution meeting, the parties shall notify the Office that they have agreed to waive the resolution meeting.

- iii. Upon receipt of a signed waiver, the matter will be transmitted to the Office of Administrative Law for a due process hearing.
- 10. The parties shall notify the Office, in writing, of the result of the resolution meeting. If the matter has not been resolved or withdrawn, it shall be transmitted to the Office of Administrative Law after 30 days from the date the request was received.
- 11. When a district board of education files a request for a due process hearing, no resolution meeting shall be held. The matter shall be mediated if the parties agree and, if necessary, transmitted to the Office of Administrative Law for a due process hearing.
- (i) After a petition requesting a due process hearing is submitted to the Office, the petition may be amended only with the consent of the other party, or if an administrative law judge allows the party to amend the petition.
 - 1. If a petition is amended with the consent of a district board of education, the district board of education shall be afforded the opportunity to hold a resolution meeting in accordance with (h) above to resolve the issues raised in the amended petition. The timeframes for holding and completing the resolution meeting shall begin on the date the amended petition is filed with the Office.
 - 2. If a petition is amended by order of an administrative law judge, the order shall be issued no later than five days prior to the date the matter is heard, and no resolution meeting is required to address the issues raised in the amended petition.
- (j) A final decision shall be rendered by the administrative law judge not later than 45 calendar days after the conclusion of the resolution period described in (h)2, 4, and 5 above unless specific adjournments are granted by the administrative law judge in response to requests by either party to the dispute.

1. The 15- or 30-day resolution period set forth in (h)2, 4, and 5 above shall end either at the expiration of the applicable 15- or 30-day time period, or when both parties notify the Office, in writing, that they have waived the resolution meeting and intend to proceed directly to a due process hearing.
- (k) The decision made by an administrative law judge in a due process hearing shall be made on substantive grounds based on a determination of whether the child received a free, appropriate public education (FAPE). In matters alleging a procedural violation, an administrative law judge may decide that a child did not receive a FAPE only if the procedural inadequacies:
1. Impeded the child's right to a FAPE;
 2. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or
 3. Caused a deprivation of educational benefits.
- (l) The decision of the administrative law judge is final, binding on both parties, and to be implemented without undue delay unless stayed in accordance with N.J.A.C. 1:6A.
1. The decision in a due process hearing shall be provided in an electronic form if the parent requests that it be issued in an electronic form.
- (m) If the parent disagrees with the determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement under 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§ 300.1 et seq., the parent may request an expedited hearing.
- (n) To remove a student with a disability when district board of education personnel maintain that it is dangerous for the student to be in the current placement and the parent and district board of education cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a

change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 calendar days according to 20 U.S.C. § 1415(k) and its implementing regulations at 34 CFR Part 300;

1. The procedure in 20 U.S.C. §1415(k)(3) may be repeated as necessary.
- (o) An expedited hearing shall be requested according to the following:
1. The request for a due process hearing shall specify that an expedited hearing is requested due to disciplinary action;
 2. When a request for an expedited hearing is received, the Office shall acknowledge receipt of the request, shall provide information to the parent regarding free and low-cost legal services, shall provide mediation if requested by both parties in lieu of a resolution meeting, and shall transmit the case to the Office of Administrative Law according to the following:
 - i. A representative from the Office shall contact a representative of the Office of Administrative Law who will provide a hearing date;
 - ii. The expedited hearing shall be conducted and completed within 20 school days of receipt of the request by the Office;
 - iii. The resolution meeting or, if requested by both parties, mediation shall be scheduled within seven days and completed within 15 days of receipt of the request by the Office;
 - iv. If the mediation results in agreement, the conclusions of the parties shall be incorporated into a written agreement prepared by the mediator at the mediation conference and signed by each party. The matter shall be considered settled. The agreement shall be binding according to N.J.A.C. 6A:14-2.6(d)11;

3. Upon receiving the acknowledgment of the request from the Office, the parties shall complete the exchange of relevant records and information at least two business days before the expedited hearing; and
 4. The expedited hearing shall result in a written decision being provided to the parties within 10 school days of the completion of the expedited due process hearing without exceptions or extensions.
- (p) In reviewing a decision with respect to a manifestation determination, the administrative law judge shall determine whether the district board of education has demonstrated that the child's behavior was not a manifestation of the student's disability consistent with the requirements of 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§ 300.1 et seq.
- (q) In reviewing a decision under 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§ 300.1 et seq. to place the student in an interim alternative educational setting, the administrative law judge shall apply the standards in 20 U.S.C. §1415(k) and its implementing regulations at 34 CFR §§ 300.1 et seq.
- (r) Either party may apply, in writing, for a temporary order of emergent relief as a part of a request for a due process hearing or an expedited hearing for disciplinary action, or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter. The request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief. The applicant shall provide a copy of the request to the other party. The request for emergent relief shall note that a copy was sent to the other party.
1. Emergent relief shall be requested only for the following issues:
 - i. Issues involving a break in the delivery of services;

- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;
 - iii. Issues concerning placement pending the outcome of due process proceedings; and
 - iv. Issues involving graduation or participation in graduation ceremonies.
- (s) Prior to transmittal of a request for a due process hearing or an expedited hearing to the Office of Administrative Law, an application for emergent relief shall be made to the Director of the Office. After transmittal of a request for a due process hearing or an expedited hearing, any application for emergent relief shall be made directly to the Office of Administrative Law.
 - 1. Emergent relief may be requested according to N.J.A.C. 1:6A-12.1. Emergent relief may be granted if the administrative law judge determines from the proofs that:
 - i. The petitioner will suffer irreparable harm if the requested relief is not granted;
 - ii. The legal right underlying the petitioner's claim is settled;
 - iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
 - iv. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
- (t) If either party fails to comply with any provision of a final decision in a due process hearing, either party may seek enforcement of the decision in a court of appropriate jurisdiction. If the district board of education responsible for implementing the IEP fails

to implement a hearing decision of the Office of Administrative Law with respect to the student's program or services, a request for enforcement may be made by the parent or the parent's attorney on behalf of the student. The request shall be made in writing to the Director of the Office, Department of Education no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement request was required to have occurred. The request shall include a copy of the decision issued by the Office of Administrative Law. If there are multiple requirements or directives in the hearing decision, the 90-day time frame to seek enforcement shall be measured separately for each requirement or directive, based on the date by which each is required in the hearing decision to occur. Upon receipt of this request, the district board of education shall have an opportunity to respond to the request for enforcement and, if appropriate, seek to resolve the request with the parent. The Office shall determine the implementation of the decision. If it is determined that the district board of education has failed to implement the decision or part of the decision, the Office shall order the district board of education to implement the decision or part of the decision, as appropriate. If any part of the decision is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the decision.

- (u) Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program, or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided at 20 U.S.C. § 1415(k)4. (See N.J.A.C. 6A:14 Appendix A.)

1. If the decision of the administrative law judge agrees with the student's parents that a change of placement is appropriate, the placement shall be treated as an

agreement between the district board of education and the parents for the remainder of any court proceedings.

(v) Any party may appeal the decision of an administrative law judge in a due process hearing.

1. Any appeal of a final decision of an administrative law judge in a due process hearing shall be filed within 90 days of the date of issuance of the final decision. Interim decisions of an administrative law judge in a due process hearing, including determinations on requests for emergency relief, or determinations with respect to procedural issues, including discovery or scheduling, shall not be subject to the 90-day limitation period for filing appeals and, instead, shall be subject to applicable requirements pertaining to filing interlocutory appeals to courts of appropriate jurisdiction.

(w) Requests for a due process hearing with respect to issues concerning Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794a, shall be processed in accordance with this section, except as follows:

1. There shall be no resolution period or opportunity for a resolution meeting pursuant to (h) above with respect to requests for a due process hearing and issues concerning Section 504 of the Rehabilitation Act of 1973, regardless of whether the request for a due process hearing is filed by a parent or a district board of education. However, the parties may agree to participate in a mediation conference and, if so, mediation shall be scheduled in accordance with N.J.A.C. 6A:14-2.6; and
2. The provisions of (d), (e), and (f) above are not applicable with respect to requests for a due process hearing filed concerning issues involving Section 504 of the Rehabilitation Act of 1973.

6A:14-2.8 Discipline/suspension/expulsions

- (a) For disciplinary reasons, district board of education officials may order the removal of a student with a disability from his or her current educational placement to an interim alternative educational setting, another setting, or a suspension for up to 10 consecutive or cumulative school days in a school year. Such suspensions are subject to the same district board of education procedures as the procedures for nondisabled students.

However, at the time of removal, the principal shall forward written notification and a description of the reasons for such action to the case manager and the student's parent(s).

1. Notwithstanding (a) above, preschool students with disabilities shall not be suspended, long-term or short-term, and shall not be expelled.
 2. The district board of education is not required by 20 U.S.C. §§ 1400 et seq., or this chapter to provide, during periods of removal, services to a student with a disability who has been removed from his or her current placement for 10 school days or less in a school year, provided that if services are provided to general education students for removals of 10 or fewer days duration, students with disabilities shall be provided services in the same manner as students without disabilities during such time periods for removals of 10 or fewer days.
- (b) District board of education personnel may consider, on a case-by-case basis, any unique circumstances when determining whether or not to impose a disciplinary sanction or order a change of placement for a student with a disability who violates a district board of education code of conduct.
- (c) Removals of a student with a disability from the student's current educational placement for disciplinary reasons constitutes a change of placement if:
1. The removal is for more than 10 consecutive school days; or

2. The student is subjected to a series of short-term removals that constitute a pattern because they cumulate to more than 10 school days in a school year and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.
 - i. District board of education officials, in consultation with the student's case manager, shall determine whether a series of short-term removals constitutes a pattern that creates a change of placement.
- (d) Disciplinary action initiated by a district board of education that involves removal to an interim alternative educational setting, suspension for more than 10 school days in a school year, or expulsion of a student with a disability shall be in accordance with 20 U.S.C. § 1415(k). (See N.J.A.C. 6A:14 Appendix A.) However, removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. § 1415(k) shall be for a period of no more than 45 calendar days.
- (e) In the case of a student with a disability who has been removed from his or her current placement for more than 10 cumulative or consecutive school days in the school year, the district board of education shall provide services to the extent necessary to enable the student to progress appropriately in the general education curriculum and advance appropriately toward achieving the goals set out in the student's IEP.
 1. When it is determined that a series of short-term removals is not a change of placement, district board of education officials, in consultation with the student's special education teacher and case manager, shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.

2. When a removal constitutes a change of placement, and it is determined that the behavior is not a manifestation of the student's disability, the student's IEP team shall determine the extent to which services are necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP.
- (f) In the case of a removal for drug or weapons offenses, or because the student caused a serious bodily injury in accordance with 20 U.S.C. § 1415(k) and its implementing regulations at 34 CFR Part 300, or a removal by an administrative law judge for dangerousness consistent with 20 U.S.C. § 1415(k) and its implementing regulations at 34 CFR Part 300, the district board of education shall provide services to the student with a disability consistent with 20 U.S.C. § 1415(k) and its implementing regulations at 34 CFR Part 300, incorporated herein by reference. However, removal to an interim alternative educational setting of a student with a disability in accordance with 20 U.S.C. § 1415(k) shall be for a period of no more than 45 calendar days.

6A:14-2.9 Student records

- (a) All student records shall be maintained according to N.J.A.C. 6A:32-7.
- (b) The parent, adult student, or designated representative shall be permitted to inspect and review the contents of the student's records maintained by the district board of education pursuant to N.J.A.C. 6A:32-7 without unnecessary delay and before any meeting regarding the IEP.
- (c) Any consent required for students with disabilities pursuant to N.J.A.C. 6A:32-7 shall be obtained according to N.J.A.C. 6A:14-1.3 (definition of consent) and 2.3(a) and (b).

6A:14-2.10 Reimbursement for unilateral placement by parents

- (a) Except as provided at N.J.A.C. 6A:14-6.1(a), the district board of education shall not be required to pay for the cost of education, including special education and related services, of a student with a disability if the district board of education made available a free, appropriate public education and the parents elected to enroll the student in a nonpublic school, an early childhood program, or an approved private school for students with disabilities.
- (b) If the parents of a student with a disability who previously received special education and related services from the district of residence enroll the student in a nonpublic school, an early childhood program, or approved private school for students with disabilities without the consent of, or referral by, the district board of education, an administrative law judge may require the district board of education to reimburse the parents for the cost of enrollment if the administrative law judge finds that the district board of education had not made a free, appropriate public education available to the student in a timely manner prior to enrollment and that the private placement is appropriate.
 - 1. A parental placement may be found to be appropriate by a court of competent jurisdiction or an administrative law judge pursuant to N.J.A.C. 6A:14-6.5 for placements in unapproved schools, even if the parental placement does not meet the standards that apply to the education provided by the district board of education.
- (c) The parents must provide notice to the district board of education of their concerns and intent to enroll their child in a nonpublic school at public expense. The cost of reimbursement described at (b) above may be reduced or denied:
 - 1. If, at the most recent IEP meeting that the parents attended prior to the removal of the student from the public school, the parents did not inform the IEP team that they were rejecting the IEP proposed by the district board of education;

2. If, at least 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parents did not give written notice to the district board of education of their concerns or intent to enroll their child in a nonpublic school;
 3. If, prior to the parents' removal of the student from the public school, the district board of education proposed a reevaluation of the student and provided notice pursuant to N.J.A.C. 6A:14-2.3(g) and (h), but the parents did not make the student available for the reevaluation; or
 4. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.
- (d) The cost of the reimbursement for enrollment in a nonpublic school shall not be reduced or denied if the parents failed to provide the required notice described in (c)1 and 2 above if the conditions in (d)3 and 4 below are met, and, at the discretion of a court or an administrative law judge, may not be reduced if the conditions in (d)1 and 2 below are found to exist:
1. The parent cannot read and/or write in English;
 2. Compliance with the notice requirement in (c)1 and 2 above would likely result in physical or serious emotional harm to the student;
 3. The district board of education prevented the parent from providing the notice specified in (c)1 and 2 above; or
 4. The parent had not received written notice according to N.J.A.C. 6A:14-2.3(e) and (f) of the notice requirement that is specified in (c)1 and 2 above.

Subchapter 3. Services

6A:14-3.1 General requirements

- (a) Child study team members, specialists in the area of disabilities, school personnel, and parents as required by this subchapter shall be responsible for identification, evaluation, determination of eligibility, development and review of the IEP, and placement.
- (b) Child study team members shall include a school psychologist, a learning disabilities teacher-consultant, and a school social worker. All child study team members shall be employees of a district board of education, shall have an identifiable, apportioned time commitment to the school district, and shall be available to provide all needed services during the hours students are in attendance.
 - 1. Each member of the child study team shall perform only those functions that are within the scope of their professional license (where applicable) and certification issued by the Department of Education.
- (c) Specialists in the area of disability include, but are not be limited to: child study team members; speech-language specialists; occupational therapists; physical therapists; audiologists; school nurses; advance practice nurses; and physicians who are appropriately certified and/or licensed to carry out activities under this chapter. Where an educational certificate and a license are required to carry out activities under this chapter, the professional shall be appropriately certified and licensed.
- (d) Child study team members and, to the extent appropriate, specialists in the area of disability:
 - 1. Shall participate in the evaluation of students who may need special education programs and services according to N.J.A.C. 6A:14-3.3 and 3.4;
 - 2. Shall participate in the determination of eligibility of students for special education programs and services according to N.J.A.C. 6A:14-3.5;
 - 3. May provide services to educational staff regarding techniques, materials, and programs. Services include, but are not limited to, the following:

- i. Consultation with school staff and parents;
 - ii. Training of school staff; and
 - iii. The design, implementation, and evaluation of techniques addressing academic and behavioral difficulties;
- 4. May deliver appropriate related services to students with disabilities;
- 5. May provide preventive and support services to nondisabled students; and
- 6. May participate on intervention and referral services teams pursuant to N.J.A.C. 6A:16-8.

6A:14-3.2 Case manager

- (a) A case manager shall be assigned to a student when it is determined that an initial evaluation shall be conducted. A child study team member, or a speech-language specialist when acting as a member of the child study team, shall be designated and serve as the case manager for each student with a disability.
- (b) The case manager shall coordinate the development, monitoring, and evaluation of the effectiveness of the IEP. The case manager shall facilitate communication between home and school and shall coordinate the annual review and reevaluation process.
- (c) The case manager shall:
 - 1. Be knowledgeable about the student's educational needs and program;
 - 2. Be knowledgeable about special education procedures and procedural safeguards;
 - 3. Have an apportioned amount of time for case management responsibilities; and
 - 4. Be responsible for transition planning.

6A:14-3.3 Location, referral, and identification

- (a) Each district board of education shall develop written procedures for students age three through 21, including students attending nonpublic schools located within the school district regardless of where they reside, who reside within the school district with respect to the location, and referral of students who may have a disability due to physical, sensory, emotional, communication, cognitive, or social difficulties.
1. The requirements of this section apply to highly mobile students with disabilities, such as students with disabilities who are migrant and/or homeless students, and to students who may have a disability even though they are advancing from grade to grade.
 2. The activities undertaken to locate nonpublic school students with disabilities shall be comparable to activities undertaken to locate public school students with disabilities. In addition, each district board of education shall consult with appropriate representatives of nonpublic school students on how to carry out these activities.
 - i. For preschool-age students enrolled in early childhood programs, the child-find obligations, including evaluation for eligibility for special education and related services, shall be the responsibility of the school district of residence of the student's parent.
 - ii. For nonpublic elementary or secondary school students, the child-find obligations shall be the responsibility of the school district of attendance in accordance with N.J.A.C. 6A:14-6.1.
 3. The procedures shall include:
 - i. Utilizing strategies identified through the intervention and referral services according to N.J.A.C. 6A:16-8, as well as other general education strategies;

- ii. Referral by the school district's instructional, administrative, and other professional staff, parents, and State agencies, including the Department of Education and agencies concerned with the welfare of students.
 - iii. Evaluation to determine eligibility for special education and related services; and/or
 - iv. Other educational action, as appropriate.
- (b) Interventions in the general education setting shall be provided to students exhibiting academic difficulties and shall be utilized, as appropriate, prior to referring a student for an evaluation of eligibility for special education and related services.
 - 1. Within former Abbott school districts, the system of assessment and interventions within general education programs according to N.J.A.C. 6A:13 shall be implemented for all students who have reading as their primary area of difficulty.
- (c) The staff of the general education program shall maintain written documentation, including data, setting forth the type of interventions utilized, the frequency and duration of each intervention, and the effectiveness of each intervention.
 - 1. When it is determined, through analysis of relevant documentation and data concerning each intervention utilized, that interventions in the general education program have not adequately addressed the educational difficulties and it is believed that the student may have a disability, the student shall be referred for evaluation to determine eligibility for special education programs and services under this chapter.
 - 2. A determination whether or not to conduct an evaluation shall be made in accordance with (e) below.
- (d) A direct referral to the child study team may be made, pursuant to (a)3ii above, when it can be documented that the nature of the student's educational problem(s) is such that

evaluation to determine eligibility for special education services under this chapter is warranted without delay.

1. The parent may make a written request for an evaluation to determine eligibility for services under this chapter. Such a request shall be considered a referral and shall be forwarded without delay to the child study team for consideration.
- (e) When a preschool age or school age student is referred for an initial evaluation to determine eligibility for special education programs and services under this chapter, a meeting of the child study team, the parent, and the regular education teacher of the student who is knowledgeable about the student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the school district's programs, shall be convened within 20 calendar days (excluding school holidays, but not summer vacation) of receipt of the written request. This group shall determine whether an evaluation is warranted and, if warranted, shall determine the nature and scope of the evaluation pursuant to N.J.A.C. 6A:14-3.4(a). The team may also determine that an evaluation is not warranted and, if so, determine other appropriate action. The parent shall be provided written notice of the determination(s), including a request for consent to evaluate, if an evaluation will be conducted pursuant to N.J.A.C. 6A:14-2.3.
1. To facilitate the transition from early intervention to preschool, a child study team member of the district board of education shall participate in the preschool transition planning conference arranged by the designated service coordinator from the Early Intervention System. The child study team member representing the district board of education at the transition planning conference shall:
 - i. Review the Part C Early Intervention System Individualized Family Service Plan;

- ii. Provide the parents written district board of education registration requirements;
 - iii. Provide the parents written information on available school district programs for preschool students, including options available for placement in general education classrooms; and
 - iv. Provide to the parent the form to request that the district board of education invite the Part C service coordinator from the Early Intervention System to the initial IEP meeting for the child after a determination of eligibility.
- 2. Preschoolers with disabilities shall have their IEPs implemented no later than age three. To assure that preschoolers with disabilities have their initial IEPs implemented no later than age three, a written request for initial evaluation shall be forwarded by Early Intervention Service providers to the district board of education at least 120 days prior to the preschooler attaining age three.
 - i. For a child receiving Early Intervention System services, the form to request that the district board of education invite the Part C service coordinator from the Early Intervention System to the initial IEP meeting for the child after a determination of eligibility shall be submitted to the district board of education with the request for initial evaluation.
- 3. When a preschool age child is referred for an initial evaluation, a speech-language specialist shall participate as an additional member of the child study team in the meeting to determine whether to evaluate and the nature and scope of the evaluation.

- i. If it is determined that a speech-language assessment will be conducted, it may be utilized as one of the two required assessments in N.J.A.C. 6A:14-3.4(f).
4. When the suspected disability for students ages five to 21 includes a language disorder, the child study team, the parent, a speech-language specialist, and the general education teacher of the student who has knowledge of the student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the district's programs, shall participate in the meeting to decide whether to evaluate, and the nature and scope of the evaluation.
5. When the suspected disability for students ages five to 21 is a disorder of voice, articulation, and/or fluency only, the decision to evaluate and the determination of the nature and scope of the evaluation shall be in accordance with (e) above, except that the meeting shall include the speech-language specialist, the parent, and the general education teacher of the student who has knowledge of the student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the district's programs.
- (f) When it is determined that an evaluation for eligibility for services under this chapter is warranted, the student shall be considered identified as potentially a student with a disability. If the student is removed for disciplinary action, limitations on the amount of time the student is removed and the requirement to provide services shall be consistent with the procedures at N.J.A.C. 6A:14-2.8. Additionally, protections for children not yet eligible for special education and related services shall apply, in accordance with 20 U.S.C. § 1415(k)(5). (See N.J.A.C. 6A:14 Appendix A.)
- (g) Audiometric screening pursuant to N.J.A.C. 6A:16-2.3(k)3 shall be conducted for every student referred to the child study team for a special education evaluation.

- (h) Vision screening shall be conducted by the school nurse for every student referred to the child study team for a special education evaluation.
- (i) The Department of Education incorporates by reference the provisions of the Individuals with Disabilities Education Act of 2004 at 20 U.S.C. § 1412(c)3 and its implementing regulations at 34 CFR Part 300 regarding child find. (See N.J.A.C. 6A:14 Appendix E.)

6A:14-3.4 Evaluation

- (a) The child study team, the parent, and the general education teacher of the student who has knowledge of the student's educational performance or, if there is no teacher of the student, a teacher who is knowledgeable about the school district's programs shall:
 - 1. Review existing evaluation data on the student including evaluations and information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers, and consider the need for any health appraisal or specialized medical evaluation;
 - 2. On the basis of the review at (a)1 above, identify what additional data, if any, are needed to determine:
 - i. Whether the student has a disability under this chapter;
 - ii. The present levels of academic and functional achievement and related developmental needs, and educational needs of the student; and
 - iii. Whether the student needs special education and related services; and
 - 3. Determine which child study team members and/or specialists shall conduct each assessment that is part of the evaluation.
- (b) Prior to conducting any assessment as part of an initial evaluation, the district board of education shall request and obtain consent to evaluate according to N.J.A.C. 6A:14-3.3(e).

- (c) If the parent refuses to provide consent to conduct the initial evaluation, the district board of education may file for a due process hearing pursuant to N.J.A.C. 6A:14-2.7 to compel consent to evaluate.
- (d) The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.
- (e) After parental consent for initial evaluation of a preschool age or school age student has been received, the evaluation, determination of eligibility for services under this chapter, and, if eligible, development and implementation of the student's IEP shall be completed within 90 calendar days.
 - 1. If the parent repeatedly fails or refuses to produce the child for the evaluation, the time period above shall not apply.
 - 2. If a child enrolls in the school of a district board of education after an initial evaluation was undertaken by another district board of education, but before the initial evaluation was completed, and the new district board of education is making progress to ensure a prompt completion of the evaluation, and the district board of education and parent agree to a specific modified timeframe for completing the evaluation, the agreed-upon timeframe for completing the evaluation shall be applied.
 - 3. If initial evaluation of a preschool-age child is warranted, the district board of education shall take steps to ensure that consent to evaluate is obtained without delay.
- (f) An initial evaluation shall consist of a multi-disciplinary assessment in all areas of suspected disability. An initial evaluation shall include at least two assessments and shall be conducted by at least two members of the child study team in the areas in which the

child study team members have appropriate training or are qualified through their professional licensure or educational certification and other specialists in the area of disability as required or as determined necessary. Each evaluation of the student shall:

1. Be conducted in the language or form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so;
2. Apply standards of validity, reliability, and administration for each assessment by trained personnel in accordance with the protocols and instructions of the producer of the assessment;
3. Include, where appropriate or required, the use of a standardized test(s) that shall be:
 - i. Individually administered;
 - ii. Valid and reliable;
 - iii. Normed on a representative population; and
 - iv. Scored as either standard score with standard deviation or norm referenced scores with a cutoff score;
4. Include a functional assessment of academic performance and, where appropriate, a functional behavioral assessment, an assessment of the language needs of a child who is an English language learner, assessment of the student's communication needs, and assessment of the need for assistive technology devices and services. Each of the following components shall be completed by at least one evaluator:
 - i. A minimum of one structured observation by one evaluator in other than a testing session;

- (1) In the case of a student who is suspected of having a specific learning disability, one evaluator shall observe the student's academic performance in the general education classroom;
 - (2) In the case of a preschool-age student, a child study team member in an environment appropriate for a child of that age;
 - ii. An interview with the student's parent;
 - iii. An interview with the teacher(s) referring the potentially disabled student;
 - iv. A review of the student's developmental/educational history, including records and interviews;
 - v. A review of interventions documented by the classroom teacher(s) and others who work with the student; and
 - vi. One or more informal measures, which may include, but not be limited to: surveys and inventories; analysis of work; trial teaching; self-report; criterion referenced tests; curriculum-based assessment; and informal rating scales; and
5. Beginning at age 14, or younger if appropriate, include assessment(s) to determine appropriate postsecondary outcomes.
- (g) When the suspected disability is a disorder of articulation, voice, or fluency pursuant to N.J.A.C. 6A:14-3.6(b), the speech-language specialist shall:
1. Meet with the parent and the student's general education teacher who is knowledgeable about the student's educational performance or, if there is no general education teacher, a general education teacher who is knowledgeable about the school district's programs to review existing data on the student, including evaluations and information provided by the parents, current classroom-

based assessments and observations, and the observations of teachers and related services providers;

2. Obtain consent to conduct the evaluation pursuant to N.J.A.C. 6A:14-2.3(a)1;
3. Conduct an assessment pursuant to (f)1 through 4 above. The assessment shall include written information from the classroom teacher of the educational impact created by the speech problem. The assessment shall fulfill the requirement for multi-disciplinary evaluation as required in (f) above; and
4. Prepare a written report of the results according to (h) below.

(h) A written report of the results of each assessment shall be prepared. At the discretion of the district board of education, the written report may be prepared collaboratively by the evaluators or each evaluator may prepare an individually written report of the results of his or her assessments. Each written report shall be dated and signed by the individual(s) who conducted the assessment and shall include:

1. An appraisal of the student's current functioning and an analysis of instructional implication(s) appropriate to the professional discipline of the evaluator;
2. A statement regarding relevant behavior of the student, either reported or observed, and the relationship of that behavior to the student's academic functioning;
3. If an assessment is not conducted under standard conditions, the extent to which it varied from standard conditions;
4. When a student is suspected of having a specific learning disability, the documentation of the determination of eligibility shall include a statement of:
 - i. Whether the student has a specific learning disability;
 - ii. The basis for making the determination;
 - iii. The relevant behavior noted during the observation;

- iv. The relationship of the behavior to the student's academic performance;
 - v. Educationally relevant medical findings, if any;
 - vi. If a severe discrepancy methodology is utilized, whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services;
 - vii. The determination concerning the effects of environmental, cultural or economic disadvantage;
 - viii. Whether the student achieves commensurate with his or her age;
 - ix. If a response to scientifically based interventions methodology is utilized, the instructional strategies utilized and the student-centered data collected with respect to the student; and
 - x. Whether there are strengths and/or weaknesses in performance or achievement relative to intellectual development in one of the following areas that require special education and related services;
 - (1) Oral expression;
 - (2) Listening comprehension;
 - (3) Written expression;
 - (4) Basic reading skill;
 - (5) Reading fluency skills;
 - (6) Reading comprehension;
 - (7) Mathematics calculation; and
 - (8) Mathematics problem solving;
5. Additionally, each child study team member shall certify, in writing, whether his or her report is in accordance with the conclusion of the student's eligibility. If his

- or her report does not reflect the conclusion of eligibility, the child study team member must submit a separate statement presenting his or her conclusions; and
6. When a response to scientifically based interventions methodology is utilized to make the determination of whether the student has a specific learning disability, the district board of education shall:
- i. Ensure that such methodology includes scientifically based instruction by highly qualified instructors, and that multiple assessments of student progress are included in the evaluation of the student;
 - ii. Not be required to include more than the assessment conducted pursuant to the district board of education's response to scientifically based intervention methodology in the evaluation of a student; and
 - iii. If the parent consents in writing, extend, as necessary, the time to complete an evaluation pursuant to (c) above.
- (i) When conducting an initial evaluation or reevaluation, the reports and assessments of child study team members or related services providers from other public school districts, Department of Education approved clinics or agencies, educational services commissions or jointure commissions, or professionals in private practice may be submitted by the parents to the child study team for consideration. Each report and assessment shall be reviewed and considered by the child study team member or related services provider with relevant knowledge or expertise. A report, or component thereof, may be utilized as a required assessment, if the assessment has been conducted within one year of the evaluation and the child study team determines the report and assessment meet the requirements of (h) above.
- (j) Upon receipt of a written referral to the child study team, the school nurse shall review and summarize available health and medical information regarding the student and shall

transmit the summary to the child study team for the meeting according to (a) above to consider the need for a health appraisal or specialized medical evaluation.

6A:14-3.5 Determination of eligibility for special education and related services

- (a) When an initial evaluation is completed for a student age three through 21, a meeting pursuant to N.J.A.C. 6A:14-2.3(k)1 shall be convened to determine whether the student is eligible for special education and related services. A copy of the evaluation report(s) and documentation and information that will be used for a determination of eligibility shall be given to the parent at least 10 calendar days prior to the meeting. If eligible, the student shall be assigned the classification "eligible for special education and related services." Eligibility shall be determined collaboratively by the participants described at N.J.A.C. 6A:14-2.3(k)1.
- (b) In making a determination of eligibility for special education and related services, a student shall not be determined eligible if the determinant factor is due to a lack of instruction in reading, including the essential components of reading instruction, or mathematics, or if the student is an English language learner (ELL).
- (c) A student shall be determined eligible and classified "eligible for special education and related services" under this chapter when it is determined that the student has one or more of the disabilities defined in (c)1 through 14 below, the disability adversely affects the student's educational performance, and the student is in need of special education and related services. Classification shall be based on all assessments conducted, including assessment by child study team members and assessment by other specialists as specified below.
 - 1. "Auditory impairment" corresponds to "auditorily handicapped" and further corresponds to the Federal eligibility categories of deafness or hearing

impairment. “Auditory impairment” means an inability to hear within normal limits due to physical impairment or dysfunction of auditory mechanisms characterized by (c)1i or ii below. An audiological evaluation by a specialist qualified in the field of audiology and a speech and language evaluation by a certified speech-language specialist are required.

- i. "Deafness" – The auditory impairment is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and the student's educational performance is adversely affected.
- ii. "Hearing impairment" – An impairment in hearing, whether permanent or fluctuating, that adversely affects the student's educational performance.

- 2. “Autism” means a pervasive developmental disability that significantly impacts verbal and nonverbal communication and social interaction that adversely affects a student's educational performance. Onset is generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, unusual responses to sensory experiences, and lack of responsiveness to others. The term does not apply if the student's adverse educational performance is due to an emotional regulation impairment as defined in (c)5 below. A child who manifests the characteristics of autism after age three may be classified as autistic if the criteria in this paragraph are met. An assessment by a certified speech-language specialist and an assessment by a physician trained in neurodevelopmental assessment are required.
- 3. “Intellectual disability” means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in

adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following:

- i. "Mild intellectual disability" means a level of cognitive development and adaptive behavior in home, school, and community settings that are mildly below age expectations with respect to all of the following:
 - (1) The quality and rate of learning;
 - (2) The use of symbols for the interpretation of information and the solution of problems; and
 - (3) Performance on an individually administered test of intelligence that falls within a range of two to three standard deviations below the mean.
- ii. "Moderate intellectual disability" means a level of cognitive development and adaptive behavior that is moderately below age expectations with respect to the following:
 - (1) The ability to use symbols in the solution of problems of low complexity;
 - (2) The ability to function socially without direct and close supervision in home, school, and community settings; and
 - (3) Performance on an individually administered test of intelligence that falls three standard deviations or more below the mean.
- iii. "Severe intellectual disability" means a level of functioning severely below age expectations whereby, on a consistent basis, the student is incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode

of communication and cannot in some manner express basic wants and needs.

4. "Communication impairment" means a language disorder in the areas of morphology, syntax, semantics, and/or pragmatics/discourse that adversely affects a student's educational performance and is not due primarily to an auditory impairment. The problem shall be demonstrated through functional assessment of language in other than a testing situation and performance below 1.5 standard deviations, or the 10th percentile on at least two standardized language tests, where such tests are appropriate, one of which shall be a comprehensive test of both receptive and expressive language. When the area of suspected disability is language, assessment by a certified speech-language specialist and assessment to establish the educational impact are required. The speech-language specialist shall be considered a child study team member.
 - i. When it is determined that the student meets the eligibility criteria according to the definition in (c)4 above, but requires instruction by a speech-language specialist only, the student shall be classified as eligible for speech-language services.
 - ii. When the area of suspected disability is a disorder of articulation, voice, or fluency, the student shall be evaluated pursuant to N.J.A.C. 6A:14-3.4(g) and, if eligible, classified as eligible for speech-language services pursuant to N.J.A.C. 6A:14-3.6(a).
5. "Emotional regulation impairment" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:

- i. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
 - ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
 - iii. Inappropriate types of behaviors or feelings under normal circumstances;
 - iv. A general pervasive mood of unhappiness or depression; or
 - v. A tendency to develop physical symptoms or fears associated with personal or school problems.
6. “Multiple disabilities” means the presence of two or more disabling conditions, the combination of which causes such severe educational needs that they cannot be accommodated in a program designed solely to address one of the impairments. Multiple disabilities include intellectual disability-blindness and intellectual disability-orthopedic impairment. The existence of two disabling conditions alone shall not serve as a basis for a classification of multiple disabilities. Eligibility for speech-language services as defined in this section shall not be one of the disabling conditions for classification based on the definition of "multiple disabilities." Multiple disabilities does not include deaf-blindness.
7. "Deaf/blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students with deafness or students with blindness.
8. “Orthopedic impairment” means a disability characterized by a severe orthopedic impairment that adversely affects a student's educational performance. The term

includes malformation, malfunction, or loss of bones, muscle, or tissue. A medical assessment documenting the orthopedic condition is required.

9. "Other health impairment" means a disability characterized by having limited strength, vitality, or alertness, including a heightened alertness with respect to the educational environment, due to chronic or acute health problems, such as attention deficit hyperactivity disorder, a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, diabetes, or any other medical condition, such as Tourette Syndrome, that adversely affects a student's educational performance. A medical assessment documenting the health problem is required.
10. "Preschool child with a disability" means a child between the ages of three and five who either:
 - i. Is experiencing developmental delay, as measured by appropriate diagnostic instruments and procedures, in one or more of the areas in (c)10i(1) through (5) below, and requires special education and related services. As measured by a standardized assessment or criterion-referenced measure to determine eligibility, a developmental delay shall mean a 33 percent delay in one developmental area, or a 25 percent delay in two or more developmental areas.
 - (1) Physical, including gross motor, fine motor, and sensory (vision and hearing);
 - (2) Intellectual;
 - (3) Communication;
 - (4) Social and emotional; and
 - (5) Adaptive; or

- ii. Has an identified disabling condition, including vision or hearing, that adversely affects learning or development and who requires special education and related services.
- 11. "Social maladjustment" means a consistent inability to conform to the standards for behavior established by the school. Such behavior is seriously disruptive to the education of the student or other students and is not due to an emotional regulation impairment as defined in (c)5 above.
- 12. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions, such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.
 - i. A specific learning disability can be determined when a severe discrepancy is found between the student's current achievement and intellectual ability in one or more of the following areas:
 - (1) Basic reading skills;
 - (2) Reading comprehension;
 - (3) Oral expression;
 - (4) Listening comprehension;
 - (5) Mathematical calculation;
 - (6) Mathematical problem solving;
 - (7) Written expression; and
 - (8) Reading fluency.

- ii. A specific learning disability may also be determined by utilizing a response to scientifically based interventions methodology as described in N.J.A.C. 6A:14-3.4(h)6.
 - iii. The term “severe discrepancy” does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities, general intellectual deficits, emotional regulation impairment, or environmental, cultural, or economic disadvantage.
 - iv. If the district board of education utilizes the severe discrepancy methodology, the district board of education shall adopt procedures that utilize a statistical formula and criteria for determining severe discrepancy. Evaluation shall include assessment of current academic achievement and intellectual ability.
13. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force or insult to the brain, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.
14. “Visual impairment” means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness. An assessment by a specialist qualified to determine visual disability is required. Students with visual impairments shall be reported to the New Jersey Commission for the Blind and Visually Impaired.

6A:14-3.6 Determination of eligibility for speech-language services

- (a) "Eligible for speech-language services" means a speech and/or language disorder as follows:
1. A speech disorder in articulation, phonology, fluency, voice, or any combination, unrelated to dialect, cultural differences, or the influence of a foreign language, that adversely affects a student's educational performance; and/or
 2. A language disorder that meets the criteria at N.J.A.C. 6A:14-3.5(c)4 and the student requires speech-language services only.
- (b) The evaluation for a speech disorder shall be conducted pursuant to N.J.A.C. 6A:14-3.4(g). Documentation of the educational impact of the speech problem shall be provided by the student's teacher. The speech disorder must meet the criteria at (b)1, 2, and/or 3 below and require instruction by a speech-language specialist:
1. Articulation/phonology: On a standardized articulation or phonology assessment, the student exhibits one or more sound production error patterns beyond the age at which 90 percent of the population has achieved mastery according to current developmental norms and misarticulates sounds consistently in a speech sample.
 2. Fluency: The student demonstrates at least a mild rating, or its equivalent, on a formal fluency rating scale and, in a speech sample, the student exhibits disfluency in five percent or more of the words spoken.
 3. Voice: On a formal rating scale, the student performs below the normed level for voice quality, pitch, resonance, loudness, or duration and the condition is evident on two separate occasions, three to four weeks apart, at different times.
- (c) When the initial speech-language evaluation is completed, classification shall be determined collaboratively by the participants at a meeting pursuant to N.J.A.C. 6A:14-

- 2.3(k). The speech-language specialist who conducted the evaluation shall be considered a child study team member at the meeting to determine whether a student is eligible for speech-language services. A copy of the evaluation report(s) and documentation of eligibility shall be given to the parent at least 10 calendar days prior to the meeting.
- (d) The IEP shall be developed in a meeting pursuant to N.J.A.C. 6A:14-2.3 and 3.7. The speech-language specialist shall be considered the child study team member, the individual who can interpret the instructional implications of evaluation results, and the service provider at the IEP meeting. The speech-language specialist shall not be excused from an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k)10. The speech-language specialist may serve as the agency representative at the IEP meeting.
 - (e) When a student has been determined eligible for speech-language services and other disabilities are suspected or other services are being considered, the student shall be referred to the child study team.

6A:14-3.7 Individualized education program

- (a) A meeting to develop the IEP shall be held within 30 calendar days of a determination that a student is eligible for special education and related services or eligible for speech-language services. An IEP shall be in effect before special education and related services are provided to a student with a disability and the IEP shall be implemented as soon as possible following the IEP meeting.
 - 1. At the beginning of each school year, the district board of education shall have an IEP in effect for every student who is receiving special education and related services from the district board of education;

2. Every student's IEP shall be accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation;
 3. The district board of education shall inform each teacher and provider described in (a)2 above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP. The district board of education shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student's IEP; and
 4. The district board of education shall ensure that there is no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and related services is being determined.
- (b) The IEP shall be developed by the IEP team pursuant to N.J.A.C. 6A:14-2.3 and this section for students classified eligible for special education and related services or pursuant to N.J.A.C. 6A:14-3.6(d) for students classified eligible for speech-language services.
- (c) When developing the IEP, the IEP team shall:
1. Consider the strengths of the student and the concerns of the parents for enhancing the education of their child;
 2. Consider the academic, developmental, and functional needs of the student;
 3. Consider the results of the initial evaluation or most recent evaluation of the student and, as appropriate, the student's performance on any general State or districtwide assessment;

4. Consider the consistency of the location of the services for students who are prone to regression due to frequent changes in location;
5. In the case of a student whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies to address that behavior, including positive behavioral interventions and supports;
6. In the case of a student who is an English language learner, consider the language needs of the student as related to the IEP;
7. In the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, and current and projected needs for instruction in Braille, that such instruction is not appropriate;
8. Consider the communication needs of the student;
9. In the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communication with peers and professional personnel in the student's language and communication mode, academic level, and full range of opportunities for direct instruction in the student's language and communication mode;
10. Consider whether the student requires assistive technology devices and services.
 - i. The district board of education shall ensure that assistive technology devices or assistive technology services, or both, as defined in the IDEA, are made available to a student with a disability if required as part of the student's special education, related services, or supplementary aids and services.
 - ii. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the IEP team

determines that the student needs access to those devices in order to receive a free, appropriate public education;

11. Beginning at age 14, or younger if determined appropriate by the IEP team, consider the need for consultation from the Division of Vocational Rehabilitation Services, Department of Labor and Workforce Development and other agencies providing services for individuals with disabilities; and
 12. Review the preschool day to determine what accommodations and modifications may be required to allow the child to participate in the general education classroom and activities.
- (d) The IEP may be amended without a meeting of the IEP team as follows:
1. The IEP may be amended if the parent makes a written request to the district board of education for a specific amendment to a provision(s) of the IEP and the district board of education agrees;
 2. The district board of education provides the parent a written proposal to amend a provision(s) of the IEP and, within 15 days from the date the written proposal is provided to the parent, the parent consents in writing to the proposed amendment;
 3. All amendments pursuant to (d)1 and 2 above shall be incorporated in an amended IEP or an addendum to the IEP, and a copy of the amended IEP or addendum shall be provided to the parent within 15 days of receipt of parental consent by the district board of education; and
 4. If an IEP is amended pursuant to this subsection, the amendment shall not affect the requirement in (i) below that the IEP team review the IEP at a meeting annually, or more often if necessary.
- (e) With the exception of an IEP for a student classified as eligible for speech-language services, the IEP shall include, but not be limited to:

1. A statement of the student's present levels of academic achievement and functional performance, including, but not limited to:
 - i. How the student's disability affects the student's involvement and progress in the general education curriculum; or
 - ii. For preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;
2. Where appropriate, a statement of detailed measurable annual academic and functional goals that shall be related, as appropriate, to the New Jersey Student Learning Standards through the general education curriculum unless otherwise required according to the student's educational needs, or appropriate, student-specific functional needs. For all students, the annual academic and functional goals shall be measurable and apprise parents and educational personnel providing special education and related services to the student of the expected level of achievement attendant to each goal.
3. Such measurable annual goals shall include benchmarks or short-term objectives related to:
 - i. Meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
 - ii. Meeting each of the student's other educational needs that result from the student's disability;
4. A statement of the special education and related services and supplementary aids and services that shall be provided for the student, or on behalf of the student. The special education and related services and supplementary aids and services shall be based, to the extent practicable, on peer-reviewed research. A statement

of the program modifications or supports for school personnel that shall be provided for the student:

- i. To advance appropriately toward attaining the measurable annual academic and functional goals;
 - ii. To be involved and progress in the general education curriculum according to (e)1 above and to participate in extracurricular and other nonacademic activities; and
 - iii. To be educated and participate with other students with disabilities and nondisabled students;
5. A statement, as appropriate, of any integrated therapy services to be provided addressing the student's individualized needs in his or her educational setting;
6. An explanation of the extent, if any, to which the student shall not participate with nondisabled students in the general education class and in extracurricular and nonacademic activities;
7. A statement of any individual modifications in the administration of Statewide or districtwide assessments of student achievement needed for the student to participate in such assessment.
 - i. If the IEP team determines that the student shall not participate in a particular Statewide or districtwide assessment of student achievement (or part of such an assessment), a statement of why that assessment is not appropriate for the student pursuant to N.J.A.C. 6A:14-4.10 and a statement of how that student shall be assessed and which assessment methodology is appropriate for the student;

8. A statement that specifies the projected date for the beginning of the services and modifications described at (e)4 above, and the anticipated frequency, location, and duration of those services and modifications;
9. Beginning at age 14, a statement of the State and local graduation requirements that the student shall be expected to meet. The statement shall be reviewed annually. If a student with a disability is exempted from, or there is a modification to, local or State high school graduation requirements, the statement shall include:
 - i. Consistent with N.J.A.C. 6A:14-4.11, a rationale for the exemption or modification based on the student's educational needs; and
 - ii. A description of the alternate proficiencies to be achieved by the student to qualify for a State-endorsed diploma.
10. A statement of student's transition from an elementary program to the secondary program, which shall be determined by factors including number of years in school; social, academic, and vocational development; and chronological age;
11. Beginning with the IEP in place for the school year when the student will turn age 14, or younger if determined appropriate by the IEP team, and updated annually:
 - i. A statement of the student's strengths, interests, and preferences;
 - ii. Identification of a course of study and related strategies and/or activities that:
 - (1) Are consistent with the student's strengths, interests, and preferences; and
 - (2) Are intended to assist the student in developing or attaining postsecondary goals related to training, education, employment, and, if appropriate, independent living;

- iii. As appropriate, a description of the need for consultation from other agencies that provide services for individuals with disabilities including, but not limited to, the Division of Vocational Rehabilitation Services in the Department of Labor and Workforce Development; and
 - iv. As appropriate, a statement of any needed interagency linkages and responsibilities;
12. Beginning with the IEP in place for the school year when the student will turn age 16, or younger if deemed appropriate by the IEP team, a statement consisting of the elements set forth in (e)11 above and appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living, and the transition services including a course of study needed to assist the child in reaching those goals.
- i. The transition services for a student with a disability, as defined in IDEA, shall consist of a coordinated set of activities that is designed within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and is based on the individual student's needs, taking into account the student's strengths, preferences, and interests. In addition to the above, transition services shall include:
 - (1) Instruction;

- (2) Related services;
 - (3) Community experiences;
 - (4) The development of employment and other post-school adult living objectives; and
 - (5) If appropriate, acquisition of daily living skills and functional vocational evaluation;
13. The person(s) responsible to serve as a liaison to postsecondary resources and make referrals to the resources as appropriate. If the student with disabilities does not attend the IEP meeting where transition services are discussed, the district board of education shall take other steps to ensure that the student's preferences and interests are considered;
14. Beginning at least three years before the student reaches age 18, a statement that the student and the parent have been informed of the rights under this chapter that will transfer to the student on reaching the age of majority;
15. A statement of how the student's progress toward the annual goals described in (e)2 above will be measured;
16. A statement of how the student's parents will be regularly informed of their student's progress toward the annual goals and the extent to which the progress is sufficient to enable the student to achieve the goals by the end of the year. The parents of a student with a disability shall be informed of the progress of their child at least as often as parents of a nondisabled student are informed of their child's progress; and
17. For students in an out-of-district placement, the IEP shall set forth how the student will participate with nondisabled peers in extracurricular and nonacademic activities, and delineate the means to achieve such participation,

including, if necessary, returning the student to the district board of education to effectuate such participation.

- (f) The IEP for the student classified as eligible for speech-language services shall include (e)1 through 8, 15, and 16 above. When appropriate, (e)11, 12, 13, and 14 above shall be included. The statement of the current academic and functional achievement in (e)1 above shall include a description of the student's status in speech-language performance and a description of how the student's disability affects the student's involvement and progress in the general education curriculum. Students who are classified as eligible for speech-language services shall not be exempted from districtwide or Statewide assessment.
- (g) If an agency other than the district board of education fails to provide the transition services included in the student's IEP, the district board of education shall reconvene a meeting of the IEP participants. Alternative strategies to meet the student's transition objectives shall be identified.
- (h) If an agency invited to send a representative to the IEP meeting does not do so, the district board of education shall take other steps to obtain the participation of the other agency in the planning of any transition services.
- (i) Annually, or more often if necessary, the IEP team shall meet to review and revise the IEP and determine placement as specified in this subchapter.
 - 1. The annual review of the IEP for a preschool student with disabilities shall be completed by June 30 of the student's last year of eligibility for a preschool program.
 - 2. The annual review of the IEP for an elementary school student with disabilities shall be completed by June 30 of the student's last year in the elementary school

program. The annual review shall include input from the staff of the secondary school.

- (j) The IEP team shall review:
 - 1. Any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;
 - 2. The results of any reevaluation conducted according to N.J.A.C. 6A:14-3.8;
 - 3. Information about the student, including information provided by the parents, current classroom-based assessments and observations, and the observations of teachers and related services providers;
 - 4. The student's anticipated needs; or
 - 5. Other relevant matters.
- (k) For students in a separate setting, the IEP team shall, on an annual basis, consider activities necessary to transition the student to a less restrictive placement.
- (l) Signatures of persons who participated in the meeting to develop the IEP shall be maintained by the district board of education and either a copy of the IEP or written notes setting forth agreements with respect to the IEP as determined by the IEP team shall be provided to the parents at the conclusion of the meeting.
- (m) When the parent declines participation in an IEP meeting or is in disagreement with the recommendations, the remaining participants shall develop a written IEP in accordance with this section. However, initial implementation of special education cannot occur until consent is obtained. For other than initial implementation of special education, consent is not required. The parents shall be provided written notice according to N.J.A.C. 6A:14-2.3.

6A:14-3.8 Reevaluation

- (a) Within three years of the previous classification, a multi-disciplinary reevaluation shall be completed to determine whether the student continues to be a student with a disability. Reevaluation shall be conducted earlier if conditions warrant or if the student's parent or teacher requests the reevaluation. However, a reevaluation shall not be conducted prior to the expiration of one year from the date the parent is provided written notice of the determination with respect to eligibility in the most recent evaluation or reevaluation, unless the parent and district board of education both agree that a reevaluation prior to the expiration of one year as set forth in this subsection is warranted. When a reevaluation is conducted earlier than three years from the previous evaluation as set forth in this subsection, the reevaluation shall be completed in accordance with the timeframes in (e) below.
1. If a parent provides written consent and the district board of education agrees that a reevaluation is unnecessary, the reevaluation may be waived. If a reevaluation is waived, the date of the parent's written consent shall constitute the date upon which the next three-year period for conducting a reevaluation shall commence.
- (b) As part of any reevaluation, the IEP team shall determine the nature and scope of the reevaluation according to the following:
1. The IEP team shall review existing evaluation data on the student, including:
 - i. Evaluations and information provided by the parents;
 - ii. Current classroom-based assessments and observations; and
 - iii. Observations by teachers and related services providers; and
 2. On the basis of that review, and input from the student's parents, the IEP team shall identify what additional data, if any, are needed to determine:
 - i. Whether the student continues to have a disability according to N.J.A.C. 6A:14-3.5(c) or 3.6(a);

- ii. The present levels of academic achievement and functional performance, and educational and related developmental needs of the student;
 - iii. Whether the student needs special education and related services, and the student's academic, developmental, functional, and behavioral needs and how they should appropriately be addressed in the student's IEP; and
 - iv. Whether any additions or modifications to the special education and related services are needed to enable the student with a disability to meet annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.
 - 3. If the IEP team determines that no additional data are needed to determine whether the student continues to be a student with a disability, the district board of education:
 - i. Shall provide notice pursuant to N.J.A.C. 6A:14-2.3 to the student's parents of the IEP team's determination and the right of the parents to request an assessment to determine whether the student continues to be a student with a disability; and
 - ii. Shall not be required to conduct such an assessment unless requested by the student's parents;
 - 4. If additional data are needed, the IEP team shall determine which child study team members and/or specialists shall administer tests and other assessment procedures to make the required determinations in (b)2i through iv above.
- (c) Prior to conducting any assessment as part of a reevaluation of a student with a disability, the district board of education shall obtain consent from the parent pursuant to N.J.A.C. 6A:14-2.3.

1. Individual assessments shall be conducted pursuant to N.J.A.C. 6A:14-3.4(f)1 through 5 or (g), as appropriate.
- (d) A reevaluation shall be conducted when a change in eligibility is being considered, except that a reevaluation shall not be required before the termination of a student's eligibility under this chapter due to graduation or exceeding age 21.
- (e) Unless the parent and district board of education agree to waive a reevaluation, all requirements of this section for performing a reevaluation, as applicable, shall be completed within 60 days of the date the parent provides consent for the assessments to be conducted as part of the reevaluation or by the expiration of the three-year timeframe from completion of the prior evaluation or reevaluation, whichever occurs earlier.
- (f) When a reevaluation is completed:
 1. A meeting of the student's IEP team according to N.J.A.C. 6A:14-2.3(k)2 or 3.6(c) shall be conducted to determine whether the student continues to be a student with a disability. A copy of the evaluation report(s) and documentation of the eligibility shall be given to the parent at least 10 days prior to the meeting.
 2. If the student remains eligible, an IEP team meeting according to N.J.A.C. 6A:14-2.3(k)2 or 3.6(d) shall be conducted to review and revise the student's IEP.
- (g) By June 30 of a student's last year of eligibility for a program for preschoolers with disabilities, a reevaluation shall be conducted and, if the student continues to be a student with a disability, the student shall be classified according to N.J.A.C. 6A:14-3.5(c) or 3.6(a).

6A:14-3.9 Related services

- (a) Related services, including, but not limited to, counseling, occupational therapy, physical therapy, school nurse services, recreation, social work services, medical services, and

speech-language services, shall be provided to a student with a disability when required for the student to benefit from the educational program. Related services shall be provided by appropriately certified and/or licensed professionals as specified in the student's IEP and according to the following:

1. Counseling services that are provided by school district personnel shall be provided by certified school psychologists, social workers, or guidance counselors.
2. Counseling and/or training services for parents shall be provided to assist them in understanding the special educational needs of their child.
3. Speech and language services may be provided as a related service to a student who is classified as "eligible for special education and related services." Assessment by a speech-language specialist is required. The student shall meet the eligibility criteria for the classification of "eligible for speech-language services" but shall not be classified as such.
4. Occupational therapy and physical therapy may be provided by therapy assistants under the direction of the certified and, where required, licensed therapist in accordance with all applicable State statutes and rules.
 - i. Prior to the provision of occupational therapy, assessment by a certified (and, where required, licensed) occupational therapist and development of an IEP are required.
 - ii. Prior to the provision of physical therapy, assessment by a certified and licensed physical therapist and development of an IEP are required.
5. A district board of education or approved private school for students with disabilities may contract for the provision of speech-language services, counseling

services, occupational therapy, and/or physical therapy in accordance with N.J.A.C. 6A:14-5.

6. Recreation shall be provided by certified school personnel.
 7. Transportation shall be provided in accordance with N.J.A.C. 6A:27-5.
 8. Nursing services shall be provided as a related service only to the extent such services are designed to enable a child with a disability to receive a free, appropriate public education as described in the student's IEP.
 9. Medical services shall be provided as a related service for diagnostic and evaluation purposes only.
 10. Therapy services may be integrated into the context of ongoing activities or routines and provided by personnel as set forth in the student's IEP.
 11. When related services are provided by non-certified personnel because there is no certification required, such services shall be provided under the supervision of certified district board of education personnel.
 12. Other related services shall be provided as specified in the student's IEP.
- (b) School personnel may give advice to parents regarding additional services that are not required by this chapter. Such advice places no obligation on the district board of education to provide or fund such services.

Subchapter 4. Programs and Instruction

6A:14-4.1 General requirements

- (a) Each district board of education shall provide educational programs and related services for students with disabilities required by the IEPs of students for whom the district board of education is responsible.

- (b) A district board of education proposal to establish or eliminate special education programs or services shall be approved by the Department of Education through the county office of education.
- (c) The length of the school day and the academic year of programs for students with disabilities, including preschoolers with disabilities, shall be at least as long as that established for nondisabled students. The IEP team may, in its discretion, alter the length of the school day based on the needs of the student.
- (d) District board of education operated special class programs for preschool children with a disability shall be in operation five days per week, one day of which may be used for parent training and at least four days of which shall provide a minimum total of 10 hours of student instruction, with the following exception:
 - 1. Classes for preschool children with a disability operated by a district board of education shall operate at least as long as any district board of education program for nondisabled preschoolers, but not less than 10 hours per week.
- (e) If a classroom aide is employed, he or she shall work under the direction of a principal, special education teacher, general education teacher, or other appropriately certified personnel in a special education program. The job description of a classroom aide shall be approved by the Department of Education through the county office of education.
- (f) Physical education services, specially designed if necessary, shall be made available to every student with a disability age five through 21, including students in separate facilities.
- (g) When a student with a disability transfers from one New Jersey school district to another, or from an out-of-State school district to a New Jersey school district, the child study team of the school district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in

consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:

1. For a student who transfers from one New Jersey school district to another New Jersey school district, the IEP shall be implemented as written if the parents and district board of education agree. If the appropriate district board of education staff do not agree to implement the current IEP, the district board of education shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.
 2. If the student transfers from an out-of-State school district, the appropriate district board of education staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.
 3. The appropriate district board of education staff shall take reasonable steps to promptly obtain the student's records, including the current IEP and supporting documentation, from the previous school district in accordance with N.J.A.C. 6A:32. The school district in which the student was previously enrolled shall take reasonable steps to promptly respond to all requests for records of students transferring from one district board of education to another district board of education.
- (h) When the IEP of a student with a disability does not describe any restrictions, the student shall be included in the general education program provided by the district board of education.
1. When instruction in general education subjects or content areas is provided to groups consisting solely of students with disabilities, the size of the groups and age range shall conform to the requirements for special class programs described

in this subchapter. An exception to the age range and group size requirements may be requested by writing to the Department of Education through the county office of education pursuant to N.J.A.C. 6A:14-4.9.

2. When students with disabilities participate in physical education, intramural and interscholastic sports, nonacademic and extracurricular activities in groups consisting solely of students with disabilities, the age range and group size shall be based on the nature of the activity, needs of the students participating in the activity, and the level of supervision required.
- (i) Each district board of education, through appropriate personnel, shall establish and implement a plan to evaluate special education programs and services according to N.J.S.A. 18A:7A-10, 11, and 14 and this chapter.
 - (j) Each district board of education shall ensure that all students with disabilities have available to them the variety of educational programs and services available to nondisabled students.
 - (k) Prior to the implementation of the IEP, the district board of education shall provide the parent with the opportunity to observe the proposed educational placement, including the general education setting, special class programs, and out-of-district placements in a program operated by another district board of education or a private school placement.
 - (l) When a student with a disability receives instruction for a particular subject area in either a single-subject resource program or a special class program, the student shall receive at least the same amount of instructional time as that provided general education students for each subject area. For students in a single-subject resource program outside the general education class, the student's IEP shall specify the proportion of time in the general education classroom and the resource program for each subject area.

- (m) When a student with a disability transfers from a nonpublic school with a services plan, appropriate school district staff shall conduct an immediate review of the services plan and shall provide comparable services pending completion of any necessary assessments and, as appropriate, the development of an IEP for the student. An IEP for the student shall be in place within 60 calendar days from the date of enrollment in the school district.

6A:14-4.2 Placement in the least restrictive environment

- (a) Students with disabilities shall be educated in the least restrictive environment. Each district board of education shall ensure that:
1. To the maximum extent appropriate, a student with a disability is educated with peers who are not disabled;
 2. Special classes, separate schooling, or other removal of a student with a disability from the student's general education class occurs only when the nature or severity of the educational disability is such that education in the student's general education class with the use of appropriate supplementary aids and services cannot be achieved satisfactorily;
 3. A full continuum of alternative placements according to N.J.A.C. 6A:14-4.3 is available to meet the needs of students with disabilities for special education and related services;
 4. Placement of a student with a disability is determined at least annually and, for a student in a separate setting, activities necessary to transition the student to a less restrictive placement are considered at least annually;
 5. Placement is based on his or her IEP;

6. Placement is provided in appropriate educational settings as close to home as possible;
 7. When the IEP does not describe specific restrictions, the student is educated in the school he or she would attend if not a student with a disability;
 8. Consideration is given to:
 - i. Whether the student can be educated satisfactorily in a general education classroom with supplementary aids and services;
 - ii. A comparison of the benefits provided in a general education classroom and the benefits provided in a special education classroom; and
 - iii. The potentially beneficial or harmful effects which a placement may have on the student with disabilities or the other students in the class;
 9. A student with a disability is not removed from the age-appropriate general education classroom solely based on needed modifications to the general education curriculum;
 10. Placement in a program option is based on the individual needs of the student; and
 11. Determinations regarding the restrictiveness of a particular program option are based solely on the amount of time a student with disabilities is educated outside the general education setting.
- (b) Each district board of education shall provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.
1. In providing or arranging for the provision of nonacademic and extracurricular services and activities, each district board of education shall ensure that each student with a disability participates with nondisabled **peers** in those services and activities to the maximum extent appropriate.

6A:14-4.3 Program options

- (a) All students shall be considered for placement in the general education class with supplementary aids and services including, but not limited to, the following:
 - 1. Curricular or instructional modifications or specialized instructional strategies;
 - 2. Assistive technology devices and services as defined in N.J.A.C. 6A:14-1.3;
 - 3. Teacher aides;
 - 4. Related services;
 - 5. Integrated therapies;
 - 6. Consultation services; and
 - 7. In-class resource programs.
- (b) If it is determined that a student with a disability cannot remain in the general education setting with supplementary aids and services for all or a portion of the school day, a full continuum of alternative placements as set forth in this subsection shall be available to meet the needs of the student. Alternative educational program options include placement in the following:
 - 1. Single-subject resource programs outside the general education class;
 - 2. A special class program in the student's school district;
 - 3. A special education program in another school district;
 - 4. A special education program in a county vocational school district;
 - 5. A special education program in the following settings:
 - i. A county special services school district;
 - ii. An educational services commission;
 - iii. A jointure commission; and

- iv. A New Jersey approved private school for students with disabilities or an out-of-State school for students with disabilities in the continental United States approved by the department of education in the state where the school is located;
 - 6. A program operated by a department of New Jersey State government;
 - 7. A community rehabilitation program;
 - 8. A program in a hospital, convalescent center, or other medical institution;
 - 9. Individual instruction at home or in other appropriate facilities, with the prior written notice to the Department of Education through the county office of education;
 - 10. An accredited nonpublic school that is not specifically approved for the education of students with disabilities pursuant to N.J.A.C. 6A:14-6.5;
 - 11. Instruction in other appropriate settings according to N.J.A.C. 6A:14-1.1(d); and
 - 12. An early intervention program (which is under contract with the Department of Health) in which the child has been enrolled for the balance of the school year in which the child turns age three.
- (c) The IEP team shall make an individual determination regarding the need for an extended school year program. An extended school year program provides for the extension of special education and related services beyond the regular school year. An extended school year program is provided in accordance with the student's IEP when an interruption in educational programming causes the student's performance to revert to a lower level of functioning and recoupment cannot be expected in a reasonable length of time. The IEP team shall consider all relevant factors in determining the need for an extended school year program.

1. The district board of education shall not limit extended school year services to particular categories of disability or limit the type, amount, or duration of those services.
- (d) A preschool age student with a disability may be placed by the district board of education in an early childhood program operated by an agency other than a district board of education according to the following:
1. The early childhood program shall be licensed or approved by a governmental agency;
 2. The district board of education shall assure that the program is nonsectarian;
 3. The district board of education shall assure the student's IEP can be implemented in the early childhood program with any supplementary aids and services that are specified in the student's IEP; and
 4. The special education and related services specified in the student's IEP shall be provided by appropriately certified and/or licensed personnel or by paraprofessionals according to N.J.A.C. 6A:14-3.9(a) or 4.1(e).

6A:14-4.4 Program criteria: speech-language services

- (a) Speech-language services provided to a student with a disability shall be in addition to the regular instructional program and shall meet the following criteria:
1. Speech-language services shall be given individually or in groups.
 - i. The size and composition of the group shall be determined by the IEP team in accordance with the speech-language needs of the student(s) with educational disabilities and shall not exceed five students.
 2. Speech-language services shall be provided by a certified speech-language specialist as defined in N.J.A.C. 6A:14-1.3.

6A:14-4.5 Program criteria: supplementary aids and services

- (a) Supplementary aids and services are provided in the general education classroom to enable students with disabilities to be educated with nondisabled peers to the maximum extent appropriate.
- (b) A teacher aide may provide supplementary support to a student(s) with disabilities when the IEP team has determined that the student requires assistance in areas including, but not limited to, the following:
 - 1. Prompting, cueing and redirecting student participation;
 - 2. Reinforcing of personal, social, behavioral, and academic learning goals;
 - 3. Organizing and managing materials and activities; and
 - 4. Implementation of teacher-designed follow-up and practice activities.
- (c) Supplementary services as described in (b) above shall be provided individually or in groups according to the numbers for in-class resource programs.
- (d) The district board of education shall provide to the teacher aide and the appropriate general or special education teaching staff time for consultation on a regular basis, which shall be set forth in policies adopted by the district board of education.
- (e) Consultation as a service on behalf of a student with disabilities or a group of students with disabilities may be provided by a related services provider, a teacher of students with disabilities, or a child study team member to the general education teacher and/or the teacher aide. Such consultation shall be specified in each student's IEP. The frequency and duration of the consultation(s) shall be indicated in the IEP. Consultation may include, but is not limited to, the following:
 - 1. The development and demonstration of techniques and strategies;
 - 2. Data collection on the effectiveness of the techniques and strategies; and

3. Development of positive behavioral supports.

6A:14-4.6 Program criteria: supplementary instruction and resource programs

- (a) Supplementary instruction is provided to students with disabilities in addition to the primary instruction for the subject being taught. The program of supplementary instruction shall be specified in the student's IEP.
- (b) Supplementary instruction in (a) above shall be provided individually or in groups according to the chart at (m) below. Supplementary instruction may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. Instruction in more than one subject may be provided in a pull-out program of supplemental instruction.
- (c) A teacher providing supplementary instruction shall be appropriately certified either for the subject or the level in which instruction is given.
- (d) In-class resource programs and pull-out replacement resource programs are programs of specialized instruction organized around a single subject and are provided to students with disabilities by an appropriately certified teacher of students with disabilities. Instruction in more than one subject may be provided in a pull-out resource program.
- (e) Resource programs shall offer individual and small group instruction to students with disabilities. Resource programs may be provided in a general education class or in a pull-out classroom that meets the requirements of N.J.A.C. 6A:26-6. When a resource program is provided, it shall be specified in the student's IEP. Resource programs shall provide instruction as defined in (i) and (j) below. In-class resource teachers may provide support and replacement instruction at the same time in accordance with the group size limits for in-class support in (m) below. Pull-out support and pull-out replacement shall not be provided by the same teacher at the same time.

- (f) If the resource program solely serves students with a visual impairment, the teacher shall be certified as a teacher of blind or partially sighted. If the resource program solely serves students with an auditory impairment, the teacher shall be certified with the appropriate teacher of the deaf and/or hard of hearing certificate.
- (g) A teacher of supplementary instruction and a resource program teacher shall be provided time on a regular basis for consultation with appropriate general education teaching staff.
- (h) An in-class resource program or an in-class program of supplementary instruction may be provided up to the student's entire instructional day. At the elementary level, replacement pull-out resource classes may be provided for up to no more than three subject areas per day. At the secondary level, replacement pull-out resource classes may be provided for up to the entire instructional day.
- (i) In an in-class resource program, the student shall be provided modifications to the instructional strategies or testing procedures, or other specialized instruction, to access the general education curriculum in accordance with the student's IEP. The general education teacher shall have primary instructional responsibility for the student in an in-class resource program unless otherwise specified in the student's IEP. An in-class resource program shall be provided in the student's general education class at the same time as the rest of the class. A student receiving an in-class resource program or an in-class program of supplementary instruction shall be included in activities such as group discussion, special projects, field trips, and other regular class activities as deemed appropriate in the student's IEP.
- (j) In a pull-out replacement resource program, the general education curriculum and the instructional strategies may be modified based on the student's IEP. The resource program teacher shall have primary instructional responsibility for the student in the

replacement resource program and shall consult with the general classroom teacher, as appropriate.

- (k) The age span in an approved single-subject pull-out resource program shall not exceed three years in elementary programs and shall not exceed four years in secondary programs.
- (l) When organizing a pull-out replacement resource class, the district board of education shall consider the commonality of the instructional needs for the subject area being taught according to the levels of academic achievement, learning characteristics, and management needs of the students to be placed in the class. The resource program teacher shall provide the primary instruction for the students in the class.
- (m) Group sizes for supplementary instruction and resource programs shall not exceed the limits listed below. Group size may be increased with the addition of an instructional aide, except where noted, according to the following:

<u>Resource and Supplementary Instruction</u>	Preschool/Elementary		Secondary	
	<u>No Aide</u>	<u>Aide Required</u>	<u>No Aide</u>	<u>Aide required</u>
In-class	8	--	10	--
Pull-out support and supplemental instruction				
Single subject	6	7 to 9	9	10 to 12
Multiple subject	6	7 to 9	6	7 to 9
<u>Replacement Resource</u>	Preschool/Elementary		Secondary	
	<u>No Aide</u>	<u>Aide Required</u>	<u>No Aide</u>	<u>Aide Required</u>

Pull-out				
Single subject	6	7 to 9	9	10 to 12

- (n) The maximum number of students with disabilities that shall receive an in-class resource program shall be eight at the preschool or elementary level, and 10 at the secondary level. The option to increase the group size of an in-class program of supplementary instruction in accordance with N.J.A.C. 6A:14-4.9 shall be prohibited.
- (o) Pull-out support and pull-out replacement resource programs shall not be provided at the same time by the same teacher. The group size of a pull-out replacement resource program may be increased in accordance with N.J.A.C. 6A:14-4.9. The option to increase the group size for multiple subject supplementary instruction according to N.J.A.C. 6A:14-4.9 shall be prohibited.
- (p) Secondary programs shall be in schools in which any combination of grades six through 12 are contained and where the organizational structure is departmentalized for general education students.

6A:14-4.7 Program criteria: special class programs, secondary, and vocational rehabilitation

- (a) A special class program shall serve students who have similar intensive educational, behavioral, and other needs related to their disabilities in accordance with their IEPs. Placement in a special class program shall occur when the IEP team determines that the nature and severity of the student's disability is such that no other school-based program will meet the student's needs. Special class programs shall offer instruction in the New Jersey Student Learning Standards unless the IEP specifies a modified curriculum due to the nature or severity of the student's disability. The general education curriculum and the instructional strategies may be modified based on the student's IEP. Special class programs shall meet the following criteria:

1. Depending on the disabilities of the students assigned to the special class program, the special class teacher shall hold certification as a teacher of students with disabilities, teacher of blind or partially sighted, and/or teacher possessing the appropriate teacher of the deaf or hard of hearing certificate;
 2. The age span in special class programs shall not exceed four years in elementary program, and shall not exceed four years in secondary programs; and
 3. A kindergarten shall not be approved as a special class program.
- (b) Special class programs for students with auditory impairments shall be instructed by a teacher possessing the appropriate teacher of the deaf or hard of hearing certificate.
 - (c) The nature and intensity of the student's educational needs shall determine whether the student is placed in a program that addresses moderate to severe intellectual disabilities or severe to profound intellectual disabilities.
 - (d) Special class programs for students with learning and/or language disabilities may be organized around the learning disabilities or the language disabilities or a combination of learning and language disabilities.
 - (e) Instructional group sizes for preschool, elementary, and secondary special class programs shall not exceed the limits listed in the table below. The instructional group size may be increased with the addition of a classroom aide according to the numbers listed in Column III as set forth in the table below. When determining whether a classroom aide is required, students with a personal aide shall not be included in the student count:

I	II	III
<u>Program</u>	<u>Instructional Size:</u>	<u>Instructional Size:</u>
	No Classroom Aide Required	Classroom Aide Required
Auditory impairments	8	9 to 12

Autism ¹	3	4 to 6
		7 to 9 (Secondary only; Two aides required)
Emotional regulation impairment		
	9	10 to 12
Intellectual disability		
Mild	12	13 to 16
Moderate	10	11 to 13
Severe	3	4 to 6
		7 to 9 (Two aides required)
Learning and/or language disabilities		
Mild to moderate	10	11 to 16
Severe	8	9 to 12
Multiple disabilities	8	9 to 12
Preschool disabilities ³	--	1 to 8
		9 to 12 (Two aides required)
Visual impairments	8	9 to 12

1 A program for students with autism shall maintain a student to staff ratio of three to one. For a secondary program, two classroom aides are required when the class size exceeds six students.

2 A program for students with severe to profound intellectual disabilities shall maintain a three to one student to staff ratio.

3 A classroom aide is required for a preschool classroom. Two aides are required when the class size exceeds eight students.

- (f) Secondary special class programs are defined as programs that are located in schools in which there is any combination of grades six through 12 and where the organizational structure is departmentalized for general education students.
- (g) In addition to the requirements for instructional size for special class programs pursuant to (e) above, instruction may be provided in the secondary setting of a class organized around a single content area consisting solely of students with disabilities instructed by a general education teacher where an adapted general education curriculum is used shall have a maximum instructional size of 12. The instructional size may be increased up to 16 students with the addition of a classroom aide.
- (h) Vocational education programs shall meet the following criteria:
 - 1. For the student placed in a vocational program outside of the district board of education, responsibility shall be as follows:
 - i. In a full-time county vocational school, all responsibility for programs and services rests with the receiving district board of education;
 - ii. In a shared-time county vocational school and in an area vocational technical school, primary responsibility rests with the sending district board of education. Vocational personnel shall participate in the IEP decisions; and
 - 2. In vocational education and related academic programs, class sizes shall be as follows:
 - i. For a class consisting of students with disabilities, the maximum class size with an aide shall not exceed 15 students. Class size shall not exceed 10 students without the addition of an aide unless prior written approval of

the Department of Education through the county office of education (county office) is granted pursuant to N.J.A.C. 6A:14-4.9. Requests for approval of a class size that exceeds 10 students without an aide shall include, but not be limited to, a description of the following student needs and instructional considerations:

- (1) The nature and degree of the student's educationally disabling condition;
 - (2) The interests, aptitudes, and abilities of the student;
 - (3) The functional level of the student;
 - (4) The employment potential of the student;
 - (5) The type of occupational area;
 - (6) Instructional strategies;
 - (7) Safety factors; and
 - (8) Physical facility requirements.
- (i) Secondary level students may be placed in community rehabilitation programs for vocational rehabilitation services according to the following:
1. Community rehabilitation programs shall be approved by a State agency including, but not limited to, the New Jersey Department of Labor and Workforce Development, Division of Vocational Rehabilitation Services, the New Jersey Department of Human Services, and the New Jersey Commission for the Blind and Visually Impaired to provide vocational evaluation, work adjustment training, job coaching, skill training, supported employment, and time-limited job coaching;

2. Placement shall be made according to the student's IEP. The IEP shall specify the New Jersey Student Learning Standards to be met and shall address how the instruction will be provided; and
3. Within 10 calendar days of placement in community rehabilitation facilities, the district board of education shall provide written notification of the placement to the county office.

6A:14-4.8 Program criteria: home instruction

- (a) A student with a disability shall have his or her IEP implemented through one-to-one instruction at home or in another appropriate setting when it can be documented that all other less restrictive program options have been considered and have been determined inappropriate.
 1. Prior written notification that a district board of education intends to provide home instruction shall be provided to the Department of Education through the county office of education.
 2. Notification shall be effective for a maximum of 60 calendar days, at which time renewal of the notification may be made. Each renewal shall be for a maximum of 60 calendar days.
 3. A written record of the student's home instruction, including dates and times during which home instruction is provided, shall be maintained, and the teacher providing instruction shall be appropriately certified as teacher of students with disabilities or for the subject or level in which the instruction is given.
 4. Instruction shall be provided for at least 10 hours per week. The 10 hours of instruction per week shall be accomplished in at least three visits by a certified teacher or teachers on at least three separate days.

5. Instruction shall be provided at a location conducive to providing educational services, taking into consideration the student's disability and any unique circumstances. The parent shall be consulted in determining the appropriate location for the provision of home instruction.
6. If a parent repeatedly fails to make a student available for scheduled home instruction, the district board of education shall consider whether the student is truant in accordance with N.J.S.A. 18A:38-27 and proceed accordingly.

6A:14-4.9 Exceptions

- (a) Exceptions for the age range and group sizes specified at N.J.A.C. 6A:14-4.4, 4.5, 4.6, and 4.7 shall be granted:
 1. On an individual **student** basis;
 2. Only with prior written approval of the Department of Education through the county office of education (county office); and
 3. For a period not to exceed the balance of the school year.
- (b) The county office shall determine whether granting the exception would interfere with the delivery of a free, appropriate public education to the student or other students in the group and, on that basis, shall either:
 1. Approve the request; or
 2. Deny the request.
- (c) If the request is denied, the district board of education is still obligated to implement the IEP.
- (d) The parent of a student with a disability for whom the exception is requested, and the parents of the students who are affected by the request for an exception, shall be informed

by the district board of education that such a request is being submitted to the county office.

- (e) Upon approval of the exception by the county office, the district board of education or the appropriate education agency shall inform the parents of the students with disabilities who are affected by the exception.
- (f) No waivers or equivalencies pursuant to N.J.A.C. 6A:5 shall be granted to this chapter.

6A:14-4.10 Statewide assessment

- (a) Students with disabilities shall participate in the Statewide assessment system according to the following:
 - 1. Except as provided in (a)2 below, students with disabilities shall participate in Statewide assessments pursuant to N.J.A.C. 6A:8-4.1. Accommodations and modifications approved by the Department of Education shall be provided, when determined necessary by the IEP team, to students with disabilities who participate in the general Statewide assessments.
 - 2. Students with disabilities shall participate in the alternate assessment for students with disabilities in each content area where the nature of the student's disability is so severe that the student is not receiving instruction in any of the knowledge and skills measured by the Statewide assessment and the student cannot complete any of the types of questions on the assessment in the content area(s) even with accommodations and modifications.

6A:14-4.11 Graduation

- (a) The IEP of a student with a disability who enters a high school program shall specifically address the graduation requirements. The student shall meet the high school graduation

requirements pursuant to N.J.A.C. 6A:8-5.1, except as specified in the student's IEP. The IEP shall specify which requirements would qualify the student with a disability for the State-endorsed diploma issued by the district board of education responsible for his or her education.

(b) Graduation with a State-endorsed diploma is a change of placement that requires written notice pursuant to N.J.A.C. 6A:14-2.3(f) and (g).

1. As part of the written notice, the parent shall be provided with a copy of the procedural safeguards statement published by the Department of Education.
2. As with any proposal to change the educational program or placement of a student with a disability, the parent may resolve a disagreement with the proposal to graduate the student by requesting mediation or a due process hearing prior to graduation.
3. In accordance with N.J.A.C. 6A:14-3.8(d), a reevaluation shall not be required.
4. When a student graduates or exceeds the age of eligibility, the student shall be provided a written summary of his or her academic achievement and functional performance prior to the date of the student's graduation or the conclusion of the school year in which he or she exceeds the age of eligibility. The summary shall include recommendations to assist the student in meeting his or her postsecondary goals.

(c) If a student attends a school other than that of the school district of residence that is empowered to grant a diploma, the student shall have the choice of receiving the diploma of the school attended or the diploma of the school district of residence.

1. If the school the student is attending declines to issue a diploma to the student, the district board of education of the school district of residence shall issue the

student a diploma if the student has satisfied all State and local graduation requirements, as specified in the student's IEP.

- (d) If a district board of education grants an elementary school diploma, a student with a disability who fulfills the requirements of his or her IEP shall qualify for and receive a diploma.
- (e) Students with disabilities who meet the standards for graduation according to this section shall have the opportunity to participate in graduation exercises and related activities on a nondiscriminatory basis.

Subchapter 5. Providing Educational And Related Services

6A:14-5.1 General requirements

- (a) Each district board of education, independently or through joint agreements, shall employ or contract with child study teams, as set forth at N.J.A.C. 6A:14-3.1(b), speech-language specialists, and other school personnel in numbers sufficient to ensure provision of required programs and services pursuant to this chapter.
 - 1. Joint agreements for child study team services may be entered into with local education agencies, including other district boards of education, educational services commissions, jointure commissions, and county special services school districts.
 - 2. A district board of education may supplement child study team services with additional teams through contracts or joint agreements.
 - 3. If a vacancy occurs on a child study team because of an absence of a member(s) of the team for an identified period of time, the district board of education may contract, for the duration of any such vacancy, with a clinic or agency approved

by the Department of Education, an individual, or another district board of education for the services provided by the absent team member(s).

(b) When a district board of education provides its educational program through another New Jersey district board of education, responsibility for this chapter's requirements shall be according to the following:

1. In a sending-receiving relationship pursuant to N.J.S.A. 18A:38-1 et seq., when all the students of one or more grades of a district board of education attend a school(s) operated by another district board(s) of education, the receiving district board of education shall be responsible for determining the eligibility of the sending district board of education's students and developing and implementing their IEPs.
2. When individual students are placed by a district board of education in a school operated by another district board of education, a contractual agreement shall be made between district boards of education which specifies responsibility for providing instruction, related services, and child study team services to students with disabilities.

(c) For the services listed below, district boards of education may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified, approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. For the related services listed at (c)1iii and v below, approved private schools for students with disabilities may contract with private clinics and agencies approved by the Department of Education, private professional practitioners who are certified and licensed according to State statutes and rules, and agencies or programs that are certified,

approved, or licensed by the Department of Human Services or by the Department of Health to provide counseling or mental health services. All instructional, child study team, and related services personnel provided by approved clinics and agencies and private professional practitioners shall be fully certified. No instructional, child study team, and related services personnel provided by approved clinics and agencies, or private professional practitioners, may, if a certification is required for the discipline under which they are providing services, provide services under this subsection if certified through the emergency certification process.

1. For public school students:

- i. Independent child study team evaluations according to N.J.A.C. 6A:14-2.5;
- ii. Child study team services to supplement existing district board of education services;
- iii. Related services;
 - (1) Certified occupational therapy assistants, and others employed in a supportive role to licensed and, where applicable, certified providers of related services, shall work under the supervision of an appropriately licensed and, where applicable, certified provider of such services.
 - (2) Physical therapy assistants shall work in the presence and under the supervision of a certified physical therapist.
 - (3) Specialists in behavior modification or other disciplines for which there is no license or certification shall hold, at a minimum, a bachelor's degree in education, psychology, or a related field from

an accredited institute of higher education and shall work under the supervision of certified district board of education personnel.

- iv. Home instruction; and
 - v. Speech-language services provided by a speech-language specialist when a district board of education or private school for students with disabilities is unable to hire sufficient staff to provide the service.
2. For students attending nonpublic schools, the district board of education in which the facility is located may contract for the following services:
- i. Evaluation, determination of eligibility, classification, and the development of a service plan;
 - ii. Supplementary instruction, speech-language services, and home instruction for students determined eligible for such services; and
 - iii. English as a second language pursuant to N.J.A.C. 6A:15 and compensatory education pursuant to N.J.S.A. 18A:46A-2.e for students eligible for such services.
- (d) District boards of education may purchase services listed under (c)1 and 2 above from Department of Education approved clinics and agencies with prior written notice to the Department of Education through the county office of education according to the following:
- 1. Notice of the intent to purchase services shall include the proposed terms of the contract;
 - 2. The notice shall be effective for one year; and
 - 3. District boards of education are not required to provide prior notice to the Department of Education when contracting for an independent child study team evaluation in accordance with N.J.A.C. 6A:14-2.5.

- (e) District boards of education may contract for medical diagnostic services with medical clinics and agencies approved by another New Jersey State agency or appropriate state agencies outside of New Jersey.

6A:14-5.2 Approval procedures for clinics or agencies

- (a) For the purposes of approval by the Department of Education, a clinic or agency shall consist of three or more professionals. Initial approval of a clinic or agency shall require, but not be limited to, submission and evaluation of the following:
 - 1. A valid certificate of incorporation or certificate of formation. Where appropriate, any licenses or permits required by ordinances in effect within the state, county, or municipality where the clinic or agency provides its services shall be included in the submission;
 - 2. A description of the scope and nature of services to be offered;
 - 3. A list of professional staff who will provide services. The list shall verify each individual's certification and license, if a certification and/or license is required for the discipline in which services are being provided, and the function each individual shall fulfill;
 - i. Professional staff employed by a clinic or agency who work full time for a district board of education, approved private school for students with disabilities, or nonpublic school shall not provide service for the clinic or agency during the hours of the individual's public school or, as applicable, approved private school or nonpublic school employment;
 - ii. An employee of a district board of education, approved private school for students with disabilities, or nonpublic school shall not provide service as an employee of a clinic or agency to a student who is the responsibility of

his or her employing district board of education or enrolled in his or her approved private school for students with disabilities or nonpublic school;

4. Assurance that the clinic or agency has conducted the criminal history review of each professional pursuant to N.J.S.A. 18A:6-7.1;
 - i. The clinic or agency shall submit to the Department of Education and maintain documentation of the information regarding the criminal history review;
 5. Assurance that the facility(ies) in which the services are being provided meet applicable building and other regulatory standards;
 6. Assurance of an adequate accounting system according to generally accepted accounting principles;
 7. Assurance of a system for the collection, maintenance, confidentiality and access of student records pursuant to N.J.A.C. 6A:32; and
 8. Assurance of the maintenance of a log, which includes, but is not limited to:
 - i. A list of services provided;
 - ii. The date, time, and location of the services provided; and
 - iii. The names of the professional staff providing each service.
- (b) Any clinic or agency denied approval by the Department of Education may appeal the decision to the Commissioner of Education for a hearing pursuant to N.J.A.C. 6A:3, Controversies and Disputes. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).
- (c) An approved clinic or agency may amend the services provided or the location of its facilities by obtaining prior written approval from the Department of Education.
1. To amend the services provided, the agency or clinic shall submit the following:

- i. A revised description of the scope and nature of services to be offered;
 - ii. A list of professional staff who will provide the services. The list shall verify each individual's certification and license, if one is required, and the function the individual will fulfill; and
 - iii. Assurance that the criminal history record review has been conducted pursuant to N.J.S.A. 18A:6-7.1.
- 2. To amend the location of the facility(ies), the agency or clinic shall submit an assurance that the facility(ies) in which the services are to be provided meet applicable building and other regulatory standards as required at (a)5 above.
- (d) When a professional staff member leaves or a new professional staff member is hired, the approved clinic or agency shall provide the Department of Education written notification within seven calendar days of the change.
- (e) Failure to comply with any requirement of this section may result in the loss of approval.

Subchapter 6. Requirements for Services in Nonpublic Schools

6A:14-6.1 Equitable participation under IDEA Part B

- (a) The district board of education of the school district of attendance shall provide, as required by Federal law and regulation under Part B of the IDEA, a genuine opportunity for the equitable participation of students with disabilities who are enrolled in nonpublic schools or early childhood programs by their parents.
 - 1. The school district of attendance shall make the final decisions with respect to the services to be provided to eligible students with disabilities enrolled in nonpublic schools or early childhood programs.

- (b) The school district of attendance shall spend an amount of money equal to a proportionate amount of Federal funds available under Part B of the IDEA for the provision of services to students with disabilities who are attending nonpublic schools.
- (c) After timely and meaningful consultation with representatives of nonpublic schools, the school district of attendance shall undertake a child find process in accordance with IDEA and its implementing regulations to determine the number of parentally placed children with disabilities attending nonpublic schools located within the school district.
 - 1. As part of the child find process, the school district of attendance shall consult with private school representatives and representatives of parents of parentally placed nonpublic school children with disabilities in the design and development of special education and related services for such children.
 - i. After consulting with representatives of participating private schools, the district board of education shall obtain a signed, written affirmation that the consultation as required by IDEA, 20 U.S.C. §§ 1400 et seq., and its implementing regulations at 34 CFR §§ 300.1 et seq. occurred.
 - ii. If unable to obtain signed, written affirmation, the school district of attendance shall forward documentation of the consultation process to the Office.
 - iii. Nonpublic school officials may file a complaint with the Department of Education if they believe the consultation process was not meaningful and timely.
 - (1) The complaint shall set forth the basis for the alleged noncompliance.
 - (2) The district board of education shall provide documentation of its consultation process to the Department within 30 days of

notification of the filing of a complaint with respect to the consultation process.

(3) The Department shall then render a determination of whether the consultation was meaningful and, if appropriate, order any necessary corrective action.

(4) Appeals of a Department of Education determination with respect to the consultation process under this subsection shall be made to the Secretary of the United States Department of Education pursuant to procedures set forth in IDEA, 20 U.S.C. §§ 1400 et seq., and its implementing regulations at 34 CFR Part 300.

(d) Services pursuant to this section may be provided by district board of education personnel or through contracts with individuals or approved clinics or agencies. In addition, services provided pursuant to this section shall be secular, neutral, and non-ideological.

(e) The procedural safeguards available to nonpublic school students with disabilities and their parents as specified by Federal law and rules under Part B of the IDEA shall apply.

1. The right to request mediation or a due process hearing applies only to the location, identification, evaluation, determination of eligibility, and reevaluation of students with disabilities enrolled in nonpublic schools or early childhood programs by their parents.

2. Disputes regarding the provision of services to a particular nonpublic school student with a disability shall be addressed through the complaint procedures according to N.J.A.C. 6A:14-9.2.

(f) If a nonpublic school student with a disability will receive special education or related services from the school district of attendance, the school district of attendance shall:

1. Initiate and conduct meetings pursuant to N.J.A.C. 6A:14-2.3(k) to develop, review, and revise a service plan for the student.
 - i. For services provided by the district board of education, the service plan for a student with a disability enrolled in a nonpublic school or early childhood program shall include the components described at N.J.A.C. 6A:14-3.7(e)1 through 6, 8, 14, 15, and 16. The transition requirements described at N.J.A.C. 6A:14-3.7(e) shall be included only when the district board of education is providing transition services to the student; and
2. Ensure that a representative of the nonpublic school or early childhood program attends each meeting. If the representative of the nonpublic school cannot attend, the school district of attendance shall use other methods to ensure participation by the nonpublic school, including individual or conference telephone calls.

6A:14-6.2 Provision of programs and services provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

- (a) The board of education of the district in which the nonpublic school is located shall provide to nonpublic school students the programs and services required by this subchapter by itself, or through joint agreements with other boards of education or through contracts with educational services commissions or with clinics and agencies approved under N.J.A.C. 6A:14-5.
- (b) Specifications for contracts to provide programs and services covered by this subchapter shall be approved by the county superintendent of schools.
- (c) Identification, evaluation, determination of eligibility, development of service plans and the provision of speech and language services, home instruction and supplementary instruction shall be provided according to this chapter.

- (d) English as a second language shall be provided according to N.J.S.A. 18A:46A-2c.
- (e) Compensatory education shall be provided according to N.J.S.A. 18A:46A-2e.
- (f) All special education programs and services required by this subchapter shall be provided with parental consent in accordance with N.J.A.C. 6A:14-2.3.
- (g) Those procedural safeguards available to nonpublic school students with disabilities and their parents as specified by Federal law and rules under Part B of the IDEA shall apply.
 - 1. The right to request mediation or a due process hearing applies only to the location, identification, evaluation, determination of eligibility, and reevaluation of students with disabilities enrolled in nonpublic schools.
 - i. For the services provided, the service plan for a student with a disability enrolled in a nonpublic school shall include the components described in N.J.A.C. 6A:14-3.7(e)1 through 6, (e)8 and (e)14 through 16.
 - 2. Disputes regarding the provision of services to a particular nonpublic school student with a disability shall be addressed through the complaint procedures according to N.J.A.C. 6A:14-9.2.
- (h) Personnel providing a program or service under this subchapter shall be highly qualified and shall meet appropriate certification and if required, licensing requirements. Personnel shall not be employed by the nonpublic school in which the student is enrolled with the exception of personnel providing the types of instruction specified in N.J.A.C. 6A:14-5.1(c)2ii and iii.
- (i) Programs and services for nonpublic school students shall be provided in facilities approved by the Department of Education through its county superintendent of schools according to N.J.S.A. 18A:46-5 and 18A:46-19.5.
- (j) Public and nonpublic school students may be grouped for speech correction and the other instructional programs provided under this subchapter, when appropriate.

- (k) When the provision of programs and/or services under this subchapter requires transportation or the maintenance of vehicular classrooms, the board of education of the district in which the nonpublic school is located shall provide the transportation and maintenance and the cost shall be paid from State aid received under this subchapter.
- (l) The board of education of the district in which the nonpublic school is located shall maintain all records of nonpublic school students receiving programs and/or services under this subchapter according to N.J.A.C. 6A:32.

6A:14-6.3 Fiscal management provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

- (a) Each board of education of the district in which the nonpublic school is located shall provide programs and services under this subchapter at a cost not to exceed the amount of State aid funds.
- (b) Each board of education of the district in which the nonpublic school is located shall maintain an accounting system for nonpublic programs and services according to N.J.A.C. 6A:23A-16 through 22.
- (c) At the close of each school year, the board of education shall report to the Department of Education the total district cost for programs and services provided under this subchapter.
- (d) Each board of education of the district in which the nonpublic school is located shall receive State aid for programs and services required by this subchapter for the succeeding school year as available from appropriated funds for nonpublic school programs and services.

6A:14-6.4 End of the year report provided under N.J.S.A. 18A:46A-1 et seq. and 18A:46-19.1 et seq.

- (a) Annually, the board of education shall submit to the Department of Education a report describing the programs and services provided under this subchapter.
- (b) The end of the year report shall include the numbers of nonpublic school students provided each program or service and such other information as may be required by the Department of Education.

6A:14-6.5 Placement in accredited nonpublic schools that are not specifically approved for the education of students with disabilities

- (a) Pursuant to N.J.S.A. 18A:46-14, school-age students with disabilities may be placed in accredited nonpublic schools that are not specifically approved for the education of students with disabilities with the consent of the Commissioner of Education, by order of a court of competent jurisdiction, or by order of an administrative law judge as a result of a due process hearing. Preschool-age students with disabilities may be placed in early childhood programs operated by agencies other than a district board of education by the district board of education pursuant to N.J.A.C. 6A:14-4.3(d) or by an administrative law judge as a result of a due process hearing.
- (b) The Commissioner's consent shall be based upon the district board of education's certification that the following requirements have been met:
 - 1. The nonpublic school is accredited. Accreditation means the on-going, on-site evaluation of a nonpublic school by a governmental or independent educational accreditation agency that is based upon written evaluation criteria that address educational programs and services, school facilities, and school staff;
 - 2. A suitable special education program pursuant to N.J.S.A. 18A:46-14.a through h cannot be provided to the student;
 - 3. The most appropriate placement for the student is this nonpublic school;

4. The program to be provided shall meet the requirements of the student's IEP;
5. The student shall receive a program that meets all the requirements of a thorough and efficient education as defined at N.J.S.A. 18A:7A-5c through g. These requirements shall be met, except as the content of the program is modified by the IEP based on the educational needs of the student. Statewide assessment and graduation requirements shall apply. Participation in Statewide assessment and/or exemptions from graduation requirements shall be recorded in the student's IEP pursuant to N.J.A.C. 6A:14-3.7(e)7 and 9.
 - i. All personnel providing either special education programs pursuant to N.J.A.C. 6A:14-4.4, 4.5, 4.6, or 4.7 or related services pursuant to N.J.A.C. 6A:14-3.9 shall hold the appropriate educational certificate and license, if one is required, for the position in which they function;
 - ii. All personnel providing regular education programs shall either hold the appropriate certificate for the position in which they function or shall meet the personnel qualification standards of a recognized accrediting agency;
 - iii. All substitute teachers and aides providing special education and related services shall be employed according to applicable rules at N.J.A.C. 6A:9B-7, 6A:32-4.2, and this chapter;
6. The student shall receive a comparable program to the program required to be provided by the district board of education pursuant to N.J.S.A. 18A:35-1, 2, 3, 5, 7, and 8, 18A:40A-1, and 18A:6-2 and 3 and N.J.A.C. 6A:8-3.1, and 6A:14-1, 2, 3, and 4. The requirements shall be met except as the content of the program is modified by the IEP based on the educational needs of the student. Exemptions shall be recorded in the student's IEP pursuant to N.J.A.C. 6A:14-3.7(e)7 and 9;
7. The nonpublic school provides services that are nonsectarian;

8. The nonpublic school complies with all relevant State and Federal antidiscrimination statutes;
 9. Written notice has been provided to the student's parent regarding this placement. The written notice included a statement that:
 - i. The nonpublic school is not an approved private school for students with disabilities and that the district board of education assumes the ongoing monitoring responsibilities for the student's program;
 - ii. No suitable special education program could be provided to this student pursuant to N.J.S.A. 18A:46-14; and
 - iii. This is the most appropriate placement available to this student;
 10. The placement is not contested by the parents; and
 11. The nonpublic school has been provided copies of N.J.A.C. 1:6A, 6A:14, and 6A:32.
- (c) In a due process hearing, the authority of the Commissioner to consent to a placement in an accredited nonpublic school shall be delegated to the administrative law judge assigned to the case when:
1. The administrative law judge makes a factual determination that the certifications in (b) above are met; or
 2. The district board of education and the parent agree to a settlement of the matter that would include placement under N.J.S.A. 18A:46-14, and the administrative law judge approves the settlement. Approval may be granted if the district board of education makes the certifications in (b) above. A copy of the signed consent application shall be attached to the settlement agreement and forwarded by the district board of education to the Department of Education through the county office of education.

- (d) The district board of education shall be responsible to monitor the student's placement at least annually to ensure the program's compliance with the certifications.

Subchapter 7. Receiving Schools

6A:14-7.1 General requirements

- (a) Receiving schools include educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, approved private schools for students with disabilities (that may or may not provide residential services) and public college operated programs for students with disabilities. Receiving schools shall obtain prior written approval from the Department of Education to provide programs for students with disabilities through contracts with district boards of education.
 - 1. Approval to establish or change a program shall be based upon the criteria established by the Department of Education in this subchapter.
 - 2. Monitoring and approval shall be conducted on an ongoing basis by the Department of Education.
- (b) For a student in a program operated by, or under contract with, the Department of Education, the district board of education retains responsibility for the provision of programs and services under this chapter.
- (c) Programs for students with disabilities provided under this subchapter shall be operated pursuant to this chapter.
 - 1. Exceptions regarding age range and class size shall be requested by the district board of education of the school district of residence and determined pursuant to

N.J.A.C. 6A:14-4.9. District boards of education and providers of programs under this subchapter shall maintain documentation of this approval.

- (d) Annually, providers of programs under this subchapter shall prepare and submit a report to the Department of Education through the county office of education. The report shall be submitted on a format provided by the Department of Education and shall include the kind and numbers of staff providing special education and related services.
- (e) Annually, providers of programs pursuant to this subchapter shall prepare and submit a report, in a format provided by the Department of Education, to the Department of Education through the county office. The report shall include, but not be limited to, the number of enrolled students by age, race, ethnicity, the number of students whose placements were terminated during the previous school year, and, when known, the subsequent placement for each student whose placement was terminated.
- (f) Out-of-State private schools for students with disabilities shall be approved to provide special education programs by the department of education of the state in which they are located prior to applying for eligibility to receive New Jersey students.
- (g) The residential component of an approved private school for students with disabilities shall be approved by either the New Jersey Department of Human Services or by the appropriate government agency in the state in which the school is located.
- (h) An employee of a district board of education who is directly or indirectly responsible for the placement of students with disabilities shall have no interest in, and shall not be employed by, any approved private school for students with disabilities that serves students with disabilities placed by that district board of education.

6A:14-7.2 Approval procedures to establish a new approved private school for students with disabilities

- (a) Prior to the establishment of an approved private school for students with disabilities, an application shall be submitted to the Department of Education according to the following schedule:
1. The applicant shall submit a description of the program and services to be offered that shall include, but not be limited to:
 - i. The educational philosophy of the program;
 - ii. Characteristics of the program, which shall include the number of students to be served, numbers and types of classes, number of school days, and daily hours in session;
 - iii. The curriculum and materials, including a description of how the New Jersey Student Learning Standards will be implemented;
 - iv. A mechanism for evaluating student progress and program efficacy; and
 - v. The organizational structure, including projected number of personnel by title, job function, and personnel requirements, including certification;
 2. The applicant shall include a survey of need indicating the number, age range, types of students with disabilities to be served by the proposed programs/services, and the reasons the students cannot be served in the school district of residence, supported by documentation from district board(s) of education. The Department of Education shall determine if the program to be provided by the approved private school for students with disabilities is needed and shall notify the applicant of the decision no later than 90 calendar days after receipt of the survey of needs.
 - i. Any appeal of a decision to deny approval may be made to the Commissioner of Education in accordance with N.J.A.C. 6A:3;

3. Additionally, each approved private school for students with disabilities shall submit:
 - i. An affidavit that its programs and services for students with disabilities are nonsectarian and in compliance with N.J.S.A. 18A:46-1 et seq., N.J.A.C. 6A:14, IDEA (20 U.S.C. §§ 1400 et seq.), and the Rehabilitation Act of 1973 (U.S. P.L. 93-112 Section 504, 29 U.S.C. § 794a);
 - ii. The administrative policies and procedures of the school;
 - iii. An assurance that necessary emergency procedures will be followed;
 - iv. A copy of the approval of the facility by the issuing agency, including a certificate of occupancy and certification of health and fire approval;
 - v. A copy of the certificate of incorporation;
 - vi. Staffing information, which shall include a list of professional staff who will provide services. The list shall verify each individual's certification and license, if one is required, the function he or she will perform, and that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual; and
 - vii. A projected budget in accordance with N.J.A.C. 6A:23A-18.

6A:14-7.3 Amendment procedures for receiving schools

- (a) An approved receiving school for students with disabilities may amend its policies, procedures, the services provided, or the location of its facilities by obtaining prior written approval from the Department of Education through the county office of education.

1. To amend the policies, procedures, nature, and/or scope of the services provided, or to increase or decrease the services provided, the approved receiving school shall submit the following:
 - i. A copy of the revised policy and/or procedure;
 - ii. A revised description of the scope and nature of the services to be offered pursuant to N.J.A.C. 6A:14-7.2; and
 - ii. A list of professional staff who will provide the services. The list shall verify each individual's certification and license, if one is required, that a criminal history review pursuant to N.J.S.A. 18A:6-7.1 has been completed for the individual, and the function he or she shall perform.
 2. To amend the location of its facilities, an approved private school for students with disabilities shall submit a copy of the valid health, fire, HVAC inspections, occupancy and, if applicable sewerage plant.
 3. Pursuant to N.J.A.C. 6A:23A-18.4, if an approved private school for students with disabilities seeks to expand the school and its program by opening an additional location, the school shall submit an application for approval as a new private school for students with disabilities in accordance with this subchapter and receive approval prior to operating an approved private school in the new location.
- (b) When a professional staff member leaves or a new professional staff member is hired by an approved private school for students with disabilities, the approved private school shall provide written notification to the Department of Education through the county office of education within seven calendar days of the change.

6A:14-7.4 Annual procedures for approved private schools for students with disabilities

- (a) Annually, each approved private school for students with disabilities shall submit fiscal pursuant to N.J.A.C. 6A:23A-18 to the Office of School Finance.
- (b) Annually, each approved private school for students with disabilities shall obtain valid certificates of fire inspection and, if applicable, health, HVAC inspections, and, sewerage plant. The certificates shall be maintained and shall be available upon request for review by the Department of Education through the county office of education.

6A:14-7.5 Responsibilities of district boards of education

- (a) The educational program of a student with a disability provided through contractual agreements pursuant to N.J.A.C. 6A:14-7.1(a) shall be considered the educational program of the district board of education. The district board of education shall be responsible for the development and annual review of the student's IEP and the reevaluation of the student. At least annually, the district board of education shall monitor the implementation of the IEP.
 - 1. For students with disabilities placed in programs described in N.J.A.C. 6A:14-7.1(a), representative(s) of the program and the district board of education shall participate in meeting(s) according to N.J.A.C. 6A:14-2.3(k)2.
- (b) When a student with a disability is placed in a receiving school pursuant to N.J.A.C. 6A:14-7.1(a), the district board of education shall provide written notification to the Department of Education through the county office of education within 10 calendar days of the placement. The notification shall include a copy of the student's IEP.
 - 1. A district board of education shall place a student with a disability in a receiving school only when it can assure that the student's IEP can be implemented in that setting.

- i. The IEP of a student placed in a receiving school shall be amended by only the IEP team of the district board of education.
 2. Prior to placement in the receiving school, a representative of the district board of education and, if possible, the parent shall visit the school.
 3. When a district board of education places a student with a disability in an approved residential private school in order to provide the student a free, appropriate public education, the placement shall be at no cost to the parent. The district board of education shall be responsible for special education costs, room, and board.
 4. Placement of a student with a disability in an approved residential private school by a public agency other than the district board of education shall be subject to the rules governing public agencies and in this chapter. The district board of education shall pay the nonresidential special education and related services costs. When the student has been placed by a public agency empowered to make such placement, the district board of education shall convene a meeting pursuant to N.J.A.C. 6A:14-2.3(k) to revise the IEP as necessary to provide the student special education and related services.
- (c) If the approval of a private school for students with disabilities is removed pursuant to N.J.A.C. 6A:14-7.10(b)2 or 6A:23A-18.15(f)2, a district board of education having a student with a disability placed therein shall immediately begin seeking an alternative, appropriate placement for the student.

6A:14-7.6 Provision of programs

- (a) An educational program provided under this subchapter shall conform to the requirements of N.J.A.C. 6A:14-2.8, the applicable provisions of N.J.A.C. 6A:14-4, and the student's IEP.
- (b) When the parent or district board of education requests mediation or due process, the student with a disability shall remain in the current placement, according to N.J.A.C. 6A:14-2.6(d)10 or 2.7(u), as applicable.
- (c) All personnel serving students with disabilities shall be appropriately certified and licensed, where a license is required, in accordance with State and Federal law.
- (d) Each school shall have on staff a full-time non-teaching principal who shall be responsible for administration and supervision of the school.
 - 1. In lieu of assigning a full-time non-teaching principal to a school, a plan to ensure adequate supervision of students and staff may be submitted to the executive county superintendent for approval;
 - 2. If the executive county superintendent approves the plan, the school shall operate in accordance with the plan in lieu of having a full-time non-teaching principal on staff.
- (e) Students with disabilities who are placed in receiving schools may be suspended for up to 10 consecutive or cumulative school days in a school year by the receiving school. Such suspensions are subject to the same district board of education as the procedures for nondisabled students as set forth at N.J.A.C. 6A:14-2.8. However, at the time of suspension, the principal of the receiving school shall provide written notification and a description of the reason(s) for the action to the district board of education's case manager.
- (f) A receiving school shall not unilaterally implement disciplinary action involving removal to an interim alternative educational setting, suspension of more than 10 consecutive or

cumulative school days in a school year, or termination of placement. Such disciplinary action shall be implemented in conjunction with the sending district board of education pursuant to N.J.A.C. 6A:14-2.8.

- (g) Educational programs shall be open to observation at all times to representatives of the sending district board of education and of the Department of Education.
- (h) With prior written approval of the Department of Education, a school described at N.J.A.C. 6A:14-7.1(a) may operate an extended school year services.
- (i) In accordance with N.J.A.C. 6A:32-8.3(b), a school day shall consist of not less than four hours of actual school work, which does not include nonacademic time such as lunch and recess periods. A special class program for preschoolers with disabilities operated pursuant to N.J.A.C. 6A:14-4.1 may be considered a full-day program.
- (j) A provider of programs under this subchapter shall notify the Department of Education a minimum of 90 calendar days prior to ceasing operation or a change in ownership.

6A:14-7.7 Termination or withdrawal from a receiving school

- (a) When a receiving school is considering the termination of a student's placement prior to the end of the student's academic year, the receiving school shall immediately contact the sending district board of education. The district board of education shall convene an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k). The IEP meeting shall occur within 10 school days of the date of the notification and shall include the participation of appropriate personnel from the receiving school, including a minimum of one person who participated in making the recommendation to terminate the placement.
 - 1. At the IEP meeting, the IEP team shall review the student's current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be provided within 10 days of the date of the IEP

meeting. The student may be terminated from the current placement after the district board of education has provided written notice to the parents pursuant to N.J.A.C. 6A:14-2.3. The termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.

- (b) When the district board of education is considering the withdrawal of a student with a disability from a receiving school prior to the end of the student's academic year, the district board of education shall convene an IEP meeting pursuant to N.J.A.C. 6A:14-2.3(k). The IEP meeting shall include appropriate personnel from the receiving school. At the IEP meeting, the IEP team shall review the student's current IEP and determine the student's new placement. Written notice of any changes to the IEP and the new placement shall be provided within 10 days of the date of the IEP meeting. The student may be terminated from the current placement after the district board of education has provided written notice to the parents pursuant to N.J.A.C. 6A:14-2.3. The termination shall be in accordance with the provisions of the contract between the receiving school and the district board of education.
- (c) Prior to a parent withdrawing a student with a disability from a receiving school, the parent shall request that the district board of education convene an IEP meeting according to N.J.A.C. 6A:14-2.3(k).
- (d) A student with a disability placed in a receiving school by the district board of education shall receive a diploma from the district board of education if the requirements of N.J.A.C. 6A:14-4.11 are met.

6A:14-7.8 Fiscal management

- (a) A district board of education shall pay tuition for all special education programs and required services provided only after receiving individual student placement approval.

- (b) The district board of education shall establish a written contract for each student with a disability placed in a program approved under this subchapter. The contract shall include a written agreement concerning tuition charges, costs, terms, conditions, and services and programs to be provided for the student with a disability. For students placed in an approved private school for students with disabilities, the district board of education shall use the mandated tuition contract pursuant to N.J.A.C. 6A:23A-18.3.
- (c) Pursuant to N.J.A.C. 6A:27-5.1, daily transportation costs shall be paid by the district board of education.
- (d) Transportation for students in residence at the Marie H. Katzenbach School for the Deaf shall be according to N.J.A.C. 6A:27-5.2.
- (e) All approved private schools for students with disabilities shall submit a certified audit to the Department of Education by November first, for the prior school year, according to N.J.A.C. 6A:23A-18.10.

6A:14-7.9 Records

- (a) All receiving schools under this subchapter shall conform to the requirements of N.J.A.C. 6A:32-7 pertaining to student records. In addition:
 - 1. All student records maintained by a receiving school under this subchapter shall be returned to the sending district board of education when a student's program is terminated.
 - 2. Requests for access to student records by authorized organizations, agencies, or persons as stated at N.J.A.C. 6A:32-7.5 shall be directed to the chief school administrator or his or her designee of the sending district board of education for the student with a disability.

3. The daily attendance record of all students in receiving schools under this subchapter shall be maintained pursuant to N.J.A.C. 6A:23A-18.9 and made available to the district board of education upon request. Habitual tardiness or prolonged absences of five or more consecutive days shall be reported in writing to the chief school administrator of the district board of education or his or her designee.
- (b) Student progress reports shall be submitted to the sending district board of education at least three times a year or as stipulated in the contract between the district board of education and the receiving school.

6A:14-7.10 Monitoring and corrective action

- (a) The Department of Education shall monitor approved private schools for students with disabilities pursuant to N.J.A.C. 6A:14-9.1. On-site monitoring shall be conducted in accordance with the schedule established by the Department of Education.
- (b) When an approved private school is determined to be in noncompliance, Department of Education actions may include, but are not limited, to the following:
 1. The Department of Education may issue a conditional approval status when noncompliance is demonstrated with State or Federal statute or rules and/or implementation of a corrective action plan.
 - i. An approved private school that is issued a conditional approval status may not accept new students;
 2. The Department of Education may revoke approval, effective at the end of a school year, when chronic or systemic noncompliance is demonstrated; and
 3. The Department of Education may immediately remove program approval when it is documented that the health, safety, or welfare of the students is in danger.

- (c) An appeal of the actions of the Department of Education may be made to the Commissioner of Education according to N.J.A.C. 6A:3.

Subchapter 8. Programs Operated by The Departments of Corrections, Children and Families, and Human Services, and The Juvenile Justice Commission

6A:14-8.1 General requirements

- (a) Special education programs provided in State facilities shall be operated pursuant to N.J.A.C. 6A:17-3 and this chapter.
- (b) Each State agency operating approved special education programs shall develop a special education plan pursuant to N.J.A.C. 6A:14-1.2. The plan also shall include:
 - 1. A list of all State and Federal funding sources; and
 - 2. A separate educational budget statement for each State facility.
- (c) All students with disabilities shall receive an educational program and related services based on an IEP. A student who has an individualized habilitation plan or an individual treatment plan, as defined by the Department of Human Services, shall have the IEP incorporated into the plan.
- (d) The length of the school day for all special education programs under this subchapter, with the exception of home instruction, shall be at least as long as that established for nondisabled students. Educational programs shall operate at least 220 days each year.
- (e) Each district board of education shall provide mandated student records pursuant to N.J.A.C. 6A:32-7 to programs operated by a State agency when a student is placed in a State facility. The parent or adult student shall receive notification of the release of the records to the facility. Permitted records pursuant to N.J.A.C. 6A:32 shall be released only with consent.

- (f) For a student in residence in a State facility, the district board of education shall maintain the educational records sent by the State facility pursuant to N.J.A.C. 6A:32-7.
- (g) For a student in residence in a State facility, the district board of education shall facilitate the entry of the student into the district board of education program, as appropriate.
- (h) When a student is placed in a State facility by a public agency other than the district board of education, the State facility shall provide a program according to the following:
 - 1. If the student is a student with a disability, an immediate review of the classification and IEP shall be conducted and the student shall be placed in a program consistent with the goals and objectives of the current IEP.
 - 2. If the student is not currently classified as a student with a disability, or if the State facility does not have current school records, within 30 calendar days of placement in the State facility, the State facility shall review the student's educational status and determine if referral to the child study team is required.

6A:14-8.2 Procedural safeguards

- (a) Mediation shall be available for a student in a State facility according to N.J.A.C. 6A:14-2.6.
- (b) A request for a due process hearing for a student in a State facility shall be made to the Department of Education according to N.J.A.C. 6A:14-2.7.
- (c) Discipline of students with a disability shall be according to N.J.A.C. 6A:14-2.8.
- (d) Surrogate parents shall be appointed according to N.J.A.C. 6A:14-2.2.

6A:14-8.3 Provision of programs

- (a) A residential State facility may recommend placement of a student with a disability in a school district. Documentation of attempts to place the student in the least restrictive

environment pursuant to N.J.A.C. 6A:14-4 shall be stated in the student's IEP. Tuition shall be paid by the State facility to the district board of education where the student is placed.

- (b) All personnel providing special education programs, related services, or multi-disciplinary team services in State facilities shall hold the appropriate certificate and, if required, a license for the position in which they function.
- (c) Day school programs operated by the Department of Children and Families shall be provided in the following manner:
 - 1. The Department of Children and Families shall provide educational programs and related services for students with disabilities in State-operated or contracted facilities;
 - 2. The district board of education shall be responsible for providing the services according to N.J.A.C. 6A:14-3.3 through 3.8. The day school program is responsible for implementing the IEP developed by the district board of education; and
 - 3. The district board of education shall be responsible to monitor the student's placement at least annually to ensure the implementation of the IEP.
- (d) An educational program for students with disabilities in a State residential facility shall be commensurate with the educational program in a day school program.
- (e) For students placed in State facilities, representative(s) of the program and the district board of education shall participate in any meeting(s) according to N.J.A.C. 6A:14-2.3(k).
- (f) When a student in a State facility is in need of home instruction according to N.J.A.C. 6A:16-10.1, the State facility shall implement the home instruction program.

Subchapter 9. Monitoring, Corrective Action, and Complaint Investigation

6A:14-9.1 Monitoring and corrective action

- (a) The Department of Education shall monitor all programs and services required by this chapter for compliance with New Jersey statutes, the New Jersey Administrative Code, the approved special education plan, and Federal requirements under the Individuals with Disabilities Education Act (IDEA).
 - 1. The monitoring process shall include, but not be limited to, review of:
 - i. Provision of a free, appropriate public education in the least restrictive environment;
 - ii. Provision of transition services; and
 - iii. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the disproportionate representation is the result of inappropriate identification.
- (b) The monitoring procedures may include, but are not limited to:
 - 1. Review of data, reports and student records;
 - 2. On-site visits;
 - 3. Comparison of a sample of IEPs with the programs and services provided;
 - 4. Development of a required action plan to address areas of noncompliance identified during the monitoring; and
 - 5. Audit of Federal and State funds.
- (c) After the monitoring process is completed, a report shall be written by the Department of Education and sent to the public or private agency.
- (d) The required action plan shall include, but not be limited to, the following:

1. Objectives and strategies for correcting each noncompliance item cited, including resources needed; and
 2. The dates by which noncompliance will be corrected.
- (e) The Department of Education shall maintain monitoring records for at least five years.

6A:14-9.2 Complaint investigation

- (a) The Director of the Office or designee(s) shall be responsible for reviewing, investigating, and taking action on any signed, written complaint regarding the provision of special education and related services covered under this chapter.
- (b) An organization or individual may request a complaint investigation by simultaneously submitting a signed, written request to the Director of the Office and to the public agency against which the complaint is directed. The complaint shall include:
1. A statement that a public or private education agency has violated the requirements of State and/or Federal statute and/or regulation for the provision of special education and related services;
 2. The facts on which the statement is based; and
 3. The time period when the alleged violation occurred.
 - i. The complainant shall allege a violation that occurred not more than one year prior to the date that the complaint is received by the Director of the Office.
- (c) The Office shall, if deemed necessary, complete an investigation within 60 calendar days after receipt of the signed, written complaint and issue a report setting forth a final decision regarding the complaint, unless the time period is extended pursuant to (c)5 below.

1. If a party believes that a final decision includes an error that is material to the determination in the decision, the party may inform the Office and the other party in writing, within 15 days of the date of the report. The written notice shall identify the asserted error and include any documentation to support the claim. The Office will determine the appropriate steps to consider the claim of error after receipt of the letter.
2. The investigation may include, but not be limited to:
 - i. Review of policies and procedures;
 - ii. Review of student record(s);
 - iii. Observation of programs;
 - iv. Interview(s);
 - v. An on-site investigation, if determined necessary; and
 - vi. If the parent consents, an opportunity for the education agency to engage the parent in mediation or an alternative means of dispute resolution.
3. The complainant shall be given the opportunity to provide additional information, either orally or in writing, about the allegations in the complaint.
4. The education agency against which the complaint is directed shall be provided an opportunity to respond to the complaint and, at the discretion of the Director of the Office or a designee, may be afforded an opportunity to resolve the issues in the complaint prior to issuance of an investigation report.
5. The Director of the Office may extend the timeline for completion of the investigation only if exceptional circumstances exist with respect to a particular complaint, or if the parent and education agency agree to mediate the dispute or engage in another means of dispute resolution.

- (d) If a written complaint is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the Office shall set aside the entire complaint until the conclusion of the hearing.
 - 1. If an issue raised in a complaint has been previously decided in a due process hearing involving the same parties, the hearing decision is binding and the Office shall inform the complainant to that effect.
- (e) A report of findings, conclusions, and, when warranted, the required corrective actions shall be issued within 60 calendar days after receipt of the written signed complaint unless the 60-day time period is extended pursuant to (c)5 above.
- (f) If the education agency is found to be in noncompliance, a corrective action plan in accordance with the directive in the report shall be developed and submitted to the Office.
- (g) The corrective action plan shall include, but not be limited to:
 - 1. Objectives, strategies, and activities for correcting each noncompliance item cited, including resources needed to obtain the objectives; and
 - 2. The dates by which the noncompliance will be corrected.
- (h) The Director of the Office shall review the corrective action plan and notify the education agency if it is acceptable.
- (i) The Office shall review and verify the implementation of the corrective action plan.
- (j) When a corrective action plan is not submitted, is unacceptable, or is not implemented, the Office shall notify the agency of the actions the Office intends to take.
- (k) Nothing in this section shall be construed as limiting the right of parents or adult students to seek a due process hearing with regard to issues raised in a request for complaint investigation. If a due process hearing is sought while a complaint investigation is pending, the complaint investigation with respect to all issues in the request for a due

process hearing shall be placed in abeyance pending completion of the due process hearing. Upon completion of the due process hearing, the complaint shall be processed pursuant to (d) above.

Subchapter 10. Early Intervention Programs

6A:14-10.1 Early intervention programs serving children between birth and age three

Early intervention programs shall be administered by the Department of Health as the lead agency in collaboration with the Departments of Human Services and Education in accordance with P.L. 2012, c. 17 and c. 45.

6A:14-10.2 General requirements when district boards of education contract with early intervention programs under contract with the Department of Health for students age three

- (a) When an IEP is developed by a district board of education for a child age three who has been enrolled in an early intervention program and it is determined that the district board of education shall provide a free, appropriate public education for the student by continuing the program in the early intervention program for the balance of the school year, the following requirements shall apply:
1. The district board of education shall be responsible for ensuring the requirements of N.J.A.C. 6A:14-1.1(d) are met;
 2. A contractual agreement shall be provided between the district board of education and the early intervention program;
 3. Personnel shall be appropriately certified and, if required, licensed; and
 4. Applications for exceptions pursuant to N.J.A.C. 6A:14-4.9 shall be made by the district board of education whenever necessary.

- (b) When the district board of education determines that the child who has been enrolled in the early intervention program requires extended school year services, the district board of education may contract with the early intervention program for the provision of that program.

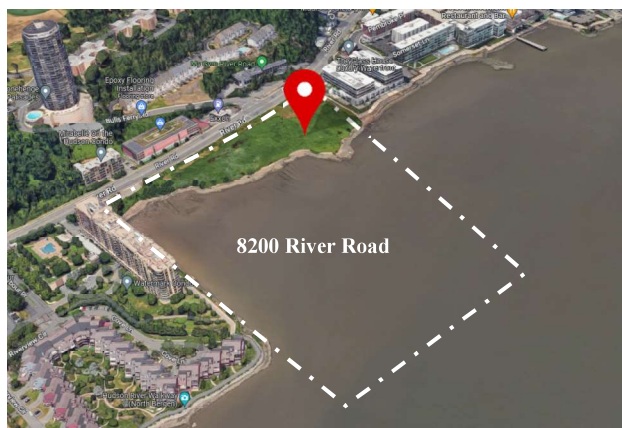
8200 RIVER ROAD

(Acres)			
Block:	Lot:	Lot Area	Zone
438	17	36.45	P1
Location from the current North Bergen Preschool		 4 min	 11 min
		 15 min	 5 min

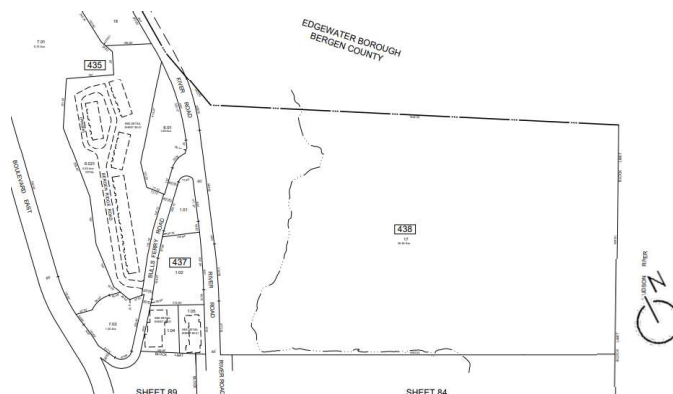
North Bergen Township Map



Satellite View



Block Map



Description

Privately owned, the 8200 River Road lot is located on Hudson River bank at the bottom of the Palisade Cliff. It is bounded by the River Road to the west and the Hudson River to the east, between 82nd Street North Bergen and the Edgewater border. The lot has approximately 1,141 feet of frontage along River Road. For the exception of a small parking pavement on this lot there is no other visible development. About 1/6th of the lot (±6 acres) sits above water. The remaining portion of the lot is covered by the river and contains remnants of former wooden pier structures that can be seen in the water. The site has been under review for redevelopment for several years and the site plan approval was granted to the owner for a residential development on April 4th, 2023.

Observations

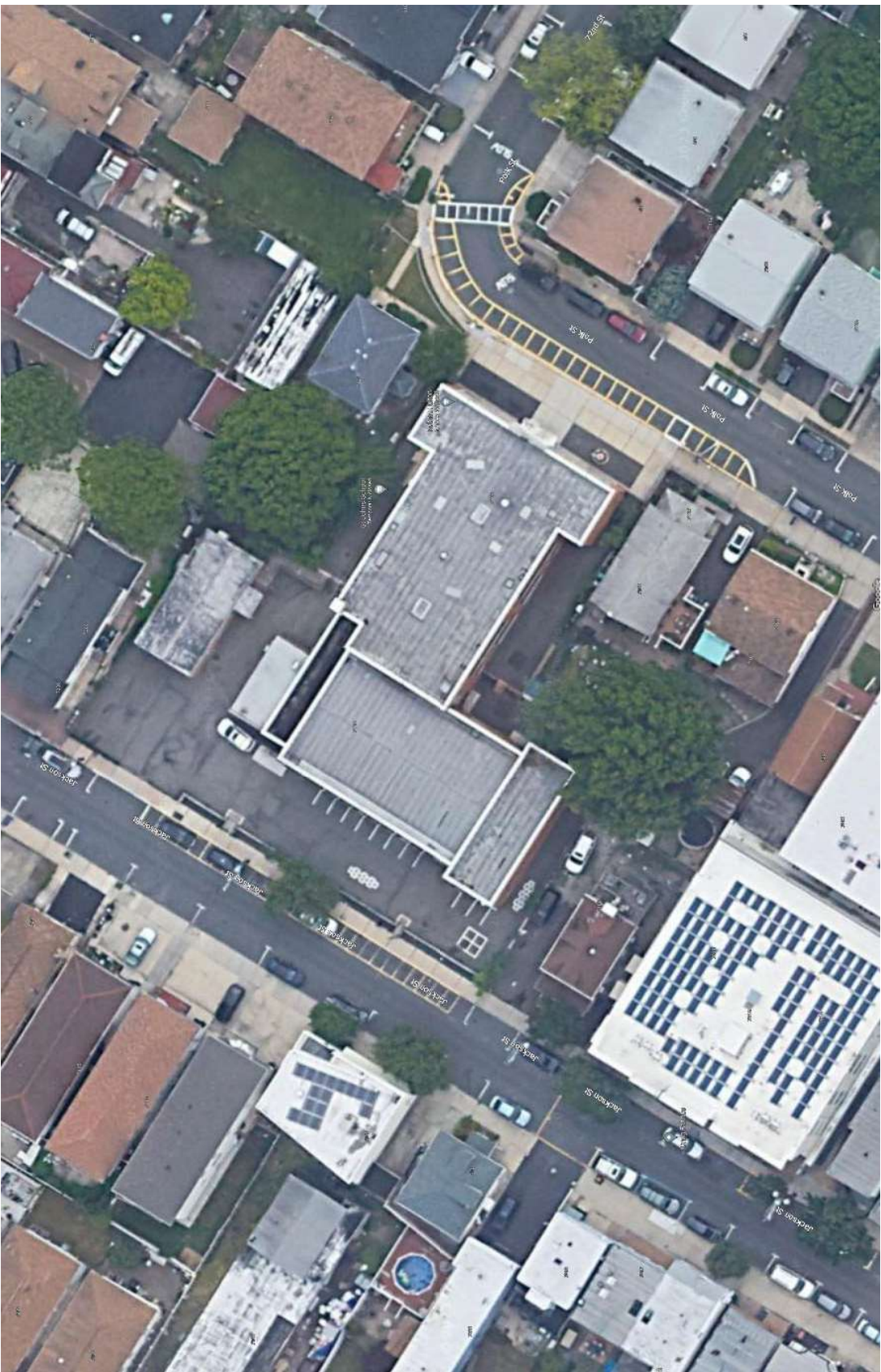
8200 River Road is located on a busy road intersection in the same school district as Braddock Park - PS #2 Robert Fulton School & Annex. The site is with-in a walking distance from the Braddock Park down a (non-handicap accessible) very steep hill via a two-lane Bull Ferry Road and a sidewalk. Bull Ferry Road is the only road in North Bergen that connects 8200 River Road to the rest of the town. In case of this road closure automobile/bus detours are possible back to North Bergen through River Road via neighboring towns: Ferry Road in Guttenberg or Gorge Road in Edgewater.

-

Conclusion

In conclusion, the 8200 River Road lot size is more than adequate to house the new school. It is also located within the school district it will serve. Location is within walking distance from the Braddock Park. However, based on the following observations RSC Architects deems 8200 River Road to be a high-risk site not well suited for the school development:

- Located on a very busy road which is the sole piece of infrastructure that connects several towns. Also, next to a busy road intersection with Bull's Ferry Road.
- The site is susceptible to occasional flooding being that it is located on a river waterfront. This adds additional burden to design building that deals with this issue (i.e. bldg. raised on piles)
- Limited pedestrian access. Not a viable rout to take with baby strollers.
- Site proximity and quality does not compare to Braddock Park.
- Site is privately owned and pending development of residential units.





② FIRST FLOOR PLAN
SCALE: 1/16" = 1'-0"

NOTE: SOLID ROOMS CONTINUED USE
Hatched ROOM RELOCATION

LEGEND:

SCSE ← EXISTING USE
CLASSROOM ← PROPOSED USE
ROOM 200 ← ROOM NO.
750 SF ← ROOM AREA (SF)
25 STUDENTS ← ROOM OCCUPANCY

[illegible]

N.J.A.C. 6A:26, Educational Facilities

Table of Contents

Subchapter 1. General Provisions

[6A:26-1.1 Purpose and applicability of rules](#)

[6A:26-1.2 Definitions](#)

Subchapter 2. Long-Range Facilities Plans

[6A:26-2.1 Responsibilities of school district](#)

[6A:26-2.2 Completion of long-range facilities plans](#)

[6A:26-2.3 Review and approval of long-range facilities plans](#)

[6A:26-2.4 \(Reserved\)](#)

Subchapter 3. Capital Project Review

[6A:26-3.1 Initiation of a capital project](#)

[6A:26-3.2 School facilities projects](#)

[6A:26-3.3 Review and approval of school facilities projects](#)

[6A:26-3.4 Calculation of preliminary eligible costs for school facilities projects](#)

[6A:26-3.5 Determination of final eligible costs for Development Authority school facilities projects](#)

[6A:26-3.6 Determination of final eligible costs for ROD school facilities projects](#)

[6A:26-3.7 Local support of school facilities projects](#)

[6A:26-3.8 Determination of State support for school facilities projects](#)

[6A:26-3.9 Design and construction of Development Authority school facilities projects](#)

[6A:26-3.10 Design and construction of ROD school facilities projects](#)

[6A:26-3.11 Initiation of other capital projects](#)

[6A:26-3.12 Acquisition of land by school districts](#)

[6A:26-3.13 Review, approval, and use of temporary facilities](#)

[6A:26-3.14 Emergency stabilization](#)

[6A:26-3.15 Insurance, damage awards, gifts, grants, other private sources of funds, and municipal surplus](#)

Subchapter 4. Management of Capital Projects

[6A:26-4.1 Capital projects fund](#)

[6A:26-4.2 Use of capital projects fund to account for a capital project funded in part or in whole by school bonds, short term notes, or pre-EFCFA lease purchase agreements of greater than five years duration](#)

[6A:26-4.3 Use of capital projects fund to account for a school facilities project not funded in part or in whole by school bonds or short term notes](#)

[6A:26-4.4 Options where there are insufficient funds to complete a capital project](#)

[6A:26-4.5 Over-expending a capital project](#)

[6A:26-4.6 Unexpended bond proceeds](#)

[6A:26-4.7 Oversight of ROD constructed school facilities projects](#)

[6A:26-4.8 Bidding and awarding of contracts for ROD capital projects](#)

[6A:26-4.9 Submission of change orders for ROD projects](#)

[6A:26-4.10 Change orders for Development Authority school facilities projects](#)

Subchapter 5. Review of Capital Projects for Educational Adequacy

[6A:26-5.1 General provisions](#)

[6A:26-5.2 Educational specifications](#)

[6A:26-5.3 Schematic plans and other related project documents](#)

[6A:26-5.4 Detailed plans and specifications and final plans and specifications](#)

[6A:26-5.5 Fee schedule](#)

[6A:26-5.6 Capital projects not subject to educational adequacy review](#)

Subchapter 6. Planning and Construction Standards for School Facilities

[6A:26-6.1 Application of the Uniform Construction Code](#)

[6A:26-6.2 Exceptions](#)

[6A:26-6.3 Educational facility planning standards](#)

[6A:26-6.4 Educational facility planning standards for school facilities housing preschool students](#)

[6A:26-6.5 Private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services](#)

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

[6A:26-7.1 Approval of the acquisition of land](#)

[6A:26-7.2 Approval of the acquisition of land in certain districts under the Development Authority auspices](#)

[6A:26-7.3 Approval for the acquisition of existing facilities](#)

[6A:26-7.4 Approval for the disposal of land, including rights or interest therein, or improvements thereon](#)

[6A:26-7.5 Approval for the closing of a school facility](#)

Subchapter 8. Temporary School Facilities

[6A:26-8.1 Temporary facilities standards](#)

Subchapter 9. (Reserved)

Subchapter 10. Lease Purchase and Lease Agreements

[6A:26-10.1 Use of lease-purchase agreements](#)

[6A:26-10.2 Costs of lease-purchase agreements of five years or less](#)

[6A:26-10.3 Approval of lease-purchase agreements for improvements or additions to school facilities](#)

[6A:26-10.4 Contents of lease-purchase agreement of five years or less](#)

[6A:26-10.5 Contents of ground lease](#)

[6A:26-10.6 Approval procedures to refinance a lease-purchase agreement](#)

[6A:26-10.7 Approval procedures for a defeasance of lease-purchase agreements](#)

[6A:26-10.8 Lease purchase agreements entered into prior to July 18, 2000](#)

[6A:26-10.9 Approval of lease agreements of facilities to be used for school purposes](#)

[6A:26-10.10 Limitation on multiyear leases of facilities](#)

[6A:26-10.11 Public hearing for leases for facilities in excess of five years](#)

Subchapter 11. County Vocational School District Facilities Rehabilitation Fund

[6A:26-11.1 County vocational school district facilities rehabilitation fund](#)

[6A:26-11.2 Application for funds](#)

Subchapter 12. Safety Requirements for School Facilities

[6A:26-12.1 Facilities maintenance requirements](#)

[6A:26-12.2 Policies and procedures for school facility operation](#)

[6A:26-12.3 Health facilities, equipment and supplies](#)

[6A:26-12.4 Safe drinking water](#)

[6A:26-12.5 Eye protection in schools](#)

Subchapter 13. (Reserved)

Subchapter 14. Withholding of State Support for Non-Compliance

[6A:26-14.1 Withholding of State support for non-compliance](#)

Subchapter 15. (Reserved)

Subchapter 16. Certified Educational Facilities Manager

[6A:26-16.1 Certified educational facilities manager](#)

Subchapter 17. Appeals

[6A:26-17.1 Appeals of Commissioner's determinations](#)

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

6A:26-18.1 Eligibility for section 15 grants for RODS, not including county vocational school districts

6A:26-18.2 Funding options for school facilities project in RODs, other than county vocational school districts, which are not awarded a section 15 grant

6A:26-18.3 Deadlines for submission of Section 15 grant applications for RODs, not including county vocational school districts

6A:26-18.4 Section 15 grants for county vocational school district school facilities projects

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

6A:26-19.1 Purpose

6A:26-19.2 Determination of eligibility by the Commissioner

6A:26-19.3 Notification of SDA districts

6A:26-19.4 Limitation of applicability of subchapter

Subchapter 20. Comprehensive Maintenance Plans

6A:26-20.1 Purpose

6A:26-20.2 Scope

6A:26-20.3 Required maintenance activities

6A:26-20.4 Required maintenance expenditures

6A:26-20.5 Requirements for comprehensive maintenance plans

6A:26-20.6 Submission and review of comprehensive maintenance plans

6A:26-20.7 Requirements for a maintenance package for newly completed school facilities projects

6A:26-20.8 Required maintenance budget amount

6A:26-20.9 The maintenance factor in State debt service aid

Chapter 26. Educational Facilities

Subchapter 1. General Provisions

6A:26-1.1 Purpose and applicability of rules

The rules are adopted by the New Jersey State Board of Education to implement the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c.72, as amended and as defined in N.J.S.A. 18A:7G-1, as well as to consolidate, conform, and update other rules relating to educational facilities in this State. The rules are adopted to ensure that the educational facilities in the State are safe, healthy, and educationally adequate to support the delivery of the thorough and efficient education to which all students are entitled, as defined by the New Jersey Student Learning Standards. The rules apply to all district boards of education in the State. To the extent these rules are inconsistent with other rules in Titles 6 and 6A of the New Jersey Administrative Code, the rules in this chapter shall take precedence.

6A:26-1.2 Definitions

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

“24-hour school facilities” mean facilities that host residents on-site year round, require the availability of water at all hours, employ staff on site 24 hours a day, and/or are care facilities, such as hospitals with educational programs provided at the facilities.

“Additional costs” means the additional construction costs beyond the area cost allowance for construction or the costs beyond reasonable estimated actual costs for rehabilitation if such costs are the result of factors outside the control of the school district, provided that either type of costs results from design factors that are required to meet the facilities efficiency standards and are approved or authorized pursuant to N.J.S.A. 18A:7G-5(g).

"Additional space" means space in excess of facilities efficiency standards.

"Adjusted gross square footage" means the gross square footage of a facility less excluded spaces.

"Annual maintenance budget amount" means the amount required to be included in the school district's annual budget certified for taxes as a deposit into the maintenance reserve account or in the required maintenance line-item accounts.

"Application for State School Aid" or "ASSA" means the application filed pursuant to N.J.S.A. 18A:7F-33, on a form issued by the Commissioner, in which a school district sets forth student enrollment by category and other pertinent information.

"Approved area for unhoused students" means the product of the area allowance per FTE student times the number of unhoused students.

"Approved LRFP" or "approved plan" means an LRFP that conforms to the requirements of N.J.A.C. 6A:26-2 and that has been determined by a Commissioner's final determination to ensure the school facilities are educationally adequate to support over the next five years the achievement of the New Jersey Student Learning Standards.

"Area allowance per FTE student" means 125 square feet for preschool through grade five, 134 square feet for grades six through eight, and 151 square feet for grades nine through 12.

"Area cost allowance" means as set forth in N.J.S.A. 18A:7G-3.

"Building system" means a set of related or similar building components that work together to perform a major function in a building or facility.

"Capital maintenance" means maintenance intended to extend the useful life of a school facility, including upgrades and replacements of building systems, such as structure, enclosure,

mechanical, plumbing and electrical systems, and can be considered to constitute or be part of a school facilities project.

"Capital project" means a school facilities project, other capital project or land acquisition project.

"Capital reserve account" means as defined in N.J.A.C. 6A:23A-1.2.

"Certified laboratory" means a laboratory certified pursuant to the provisions of N.J.A.C. 7:18.

"Comprehensive Annual Financial Report" or "CAFR" means the official annual report of a governmental unit that includes all funds and account groups, as defined in N.J.A.C. 6A:23A-1.2.

"Comprehensive maintenance plan" means a school district's multi-year maintenance plan covering required maintenance activities for each school facility in the school district adopted pursuant to this chapter.

"Cost index" means the average annual increase, expressed as a decimal, in actual construction cost factors for the New York City and Philadelphia areas during the second fiscal year preceding the budget year as determined pursuant to rules promulgated by the Development Authority.

"County vocational school district" means a county vocational school district established pursuant to N.J.S.A. 18A:54-1 et seq.

"Debt service" means as set forth in N.J.S.A. 18A:7G-3.

"Development Authority" means the New Jersey Schools Development Authority established pursuant to N.J.S.A. 52:18A-237.

"District aid percentage" means the number, expressed as a percentage derived from dividing the school district's equalization aid calculated pursuant to N.J.S.A. 18A:7F-53 as of the date of the Commissioner's determination of preliminary eligible costs by the school district's adequacy

budget calculated pursuant to N.J.S.A. 18A:7F-51 as of the date of the Commissioner's determination of preliminary eligible costs.

"District board of education" means the local board of education or State district superintendent in the case of a State-operated district.

"District factor group" means an index of socioeconomic status established by the Department of Education based upon indicators available in the decennial census. School districts are arranged in 10 groups, DFG A through DFG J, A being the group with the lowest socioeconomic status, J the highest.

"Division" means the Department's Division of Administration and Finance.

"Drinking water outlet" means any location at a school facility, other facility, or temporary facility, as those terms are defined in this section, where water is expected to be used for consumption or food preparation.

"Educational adequacy" means, for purposes of a school facilities project, the suitability of a facility to provide instruction that will enable students to achieve the New Jersey Student Learning Standards and will encompass the facilities efficiency standards combined with the requirements of N.J.A.C. 6A:26-5.

"Educational space" means any space in a school facility for general instruction, specialized instruction, administration or student services and support.

"Emergency stabilization" means actions taken by a school district to correct and eliminate an actual or imminent peril to the health and safety of students or staff designed to render a school facility fit for occupancy by students or staff.

"Emergent condition" means a condition is so injurious or hazardous that it causes an imminent peril to the health and safety of students and staff.

"Emergent project" means a capital project necessitating expedited review and, if applicable, approval, in order to alleviate a condition that, if not corrected on an expedited basis, would render a building or facility so potentially injurious or hazardous that it causes an imminent peril to the health and safety of students or staff.

"Estimated actual costs" means costs as determined pursuant to N.J.A.C. 6A:26-2.3 or 3.4.

"Excess costs" means as set forth in N.J.S.A. 18A:7G-3.

"Excluded space" is an existing space that is not contained in the facilities efficiency standards but may be included in a school district's approved room inventory that would be structurally or fiscally impractical to convert to other uses in the facilities efficiency standards as demonstrated by the school district and that:

1. Delivers programs and services aligned to the New Jersey Student Learning Standards; or
2. Provides support services directly to students.

"Facility" means a structure or building as further defined in this section by the terms school facility, temporary facility or other facilities.

"Facilities efficiency standards" means the standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4.

"Feasibility study" means a study undertaken to determine whether a school facilities project is achievable in view of possible identified factors that may influence the project's design or construction, including, but not limited to, applicable Federal, State and local laws; physical site conditions; market conditions; and costs and benefits. For example, such a study may be a pre-construction evaluation undertaken by a school district to determine whether it would be more feasible to replace rather than renovate a school facility because of health and safety or

efficiency. It may also consist of a pre-land acquisition evaluation to determine whether it would be more feasible to acquire land for a school facilities project because of health and safety, efficiency, environmental factors, physical site conditions, or cost.

"Filing year" means the year in which the comprehensive maintenance plan is filed with the executive county superintendent.

"Final eligible costs" means as set forth in N.J.S.A. 18A:7G-3.

"Final plans and specifications" means the plans and specifications utilized to bid a capital project and to undertake and complete its construction.

"FTE" means as set forth in N.J.S.A. 18A:7G-3.

"Functional capacity" means the number of students that can be housed in a building to provide sufficient space for the building to be educationally adequate for the delivery of programs and services necessary for student achievement of the New Jersey Student Learning Standards.

Functional capacity is determined by dividing the adjusted gross square footage of a school facility by the minimum area allowance per FTE student for the grade level students contained therein.

"Grant cycle" means the amount of annual funding available, as determined by the Commissioner, for section 15 grants for school facilities projects in RODs, other than county vocational school districts.

"Gross square footage" means the total square footage of a school facility.

"Inconsistent space" means spaces that differ from the facilities efficiency standards in number, configuration, size, location, or use.

"Land acquisition" means an acquisition of land, whether by purchase, condemnation, or by gift or grant, to be used as a school site. Land acquisition is either an eligible cost of a school facilities project or an other capital project not eligible for funding pursuant to EFCFA.

"Lead action level" means the lead action level established by the United States Environmental Protection Agency at 40 CFR 141.80 for lead in drinking water.

"Lease-purchase agreement" means any agreement under which the school district leases equipment or school facilities as the lessee, and gives the school district the option of purchasing the leased property during or upon termination of the lease with credit toward the purchase price for all or part of rental payments that have been made by the school district in accordance with the lease-purchase agreement.

"Lease-purchase payment" means as set forth in N.J.S.A. 18A:7G-3.

"Local funding" means the funds supplied by a school district to finance the total costs of an other capital project.

"Local portion" means the amount of school bonds issued for a school facilities project funded under N.J.S.A. 18A:7G-9 or 10.

"Local share" means as set forth in N.J.S.A. 18A:7G-3.

"Local support" means the local share or the local portion.

"Long-range facilities plan" or "LRFP" means the plan required to be submitted to the Commissioner by a school district pursuant to N.J.S.A. 18A:7G-4.

"Maintenance reserve fund" means the account established by a school district pursuant to N.J.S.A. 18A:7G-13 into which it deposits monies to be used exclusively for required maintenance of school facilities.

"New construction" means a school facilities project that consists of either:

1. New school facilities; and/or
2. Additions to school facilities characterized by an increase in the gross square footage of the school facility and that is necessary due to unhoused students.

"New Jersey Student Learning Standards" means the standards established pursuant to N.J.S.A. 18A:7F-4.a.

"Other allowable costs" means the cost of temporary facilities; site remediation; site development; acquisition of land/or other real property interest necessary to effectuate the school facilities project; fees for the services of design professionals, including architects, engineers, construction managers, and other design professionals; legal fees; permitting and plan review fees; financing costs; and the administrative costs of the Development Authority or the school district incurred in connection with the school facilities project.

"Other capital projects" means all projects, or portions thereof, that are 100 percent locally funded, including:

1. Capital projects for the construction or rehabilitation of other facilities;
2. Leased school facilities, other facilities or temporary school facilities, unless used as temporary space for a school facilities project in accordance with N.J.A.C. 6A:26-3.14, subject to Department review of the terms and conditions of the lease, in the case of school districts for which the State share of eligible costs for school facilities projects is 100 percent;
3. Eligible capital projects for which a school district is not seeking State support; and
4. Projects for which there are no costs eligible for State support.

"Other facilities" means athletic stadiums; swimming pools; any associated structures; or related equipment tied to such facilities, including, but not limited to, grandstands and night field lights,

greenhouses, garages, facilities used for non-instructional or non-educational purposes, and any structure, building, or facility used solely for school administration.

“Preconstruction activities” means the activities that must be undertaken prior to completion and submission to the Department of a school facilities project application for approval and calculation of preliminary eligible costs. Such activities can include site analysis, acquisition of land, remediation, site development, feasibility studies, design work, and acquisition of and design work for temporary facilities.

"Preliminary eligible costs" means the initial eligible costs of a school facilities project, which shall be deemed to include the costs of construction and other allowable costs, as calculated pursuant to the formulas set forth in N.J.S.A. 18A:7G-7 after the completion of preconstruction activities.

“Priority project categories” means the categories specified in N.J.A.C. 6A:26-3.9(a) and 18.1.

"Project documents" means educational specifications, schematic plans, detailed plans and specifications, final plans and specifications, and other documents required for capital project review and approval by the Division.

“Quality Single Accountability Continuum” or “QSAC” means the monitoring and evaluation process of school districts pursuant to N.J.S.A. 18A:7A-10 et seq.

“Redevelopment entity” means an entity authorized by a municipal governing body to implement plans and carry out redevelopment projects in the municipality pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

“Regular operating school district” or “ROD” means a school district other than an SDA district.

"Rehabilitation" means a school facilities project consisting of the reconstruction, remodeling, alteration, modernization, or repair of a school facility to keep the school facility functional for

its original purpose or for new purposes and that does not increase the gross square footage of the school facility.

"Replacement cost" means the area cost allowance multiplied by the gross square footage of the building for the year specified in this chapter.

"Required maintenance" means, for purposes of determining "M" in the formula in N.J.A.C. 6A:26-3.8, specific maintenance activities required for system warranty purposes that are approved for repairs and replacements to keep a school facility open and safe for use or in its original condition - including repairs and replacements to a school facility's heating, lighting, ventilation, security and other fixtures to keep the facility or fixtures in effective working condition - and that does not consist of routine or capital maintenance. Required maintenance is not an eligible cost of a school facilities project.

"Room inventory" means a list of each general instructional, specialized instructional, administrative, and support space, and the sizes and numbers that would constitute a school facility adequate to support the achievement of the New Jersey Student Learning Standards by the projected student enrollment.

"Routine maintenance" means contracted custodial or janitorial services; expenditures for the cleaning of a school facility or its fixtures; the care and upkeep of grounds or parking lots; the cleaning of, or repairs and replacements to, movable furnishings or equipment; or other expenditures that are not required to maintain the original condition over the school facility's useful life. Routine maintenance is not an eligible cost of a school facilities project.

"School bonds" means as set forth in N.J.S.A. 18A:7G-3.

"School district" means a district board of education, including a local or regional school district established pursuant to N.J.S.A. 18A:8-1 et seq. or 18A:13-1 et seq.; a county special services

school district established pursuant to article 8 of N.J.S.A. 18A:46-1 et seq.; a county vocational school district established pursuant to article 3 of N.J.S.A. 18A:54-1 et seq.; and a school district under full State intervention pursuant to N.J.S.A. 18A:7A-34 et seq.

"School enrollment" means the number of FTE students who are recorded in the school registers on the last school day prior to October 16 of the current school year, except that it shall not include FTE students in evening programs, post-graduate students, and post-secondary vocational students.

"School facility" means and includes any structure, building, or facility used wholly or in part for educational purposes by a school district and facilities that physically support the structures, buildings, and facilities, such as school district wastewater treatment, power generating and steam generating, but excludes other facilities as defined in this section.

"School facilities project" means the acquisition, demolition, construction, improvement, repair, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or any other personal property necessary for, or ancillary to, any school facility. School facilities project includes, but is not limited to, fixtures; furnishings and equipment; site acquisition; site development; services of design professionals such as engineers and architects; construction management; legal services; financing costs; and administrative costs and expenses incurred in connection with the project. To qualify as a school facilities project, the project must be new construction to meet the housing needs of unhoused students, or rehabilitation to keep a school facility functional for its original purpose or for a new purpose accomplished within the gross square footage of the original building. Maintenance projects intended solely to achieve the design life of a school facility and routine maintenance do not constitute school facilities projects.

"SDA district" means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year.

“Section 15 grant” means a grant of funds to be made pursuant to N.J.S.A. 18A:7G-15.

"Short-term notes" means temporary notes or loan bonds as described in N.J.S.A. 18A:24-3.

"Special education student" means a student receiving specific services pursuant to N.J.S.A. 18A:46-1 et seq. and N.J.A.C. 6A:14, Special Education.

"State debt service aid" means the amount of State aid determined pursuant to N.J.S.A. 18A:7G-9 for school bonds issued for school facilities projects approved by the Commissioner on or after July 18, 2000, in school districts that elect not to have the Development Authority or a redevelopment entity construct the project or that elect not to finance the project under N.J.S.A. 18A:7G-15; and the amount of State aid determined pursuant to N.J.S.A. 18A:7G-10 for school bonds or certificates of participation issued for school facilities projects approved by the Commissioner prior to July 18, 2000.

"State debt service aid percentage" means the district aid percentage or 40 percent, whichever is greater.

"State share" means as set forth in N.J.S.A. 18A:7G-3.

"State support" means the State share or State debt service aid.

“Temporary facility” means a facility used for educating students on a temporary basis while awaiting completion of a school facilities project that will permanently house students. It also means:

1. A facility reviewed and approved by the executive county superintendent and/or the Division as substandard prior to June 7, 2004, and a facility approved by the Division, as a temporary facility under the rules in effect on or after that date;
2. A facility not planned or constructed as a permanent school facility that is rented, leased, or otherwise acquired by a school district or a private school for the disabled for use by public school students; and

3. A temporary classroom unit, self-propelled van or other mobile unit, whether or not installed on a school district-owned school site.

"Total costs" means the final eligible costs plus excess costs, if any, for a school facilities project to be constructed by the Development Authority or a redevelopment entity or financed pursuant to N.J.S.A. 18A:7G-15; the total cost of the project as determined by the school district for a school facilities project not to be constructed by the Development Authority or a redevelopment entity or financed pursuant to N.J.S.A. 18A:7G-15, and the total costs of an other capital project as determined by the school district.

"Type I school district" means a school district established in a city, pursuant to N.J.S.A. 18A:9-2, where board members are appointed by the municipality, and where the governing body of the municipality issues school bonds for school district capital projects, pursuant to N.J.S.A. 18A:22-20 and 18A:24-11.

"Type II school district" means a school district established in a municipality other than a city, every consolidated school district, and every regional school district, pursuant to N.J.S.A. 18A:9-3, where board members are elected or appointed by the municipality, as applicable, and where the district board of education issues school bonds for school district capital projects in a school district without a board of school estimate, pursuant to N.J.S.A. 18A:24-12.

"Uniform Construction Code" or "UCC" means N.J.A.C. 5:23.

"Unhoused students" means the number of students in excess of the functional capacity of a school facility calculated pursuant to N.J.A.C. 6A:26-2.2(c).

"Useful life" means the applicable recovery period for depreciation purposes determined under Section 168 of the Internal Revenue Code of 1986, 26 U.S.C. § 168 as amended and supplemented, and the applicable regulations.

Subchapter 2. Long-Range Facilities Plans

6A:26-2.1 Responsibilities of school district

- (a) Following the approval of the 2005 LRFP, each school district shall amend its LRFP at least once every five years on software made available by the Department, and in accordance with the instructions for completing the software. For newly established school districts, the LRFP shall be submitted no later than one year following its formation or earlier if the school district seeks approval for a school facilities project. The LRFP shall detail the school district's school facilities, other facilities and temporary facilities and the school district's plan for meeting school facilities needs during the ensuing five years.
- (b) Except as provided in N.J.A.C. 6A:26-3.14, no school facilities project shall be considered or approved unless the school district's LRFP has been submitted to the Department and approved by the Commissioner.
- (c) Each school district shall submit its LRFP to the planning board(s) of the municipality(ies) in which the school district is situated, no later than the date the school district submits the LRFP to the Commissioner, to afford the planning board(s) the opportunity to prepare and submit findings to the school district. In the case of a regional school district, all municipalities comprising the regional school district shall be considered school districts in which the regional school district is situated for purposes of this subsection. A school district shall provide to the Division proof of the date the school district submits the LRFP to the Commissioner and to the planning board(s). The planning board(s) shall submit its findings, if any, to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500, within 45 days of its receipt of the LRFP. No LRFP shall be considered complete until comments have been received from the planning board(s) or until 45 days have passed

from the planning boards' receipt of the LRFP. If the school district or its architect receives the planning board findings, the findings shall be forwarded promptly to the Division at the above address.

- (d) All school districts sending students to another school district to be educated pursuant to N.J.S.A. 18A:38-8 et seq. shall expeditiously provide all information necessary for the receiving school district to complete its LRFP, including, but not limited to, demographic information necessary to prepare enrollment projections. Both sending and receiving school districts must submit a LRFP. If a send-receive relationship is terminated pursuant to N.J.S.A. 18A:38-21, both the sending and receiving school district shall promptly submit an amended LRFP.
- (e) If one or more member school districts withdraw from a regional school district operating pursuant to N.J.S.A. 18A:13-1 et seq., or the regional school district dissolves pursuant to N.J.S.A. 18A:13-51 et seq., all such withdrawing school districts and the regional school district, if applicable, shall submit an amended LRFP.
- (f) At any time, a school district may submit an amendment to an approved LRFP for review and approval by the Commissioner.
- (g) A school district's approved LRFP shall remain in effect until an amended LRFP is approved.

6A:26-2.2 Completion of long-range facilities plans

- (a) Each LRFP shall include:
 - 1. Enrollment projections for the school district for the five years covered by the plan, by grade level, as set forth in the Fall Survey Report for grades K through 12 and the ASSA for preschool programs, and utilizing enrollment figures as of October 15 of the previous year as the base enrollment figures. Students enrolled in the school district who are attending charter schools, students attending the schools of the school district pursuant to the school choice program, and students

enrolled in the school district but attending private schools for the disabled shall be separately identified in enrollment projections, and shall be excluded from the calculation of the number of unhoused students pursuant to (b) below.

- i. The enrollment figures shall be certified by a qualified demographer;
- ii. The resume and any other professional credentials relied upon by the school district to demonstrate that the person who prepared the enrollment projection possesses adequate experience to be considered a qualified demographer shall be submitted as part of the school district's LRFP. Adequate experience shall include preparation of enrollment reports and projections on behalf of school districts, both in fulfillment of statutory or regulatory obligations and for other purposes. School district employees, such as the chief administrator and school business administrator, as well as persons hired by a school district may, if they possess the requisite experience, serve as a qualified demographer;
- iii. Projections shall be for the five ensuing years utilizing a cohort survival method, shall utilize pertinent live births of residents of the community provided by the New Jersey Department of Health and Senior Services and shall include enrollment trends for the previous five years as set forth in the previous six Fall Survey Reports or ASSA, as appropriate;
- iv. Where a school district does not believe a five-year projection utilizing a cohort survival method will accurately predict future enrollment, the school district shall submit additional data and justification for consideration by the Commissioner;
- v. A school district shall adjust enrollment projections to account for significant numbers of students who are attending charter schools; and

- vi. ECPA school districts shall make appropriate adjustments to enrollment projections for preschool children based on the history of the actual enrollments in those programs and consistent with the school district's approved ECPA plan;
- 2. The functional capacity of every school facility in the school district, listed separately by facility and grade level, including an inventory of all spaces in each facility;
- 3. An inventory of every school facility, other facility and temporary facility in the school district.
 - i. If a school district shares or leases facilities or any portion thereof, either as a lessor or lessee, all such spaces shall be included in its LRFP.
 - ii. All facilities, or portions thereof, owned by a school district that are leased or otherwise conveyed to another entity shall be included if the facility, or portion thereof, will become available for use by the school district in the ensuing five years. Only the terms of leases currently in effect shall be considered when determining whether a space will be available to the school district in the ensuing five years.
 - iii. All facilities, or portions thereof, acquired by the school district through a leasehold agreement, or to which the school district is otherwise entitled to possession by any legal arrangement, shall be included for the period covered by the plan during which the school district is entitled to use of the facility;
- 4. An inventory of all school district-owned land, indicating whether used currently, previously, or never, as a school site, with a map of the school district indicating the location of all school district-owned land and the location of existing schools in the school district;

5. A listing of the approximate size and nature of any new sites that may be needed for school facilities projects set forth in the LRFP, listing the specific project(s) to be constructed on each site;
6. An inventory of all building systems within each facility, including structure, enclosure, mechanical, plumbing, interior walls and finishes and electrical systems;
7. A determination of the life expectancy of all building systems;
8. A determination of any building system deficiencies in each school facility and the required remediation;
9. The school district's proposed school facilities projects and other capital projects and preliminary scopes of work in the five years ensuing, setting forth each proposed new school facility, addition and renovation, including each separate space to be constructed or renovated (for example, classrooms, art and music rooms, cafeterias, gymnasiums), the functional capacity of each proposed school facility and the priority tier pursuant to N.J.S.A. 18A:7G-5(m), and all school facilities to be sold, converted to other non-school facility uses or razed;
10. The school district's proposed programmatic models for school facility types and capacities the school district intends to operate in the five years ensuing;
11. A comparison of the school district's proposed programmatic models with the facilities efficiency standards and identification of all types of spaces, sizes of spaces and number of spaces inconsistent with those standards. The school district shall note for all spaces that are inconsistent with the facilities efficiency standards whether it intends to seek a waiver of a facilities efficiency standard, locally fund the space, or seek approval for funding of additional space;
12. A comparison of the school district's programmatic models with the existing inventory and how the school district proposes to convert the existing inventory to the programmatic models;

13. The school district's proposed plans for new construction and renovation of other facilities in the five years ensuing, setting forth each proposed new other facility, addition and renovation, including each separate space to be constructed or renovated and all other facilities to be sold, converted to other non-school facility uses or razed;
 14. For each school facility set forth in the LRFP for which the school district is seeking approval of additional space or waiver of a facility efficiency standard to be approved as part of the LRFP, the school district shall submit documentation supporting the request in accordance with N.J.A.C. 6A:26-2.3(c);
 15. For each school facility to be replaced, a preliminary comparison of the cost of replacement of the school facility verses the cost to rehabilitate the school facility;
 16. Preliminary data to support each proposed new school facility or addition, renovation to an existing school facility and the removal from the school district's inventory of school facilities each school facility to be sold, converted to non-school facility use or razed;
 17. A preliminary estimate of the cost of every school facilities project set forth in the LRFP; and
 18. A district board of education resolution approving submission of the LRFP.
- (b) Each LRFP shall include a determination by the school district of the number of unhoused students for the ensuing five-year period calculated as follows:
1. The number of unhoused students shall be the number of FTE students projected to be enrolled in preschool disabled, preschool, kindergarten, grades one through 12 and special education student programs to be provided in the school district in the ensuing five years that exceed the functional capacity of the school district's current school facilities or school facilities that will be available within five years, including community provider facilities housing preschool students, excluding projects which have been approved pursuant to N.J.A.C. 6A:26-3. Projected

enrollments and functional capacity shall be separately determined for early childhood and elementary students (preschool through grade five), middle school students (grades six through eight) and high school students (grades nine through 12). For the purpose of calculating the school district's unhoused students, special education students shall be considered part of the grade level to which the students' chronological age corresponds. In the event approval is granted for a school facilities project which involves the construction of a new school facility to replace an existing school facility, the calculation of the number of unhoused students shall exclude the functional capacity of the facility to be replaced.

- (c) Approved area for unhoused students (AU) shall be determined according to the following formula: $AU = (UEC \times SEC) + (UE \times SE) + (UM \times SM) + (UH \times SH)$ where UEC, UE, UM, UH are the numbers of unhoused students in the early childhood, elementary, middle, and high school enrollment categories, respectively; and SEC, SE, SM, SH are the area allowances per FTE student in preschool and kindergarten, grades one through five, grades six through eight, and grades nine through 12, respectively. Area allowances shall be determined based on the grade level of a student regardless of the grade configurations of the school buildings of the school district. Gross square footage is to be used for these determinations.
- (d) An ECPA school district is encouraged to include one or more community provider early childhood education facilities projects, including projects of Head Start providers that qualify as community providers, as part of its LRFP. Superintendents are strongly encouraged to meet and collaborate with community early childhood education providers to meet the needs of unhoused students in the LRFP.
- (e) The school district shall incorporate the facilities efficiency standards in the LRFP.
 - 1. If the LRFP includes a proposal for new construction or rehabilitation of a school facility that does not meet the facilities efficiency standards, the school district

shall seek, as part of the LRFP approval, a waiver for those components that are not consistent with the standards.

2. If the LRFP includes a proposal for new construction pursuant to N.J.S.A. 18A:7G-7(a), or rehabilitation pursuant to N.J.S.A. 18A:7G- 7(b), of a school facility that exceeds the facilities efficiency standards, the school district may seek Commissioner approval of that additional space and, if approved, such space will be deemed eligible for State funding. If the school district does not seek Commissioner approval for the additional space, the school district shall state that fact in its submission and that space will be deemed ineligible for State support at the time of approval of the LRFP.

6A:26-2.3 Review and approval of long-range facilities plans

- (a) Within 90 days of receipt of a LRFP from a school district that has not previously submitted a LRFP, the Division shall determine whether the plan is fully and accurately completed and whether all information necessary to review the plan has been filed by the school district.
 1. When a LRFP is determined to be complete, the Division shall notify in writing the school district that the plan is deemed complete.
 2. When a LRFP is determined to be incomplete, the Division shall notify in writing the school district and require the submission of additional information as detailed in the notification. A school district shall submit the requested information. Only after the Division determines all requested information has been submitted and the information is accurate shall it determine a plan to be complete.
- (b) Within 60 days of the date of the notification that a plan is complete, the Commissioner shall notify the school district of the final determination of the LRFP. A final determination shall set forth:

1. Reasonable five-year enrollment projections;
 2. A complete facility inventory;
 3. A complete inventory of physical conditions/deficiencies of every facility;
 4. A listing of all school-district-owned land, and a listing of any new school sites needed for school facilities projects if identified by the school district;
 5. Spaces for which a waiver is approved pursuant to (e) below;
 6. Identification of school facilities for which new construction was proposed in lieu of rehabilitation and for which it appears from the information presented that new construction is justified but, for school facilities so identified, a feasibility study shall be submitted as part of the application for the school facilities project;
 7. A listing of all proposed new construction projects for unhoused students; and
 8. A listing of all proposed capital projects included in the LRFP.
- (c) A school district shall amend its approved LRFP whenever it seeks to undertake a capital project that is inconsistent with the approved LRFP in effect. The amendment request shall be accompanied by a district board of education resolution approving the submission of the LRFP amendment.
1. In the case of an emergent project, the LRFP may be amended as provided in N.J.A.C. 6A:26-3.14(e).
 2. In the case of a school facilities project requiring amendment to the school district's applicable approved room inventory in the approved LRFP, approval of the school facilities project shall require the prior approval of an amended room inventory. If amending the room inventory would affect the capacity of one or more of the school district's school facilities, the school district shall fully document the impact of amending the room inventory on each school facility in the school district, and Division review and approval of the LRFP amendment shall be required prior to Division approval of the school facilities project.

3. In the case of a school district seeking to amend its LRFP involving capital maintenance, the school district shall amend its LRFP by submitting an amendment request and updating the Department's software to:
 - i. Identify the building system or systems affected by the project;
 - ii. Revise building system conditions to reflect deficiencies;
 - iii. Indicate the deficient quantity and unit costs for the deficient system; and
 - iv. Commit the deficiency to a proposed project.
 4. Prior to approval of a project that is inconsistent with a school district's approved LRFP and that affects the capacity of one or more of its school facilities, or the total number or grade alignment of school facilities in the school district, a school district shall amend its LRFP to fully document the project's impact on each facility. The Division shall review and approve the LRFP amendment according to this section prior to the Division's approval of the project.
- (d) Notwithstanding any provision of this chapter to the contrary, if at any time the number of LRFPs pending before the Commissioner for review exceeds 20 percent of the total number of operating school districts in the State, the Commissioner may extend by 60 days the deadline for reviewing each plan then before him or her. The Commissioner shall notify in writing each affected school district of the extension. No LRFP shall be considered to be pending before the Commissioner for review until a school district is notified by the Commissioner that the plan is complete.
- (e) Any school district that has an approved LRFP may begin undertaking feasibility studies for new construction identified pursuant to (b)6 above, site acquisition, development, remediation and design work, and acquire temporary facilities, provided that such activities are consistent with its approved LRFP and this chapter. For school districts required to use the Development Authority, the activities also shall be undertaken under

the auspices of the Development Authority and in accordance with N.J.S.A. 18A:7G-5 and this chapter.

6A:26-2.4 (Reserved)

Subchapter 3. Capital Project Review

6A:26-3.1 Initiation of a capital project

- (a) All capital projects shall be undertaken in accordance with this subchapter.
- (b) School facilities projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.2 and 3.3; land acquisition projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.9 or 3.13 and 6A:26-7, as applicable; and other capital projects shall be reviewed in accordance with N.J.A.C. 6A:26-3.12.
- (c) Project documents for school facilities projects and other capital projects shall be reviewed by the Division and approved for compliance with the requirements of N.J.A.C. 6A:26-5 as applicable.
- (d) Project documents for school facilities projects and other capital projects that involve the acquisition of land shall be reviewed for compliance with the requirements of N.J.A.C. 6A:26-7.
- (e) The Division shall review each capital project to determine whether the project is consistent with the school district's approved LRFP and whether it complies with the applicable room inventory in the approved LRFP, if any.

6A:26-3.2 School facilities projects

- (a) Any school district seeking to initiate a school facilities project shall apply to the Division on a Commissioner-provided form for approval of the school facilities project.
School facilities projects include:

1. New construction;

2. Rehabilitation, provided that the rehabilitation or capital maintenance consists of the entire building system in the same school facility building section, as building section is defined in the approved LRFP, unless one or more of the components of a mechanical, electrical, or plumbing building system is required for the continued operation of such system;
3. Acquisition of existing buildings to accommodate unhoused students;
4. Furnishings, fixtures, and equipment, but they shall be eligible for State support only as follows:
 - i. Furnishings with a useful life of 10 years or greater when part of a school facilities project is either new construction or rehabilitation and also qualified as reconstruction. The cost of furnishings shall not exceed the cost of the item if purchased through a State contract, if applicable. For purposes of this subsection, reconstruction is to be defined in accordance with the UCC, N.J.A.C. 5:23-6.3;
 - ii. Fixtures when part of a school facilities project;
 - iii. Equipment with a useful life of 10 years or greater either consisting of a school facilities project when it is an integral and substantial part of a building system in a school facility or when part of a school facilities project. The cost of equipment shall not exceed the cost of the item if purchased through a State contract, if applicable. Operating equipment such as vacuums, snowblowers, and floor polishers, along with repairs to such items shall be ineligible for State support;
 - iv. Air conditioning equipment with a useful life of 10 years or greater either consisting of a school facilities project when it is an integral and substantial part of a building system or when part of a school facilities project. If the school facilities project consists of new construction, the air conditioning

system shall be eligible for State support to the extent that it is included in the area cost allowance. If the school facilities project consists of rehabilitation that includes the replacement of an existing air conditioning system, the replacement shall be eligible for State support provided that it is for the entire building air conditioning system in the same school facility building section, as building section is defined in the approved LRFP, unless one or more of the components of that building system are required for the continued operation of such system. If the school facilities project consists of rehabilitation that includes the installation of a new air conditioning system, the new system shall be eligible for State support if it is for the entire building air conditioning system in the same school facility building section and for instructional spaces (excluding industrial shops) and/or for occupied non-instructional spaces (excluding kitchens and locker rooms). To the extent that a new air conditioning system is for unoccupied non-instructional spaces, such as utility rooms and storage rooms, except for spaces that accommodate heat- and humidity-sensitive equipment, it will not be eligible for State support; and

- v. Technology electronic systems recommended by the “Facilities Standards for Technology in New Jersey Schools” and the “Working Toward the Future With Our Children” educational technology plan for New Jersey, or subsequent State educational technology standards for New Jersey schools, when part of a school facilities project which is either new construction or rehabilitation that also qualifies as reconstruction as defined in the UCC, N.J.A.C. 5:23-6.3; and

- 5. The rehabilitation of a multi-purpose physical education field(s) and, for pre-school-through-grade-five school facilities, a playground with playground

equipment when required to support the New Jersey Student Learning Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model. A new multi-purpose physical education field or playground, including playground equipment is eligible for State support, within the area cost allowance only when part of a school facilities project consisting of new construction for unhoused students.

- (b) An application for a school facilities project shall contain the following information:
1. All information set forth in N.J.A.C. 6A:26-5.2 and 5.3 if the project is subject to educational adequacy review and, if not, any drawings or narrative relating to the project from a New Jersey licensed architect or professional engineer, if applicable, and, if the school facilities project includes the acquisition of land, N.J.A.C. 6A:26-7.1;
 2. Necessary updates to the enrollment projections in the school district's approved LRFP to support the project;
 3. A delineation and description of each of the functional components of the school facilities project;
 4. The number of unhoused students to be housed in the school facilities project;
 5. The minimum area allowances per FTE student as calculated pursuant to this chapter;
 6. A narrative description of the school facilities project on a form prescribed by the Commissioner, including an itemized breakdown of estimated actual costs and quantities by area for new construction, rehabilitation and acquisition of existing buildings;
 7. Identification of the site for new construction, if any;
 8. Identification and description of any spaces that exceed the facilities efficiency standards for which the school district received approval pursuant to the approved LRFP or is seeking approval as additional space pursuant to N.J.A.C. 6A:26-3.3;

9. A complete room inventory of the spaces contained in the building;
 10. A feasibility study for all new construction in lieu of rehabilitation;
 11. Identification of the programmatic model from the school district's approved LRFP and supporting documentation to confirm that the school facilities project conforms to the programmatic model;
 12. The tier the school district proposes for each school facilities project in accordance with N.J.S.A. 18A:7G-5(m);
 13. A resolution of the district board of education authorizing the submission of the application to the Division;
 14. A certification from the chief school administrator and the school business administrator that the school district has not advertised or awarded a construction or purchase contract for the school facilities project and that the school facilities project has not been completed; and
 15. Any additional information that a school district deems relevant for the Commissioner's review of the school facilities project.
- (c) Where required by N.J.S.A. 40:55D-31 and 18A:18A-16, each school district shall submit applications for school facilities projects to the planning board(s) of the municipality(ies) in which the school district is situated, no later than the date the school district submits to the Division each application to afford the planning board(s) the opportunity to prepare and submit findings to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500. A school district shall provide to the Division proof of the date that it submits each school facilities project application to the planning board(s). The planning board(s) shall submit to the Division findings, if any, within 45 days of its receipt of each project application from a school district required to use the Development Authority, and has an additional 10 days to file with the Division notice of recommendations against approval of the project. No school facilities project

application shall be considered complete until comments have been received from the planning board(s) or until either 45 days or 55 days, as applicable, have passed from the planning board's receipt of each school facilities project application, whichever is earlier. If the school district or its architect receives the planning board findings, it shall be forwarded promptly to the Division at the above address.

- (d) A school district shall not initiate a school facilities project without an approved LRFP.

6A:26-3.3 Review and approval of school facilities projects

- (a) After receipt of a school facilities project application, the Division shall assess the application and determine whether it is fully and accurately completed and all necessary information has been filed by the school district or the Development Authority on behalf of the school district. All information in N.J.A.C. 6A:26-3.2(b) must be provided to the Division before a school facilities project application shall be considered fully and accurately completed and the application shall be reviewed to determine whether it conforms to the school district's approved LRFP and whether it complies with the applicable programmatic model in the approved LRFP, if any, or the facilities efficiency standards. If a school facilities project application is determined to be incomplete, the Division shall inform the school district by listing in writing all deficiencies in the application and missing required information. After all required information is received and a school facilities project application is determined complete, the Division shall notify in writing the school district that the school facilities project application is deemed complete. In the case of a Development authority schools facility project, preconstruction activities shall be conducted prior to the application being deemed complete.
- (b) After approval of the LRFP, within 90 days of receipt of a complete school facilities project application, or from the date of the school district's last revision to the project application, whichever is later, the Division shall review each application to determine

whether the school facilities project is consistent with the school district's approved LRFP and whether it complies with the applicable room inventory in the approved LRFP, if any, or the facilities efficiency standards. If unable to make a decision within the 90 days, the Division shall notify the school district, explaining in writing the reason for the delay and indicating the date by which a decision shall be made. The decision date shall be no later than 60 days from the expiration of the original 90 days. If a decision is not made by the subsequent date established, the school facilities project shall be deemed approved.

- (c) When the Division determines that a school facilities project complies with the requirements of N.J.A.C. 6A:26-5.1 through 5.3, and is consistent with the facilities efficiency standards or the applicable room inventory in the school district's approved LRFP, if any, and does not exceed the standards or the applicable room inventory approved in the LRFP, except for spaces for which the school district is not seeking State support, the Division shall approve the school facilities project, provide a final determination of the preliminary eligible costs pursuant to the formulas set forth in N.J.S.A. 18A:7G-1 et seq. and N.J.A.C. 6A:26-3.4, and shall notify in writing the school district of the approval and preliminary eligible costs.
- (d) The Division shall notify the school district if it determines that a school facilities project is inconsistent with the facilities efficiency standards or the applicable room inventory in the approved LRFP. Within 30 days of the notification, the school district shall advise the Division of its determination to do one of the following:
 - 1. Revise its school facilities project and re-submit it for review by the Division;
 - 2. Make a request for additional space eligible for State support;
 - 3. Locally fund any excess costs; or
 - 4. Seek a waiver as set forth in (i) below.
- (e) The Division shall approve requests for additional or inconsistent space eligible for State support if the school district demonstrates that:

1. School facility needs related to programs required pursuant to State or Federal law or regulation cannot be addressed within the facilities efficiency standards and that all other spaces are consistent with the standards;
 2. Such spaces are necessary to comply with Federal or State laws concerning educating students with disabilities to the greatest extent possible in the same building or classes with their non-disabled peers and the additional or inconsistent spaces will:
 - i. Allow for the return of students with disabilities from out-of-school-district facilities;
 - ii. Permit the retention of students with disabilities who would otherwise be placed in out of school district facilities;
 - iii. Provide space for regional programs in a host school building that houses both disabled and non-disabled students; or
 - iv. Provide space for the coordination of regional programs by a county special services school district, educational services commission, jointure commission or other agency authorized by law to provide regional special education services, in a school facility that houses both disabled and non-disabled students;
 3. Such spaces are necessary to house the school district's central administration and:
 - i. The proposed administrative offices will be housed in a school facility;
 - ii. The existing central administrative offices are obsolete or it is more practical to convert those offices to instructional space; and
 - iii. The space sought does not exceed an increase of the approved areas for unhoused students of 2.17 square feet for each FTE student in the projected total school district school enrollment.
- (f) Spaces approved pursuant to (e) above shall be aided pursuant to N.J.S.A. 18A:7G-5.g(4).

- (g) When reviewing requests by SDA districts for additional space, the Commissioner shall, in accordance with *Abbott v. Burke*, 153 N.J. 480 (1998) (Abbott V), afford deference to a school district's determination that specialized instructional rooms are necessary based on the school district's particular needs.
- (h) If a request for additional space is determined to be eligible for State support, the applicable room inventory in the school district's approved LRFP shall be deemed amended. If the Division does not approve a request for additional space, it shall be deemed ineligible for State support unless and until the Division's decision is reversed on appeal.
- (i) The Division shall not approve any school facilities project for new construction or rehabilitation that is not consistent with the facilities efficiency standards or the applicable room inventory in the approved LRFP unless the school district demonstrates that waiver of the standard(s) will not adversely affect the facility's educational adequacy, including the ability to deliver the programs and services necessary to enable all students to achieve the New Jersey Student Learning Standards. If the Division approves a waiver, the applicable room inventory in the school district's approved LRFP shall be deemed amended. If the Division does not approve a waiver request, the school district shall conform the school facilities project to the facilities efficiency standards and resubmit the project.
- (j) School facilities projects that comprise new construction shall receive approval for State support only if necessary for reasons of unhoused students.
- (k) A school facilities project that consists of rehabilitation shall be approved only if it will keep the school facility functional for its original purpose or for a new purpose and if it can be accomplished without increasing the gross square footage of the original facility but shall not include any routine maintenance or required maintenance. The Division may approve rehabilitation projects that include elevators, egress, and other modifications to school facilities to render them compliant with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.,

the UCC, N.J.S.A. 52:27D-119 et seq. or other State and Federal requirements, even if the gross square footage of the building is thereby increased to complete the school facilities project.

- (l) All school facilities shall be deemed suitable for rehabilitation unless a feasibility study undertaken by the school district demonstrates to the Division's satisfaction that the structure might pose a risk to the safety of the occupants even after rehabilitation, or that rehabilitation is not cost-effective. Whenever a school district initiates a school facilities project for new construction in lieu of rehabilitation, the school district shall submit a feasibility study as part of the school facilities project application supporting its determination that it would be more feasible to replace rather than rehabilitate the school facility because of health and safety or efficiency. The feasibility study shall consist of:
 1. Estimated costs of repairing the existing school facility and providing upgrades and additions required to make the school facility educationally adequate. The estimated costs of a rehabilitation project shall contain only the costs necessary for compliance with the UCC, health and safety, and educational adequacy as determined pursuant to N.J.A.C. 6A:26-5 and N.J.S.A. 18A:7G- 5.g(1);
 2. Estimated costs of replacing the existing school facility, including site acquisition, if required, and disposal of the existing site and school facility; and
 3. Estimated costs of all extraordinary factors, including off-site improvements, environmental remediation and temporary facilities.
- (m) When a school district demonstrates to the Division's satisfaction that replacement is more feasible than rehabilitation and the proposed school facilities project is otherwise approvable, the Division shall approve the school facility project for new construction in lieu of rehabilitation, and the preliminary eligible costs shall be determined pursuant to N.J.A.C. 6A:26-3.4(a).

- (n) When a school district does not demonstrate to the Division's satisfaction that replacement is more feasible than rehabilitation, the Division may approve the school facilities project if all other requirements are met, but the preliminary eligible costs shall be determined in accordance with N.J.A.C. 6A:26-3.4(b).
- (o) If the Division determines that the preliminary eligible costs of a rehabilitation project, as determined pursuant to N.J.A.C. 6A:26-3.4(b), appear so excessive as to make rehabilitation an unreasonable option, it may direct the school district to conduct a study comparing cost and other factors associated with the rehabilitation versus new construction. If the Division determines that rehabilitation is an unreasonable option based on the comparison, the school district shall either re-submit the project as new construction or preliminary and final eligible costs shall be determined pursuant to N.J.A.C. 6A:26-3.4(a) if the school district determines to continue with the rehabilitation project.
- (p) Upon approval of a school facilities project and determination of the preliminary eligible costs pursuant to N.J.A.C. 6A:26-3.4, the Division shall notify the school district that the school facilities project has been approved and of the preliminary eligible costs, excess costs, and additional costs, if any.

6A:26-3.4 Calculation of preliminary eligible costs for school facilities projects

- (a) Upon approval of a completed school facilities project application, preliminary eligible costs for new construction, new construction in lieu of rehabilitation approved pursuant to N.J.A.C. 6A:26-3.3, and purchase of an existing facility to be utilized as a school facility shall be calculated as follows:

Preliminary eligible costs = AU x C

Where

AU is the approved area for unhoused students; and

C is the area cost allowance.

- (b) Preliminary eligible costs for rehabilitation or new construction in lieu of rehabilitation that is not approved pursuant to N.J.A.C. 6A:26-3.3 shall equal reasonable estimated actual costs as calculated on a form prescribed by the Commissioner, which shall include, but not be limited to:
1. Specific unit costs and quantities;
 2. Other allowable costs;
 3. The costs to render a school facility energy efficient;
 4. The costs to render a school facility compliant with the UCC;
 5. The costs to ensure that a school facility meets health and safety standards; and
 6. The costs to ensure that the school facility meets educational adequacy as determined pursuant to the facilities efficiency standards and N.J.A.C. 6A:26-5.
- (c) The reasonableness of estimated actual costs under (b) above shall be determined in accordance with industry standards.
- (d) Notwithstanding (a) and (b) above, preliminary eligible costs for new construction and rehabilitation of a purchased facility within five years of purchase shall be determined as follows:
- Preliminary eligible costs = $(ACP-PC) \times (C/CP)$
- where
- ACP is the preliminary eligible costs for the facilities purchased pursuant to (a) above;
- PC is the purchase cost for the facility;
- C is the area cost allowance at the time of application for the school facilities project; and
- CP is the area cost allowance at the time of purchase of the facility.
- Preliminary eligible costs so calculated shall not be less than zero.
- (e) For school facilities projects deemed approved pursuant to N.J.A.C. 6A:26-3.3(b), preliminary eligible costs for new construction shall be calculated by using the proposed

square footage of the school facility as the approved area for unhoused students, and for rehabilitation shall be the reasonable estimated costs of the rehabilitation.

- (f) Notwithstanding anything to the contrary, preliminary eligible costs for school facilities projects of county vocational school districts and of special services school districts shall equal the amount determined by the board of school estimate and approved by the board of chosen freeholders pursuant to N.J.S.A. 18A:46-42 or 18A:54-31, as appropriate.
- (g) Notwithstanding anything to the contrary, preliminary eligible costs for Development Authority school facilities projects shall equal the amount determined by the Development Authority pursuant to N.J.S.A. 18A:7G-5.

6A:26-3.5 Determination of final eligible costs for Authority school facilities projects

- (a) School facilities projects of SDA districts shall be constructed by the Development Authority.
- (b) After approving a project that shall be constructed by the Development Authority and calculating the preliminary eligible costs, the Division shall promptly prepare and submit to the Development Authority a preliminary project report that shall consist, in addition to any other information deemed relevant by the Commissioner, of the following information:
 - 1. A complete description of the school facilities project;
 - 2. The actual location of the school facilities project;
 - 3. The total square footage of the school facilities project together with a breakdown of total square footage by functional component;
 - 4. The preliminary eligible costs of the school facilities project;
 - 5. The project's priority ranking determined pursuant to N.J.S.A. 18A:7G-5(m);
 - 6. Any other factors to be considered by the Development Authority in undertaking the school facilities project; and
 - 7. The name, address, and phone number of the person from the school district to contact concerning the school facilities project.

- (c) If the Development Authority determines that a school facilities project can be completed within the preliminary eligible costs based on detailed plans and specifications, the final eligible costs shall be deemed to equal the preliminary eligible costs pursuant to EFCFA and the preliminary project report shall be deemed to be the final project report delivered to the Development Authority pursuant to N.J.S.A. 18A:7G-5(j).
- (d) In the event that the Development Authority determines that a school facilities project cannot be completed within the preliminary eligible costs, prior to the submission of its recommendations to the Commissioner, the Development Authority shall consult with the school district and the Commissioner and determine whether changes can be made to the school facilities project that will result in a reduction in costs while meeting the requirements of educational adequacy.
1. When the Commissioner is notified by the Development Authority that the Development Authority has determined that changes in the school facilities project are possible so the project can be accomplished within the scope of the preliminary eligible costs while still conforming to the facilities efficiency standards, the Division shall:
 - i. Calculate the final eligible costs to equal the preliminary eligible costs; and
 - ii. Issue a final project report to the Development Authority in accordance with (h) below.
 2. When the Development Authority has determined it is not possible to make changes in a school facilities project so it can be completed within the preliminary eligible costs either because the additional costs are the result of factors outside the control of the school district or because the additional costs are required to meet educational-adequacy requirements, the Development Authority will recommend to the Commissioner that the preliminary eligible costs be increased accordingly, whereupon the Division shall:

- i. Calculate the final eligible costs to equal the sum of the preliminary eligible costs plus the increase recommended by the Development Authority; and
 - ii. Issue a final project report in accordance with (h) below.
- 3. When the Development Authority has determined the additional costs are the result of factors within the school district's control or of design factors that are not required to meet the facilities efficiency standards, the Development Authority shall recommend to the Commissioner that the preliminary eligible costs be accepted, whereupon the Division shall:
 - i. Calculate the final eligible costs to equal the preliminary eligible costs unless the preliminary eligible costs are determined to be insufficient to meet the educational needs of the school district, in which case preliminary eligible costs shall be adjusted upward as appropriate, and specify the excess costs that shall be borne by the school district; and
 - ii. Issue a final project report to the Development Authority in accordance with (h) below.
- (e) For any school facility project to be constructed by the Development Authority in which the State share of final eligible costs is 100 percent, the Development Authority may delay the request for a determination of final eligible costs until receipt of the construction bids by the Development Authority.
- (f) After receipt by the Development Authority of a final project report, the school district shall be responsible only for the local share identified in the report, cost overruns relating to excess costs, if any, and the costs associated with changes, if any, made at the request of the school district to the scope of the school facilities project. If a school district fails to obtain approval of the local share within one year of the determination of the final eligible costs, the Development Authority may redetermine final eligible costs and forward them to the Commissioner for approval. If the Development Authority elects to

re-determine final eligible costs, the school district shall not seek or obtain approval of the local share until the final eligible costs are re-determined.

- (g) The Development Authority shall not commence the acquisition or construction of a school facilities project until the Division transmits to the Development Authority a final project report except as provided in N.J.A.C. 6A:26-3.9.
- (h) The final project report shall contain all of the information contained in the preliminary project report and also shall contain:
 - 1. The final eligible costs;
 - 2. The excess costs, if any;
 - 3. The total costs, which equal the final eligible costs plus excess costs, if any;
 - 4. The State share of the final eligible costs; and
 - 5. The local share of the total costs.

6A:26-3.6 Determination of final eligible costs for ROD school facilities projects

- (a) Prior to a determination of final eligible costs, a school district that is not using the Development Authority for construction of a school facilities project may appeal to the Commissioner for an increase in the preliminary eligible costs that were approved pursuant to N.J.A.C. 6A:26-3.3 if the detailed plans and specifications prepared in accordance with N.J.A.C. 6A:26-5.4 by a licensed architect or engineer for the school facilities project indicate that the cost of constructing the portion of the school facilities project approved for State support exceeds by 10 percent or more the preliminary eligible costs for the project as determined by the Commissioner. The school district shall file its appeal within 30 days of the preparation of the detailed plans and specifications.
- (b) The appeal shall outline the reasons why the preliminary eligible costs calculated for the school facilities project are inadequate, provide documentation to support such reasons, and estimate the amount of the adjustment that needs to be made to the preliminary

eligible costs. Upon a determination that the appeal information is complete, the Commissioner shall forward the appeal information to the Development Authority for its review and recommendation.

- (c) The Commissioner shall make a determination on the appeal within 30 days after receipt of the Development Authority's recommendation. If the Commissioner does not approve the adjustment to the preliminary eligible costs sought by the school district, the Commissioner shall issue in writing his or her findings setting forth the reasons for the denial and why the preliminary eligible costs as originally calculated, or an adjustment to the preliminary eligible costs that is smaller than sought by the school district, is sufficient.
- (d) A school district that decides not to appeal the determination of preliminary eligible costs may request, at any time after approval of the school facilities project and determination of preliminary eligible costs, that the Commissioner determine final eligible costs for the project.
- (e) Final eligible costs for the school facilities project shall be determined as follows:
 - 1. The preliminary eligible costs shall become the final eligible costs if a school district does not appeal or unsuccessfully appeals the determination of preliminary eligible costs.
 - 2. The final eligible costs shall be the preliminary eligible costs as adjusted by the Commissioner if a school district successfully appeals the determination of preliminary eligible costs pursuant to (b) above. In no case shall the adjustment to preliminary eligible costs be more than 10 percent.
- (f) Following the determination of final eligible costs, the Division shall notify in writing the school district of the following:
 - 1. The final eligible costs;
 - 2. The total costs;
 - 3. The State share or State debt service aid percentage;
 - 4. The local share, if applicable;
 - 5. Excess costs, if any; and

6. Additional costs, if any.
- (g) A school district shall not seek approval of the local share or the total costs of a school facilities project receiving State debt service aid through a bond referendum for the school facilities project until the Division has notified the school district of the final eligible costs for the project. A school district may seek approval of the estimated local share in its annual budget prior to a determination of final eligible costs. If the local share estimate in the annual budget is less than the actual local share, the school district shall proceed in accordance with N.J.A.C. 6A:26-4. A school district may seek approval of local share utilizing capital reserve pursuant to N.J.A.C. 6A:23A-14.

6A:26-3.7 Local support of school facilities projects

- (a) No school facilities project shall be constructed unless local support, if any, plus other local revenue sources utilized to fund the total costs of a school facilities project receiving State debt service aid has received approval as set forth in this section. School districts shall notify the Commissioner and executive county superintendent when approval is obtained, and, if applicable, provide each the schedule for issuance of school bonds. School districts shall also notify the executive county superintendent of the issuance of school bonds within 30 days of their issuance.
- (b) If the Development Authority is constructing the school facilities project, the school district shall provide to the Development Authority funds for 100 percent of the ineligible costs of the project in accordance with the rules of the Development Authority.
- (c) If the school district determines to issue school bonds to fund all or any part of the local support, the school district shall proceed in accordance with (e), (f), or (g) below, as applicable. If the school district determines to fund the entire local support through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate voter or board-of-school-estimate approval of the expenditure of

local support, make withdrawals from capital reserve in accordance with N.J.A.C.

6A:23A-14. A school district may fund the local support for additions or improvements to an existing school facility or equipment through a lease-purchase agreement not in excess of five years' duration if the school district obtains approval of the lease-purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.

- (d) If a school district submits to voters a separate proposal for local funding for a non-referendum capital project pursuant to N.J.S.A. 18A:7F-5 and N.J.A.C. 6A:23A-8.4, such amounts shall not be utilized as the local share or to reduce the total costs of a school facilities project receiving State debt service aid of a school facilities project.
- (e) Whenever the district board of education in a Type I or Type II school district having a board of school estimate determines it is necessary to sell school bonds to raise money for the local support for any school facilities project approved pursuant to EFCFA and these regulations, it shall estimate by resolution the amount necessary to be raised for school facilities project(s) and itemizing the estimate to make it readily understandable. The secretary of the district board of education shall certify to each member of the school district's board of school estimate a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds; the final eligible costs of the school facilities project as approved by the Commissioner; the total costs; the State share or State debt-service-aid percentage; the local share, if applicable; and the excess costs, if applicable. If the district board of education determines to use a combination of school bonds and other revenue sources, the resolution shall also include the portion of the local share or total costs of a school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from it. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.

(f) Whenever a school facilities project(s) to be paid for from school bond proceeds is submitted to the voters of a Type II school district an annual or special school election for their approval or disapproval, the district board of education shall frame and adopt the question(s) to be submitted so each school facilities project is submitted as a separate question, or so all or any number of them are submitted in one question, which shall state the school facilities project(s) submitted and the amounts to be raised for each of the school facilities projects separately submitted or for each or all of the school facilities projects jointly submitted, as the case may be, but any proposal for land purchase shall be sufficient to authorize the taking and condemning of the land. If the district board of education determines to use a combination of school bonds and other revenue sources, the question shall also include the portion of the local share or total costs of a school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from it. Gifts, grants, private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.

1. If the school facilities project is to be constructed by the Development Authority or a redevelopment entity, or by the school district with a grant pursuant to N.J.S.A. 18A:7G-15, the single-question referendum shall request approval for the local share and shall disclose the amount needed to be raised by school bonds, the final eligible costs of the school facilities project as approved by the Commissioner, the State share, the total costs, and the excess costs, if any.
2. If the school facilities project is not to be constructed by the Development Authority or a redevelopment entity or by the school district with a grant pursuant to N.J.S.A. 18A:7G-15, the single-question referendum shall request approval for the total costs of the school facilities project, disclose the amount needed to be

raised by school bonds, the State debt-service-aid percentage, the final eligible costs, and the excess costs, if any.

i. The State debt-service-aid percentage shall be stated as a percentage of the annual debt service of the final eligible costs.

3. When a school facilities project is framed in more than one question, the explanatory statement accompanying the questions shall include a summary that lists the total costs of the project; the State share or the State debt-service-aid percentage; the final eligible costs of the project; the local share, if applicable; excess costs; and the revenue source for the local share or total costs of a school facilities project receiving State debt service aid.

4. The statement of excess costs in any ballot question and in any explanatory statement that accompanies a ballot question shall describe the excess costs as follows: "This school facilities project includes (insert amount) for school facility construction elements in addition to the facilities efficiency standards developed by the Commissioner of Education, or that are not otherwise eligible for State support pursuant to N.J.S.A. 18A:7G-5(g)".

(g) Whenever a State-operated school district determines it is necessary to sell school bonds to raise money for any school facilities project approved pursuant to EFCFA and this subchapter, it shall estimate the amount necessary to be raised for the school facilities project(s), itemizing such estimate to make it readily understandable. The State school district superintendent shall certify to each member of the school district's capital project review board a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds; the final eligible costs of the school facilities project as approved by the Commissioner; the total costs; the State share or the State debt-service-aid percentage; the local share, if applicable; and the excess costs, if any. The capital project review board shall review the project in accordance with N.J.S.A. 18A:7A-46.2. If the

school district determines to use a combination of school bonds and other revenue sources, the question shall also include the portion of the local share or total costs of the school facilities project receiving State debt service aid to be raised through other revenue sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.

- (h) A school district, other than a State-operated school district, that sought and failed to receive approval pursuant to N.J.S.A. 18A:7G-11 of a school facilities project that did not have excess costs, and sought and failed within the three years prior but after July 18, 2000, to receive approval of the same school facilities project, with or without excess costs, may file a petition with the Office of Controversies and Disputes, in conformance with N.J.A.C. 6A:3-1.4 and the procedures in this subsection, to request that the Commissioner approve the school facilities project and authorize the issuance of school bonds for the local share of the school facilities project. Pursuant to N.J.S.A. 18A:7G-12, a State-operated school district may not use the process set forth in this paragraph but shall instead use the process established by N.J.S.A. 18A:7A-46.2 to undertake a school facilities project.

- 1. A petition filed pursuant to this subsection shall be captioned In the Matter of the Application of the Board of Education of the (Township, Borough, etc.) of (School district), (Name) County, for an Order Directing Issuance of Bonds Pursuant to N.J.S.A. 18A:7G-12 and shall:

- i. Briefly set forth the basis for the school district's appeal, including: an explanation of how each school facilities project proposed in the petition meets the statutory requirements that the school district has failed to obtain approval of the local share of the school facilities project(s) within the three years prior to the latter of such failures; the latter failure was for a school

- facilities project(s) without excess costs as defined in N.J.A.C. 6A:26-1.2; and why the requested school facilities project(s) is necessary for the provision of a thorough and efficient system of education in the school district;
- ii. Be accompanied by a district board of education resolution approving the school district's appeal, documentation of the failed referenda underlying the appeal and a verification as set forth in N.J.A.C. 6A:3-1.4; and
 - iii. Be filed in triplicate (original and two copies).
2. The review, public comment, and hearing process regarding the petition shall be as follows:
- i. A conforming petition and supporting materials filed pursuant to (h)1 above shall be forwarded to the Division, which shall review the record for completeness and solicit such documentation from the school district as may be necessary to ensure the petition's consistency with the threshold statutory criteria as set forth in (h)1 above. Once the record is determined to be complete, the Division shall return to the Office of Controversies and Disputes the record with a written report of its review. The Division also shall provide to the school district a copy of its written report;
 - ii. Upon receipt of a completed record from the Division, the Office of Controversies and Disputes shall notify the district board of education that it has met the prerequisites for seeking an order of the Commissioner directing issuance of school bonds for the local share of the school facilities project(s) and shall direct the school district to:
 - (1) Announce at a district board of education meeting to occur by a specified date that interested persons may submit written comments to the Commissioner through the Office of Controversies and Disputes, in duplicate and no more than 10 pages in length, and a copy to the district board of education;

- (2) Publish by the date specified and in a minimum of two newspapers, one local and one Statewide, notice of the opportunity for the public to file such comments. Both the announcement and published notice shall identify clearly the school facilities projects; the amount of school bonds the school district seeks to issue; the fact that the voters previously rejected referenda seeking the issuance and the number of such rejections; and the purpose of the school district's appeal to the Commissioner; and
 - (3) File with the Office of Controversies and Disputes a sworn certification that the required announcement was made and the required notice was published.
- iii. Upon receipt of the required certification from the school district and expiration of the public comment period pursuant to (h)2ii above, the Commissioner shall arrange for an evidentiary hearing in accordance with the following procedures:
 - (1) The Commissioner may either request that the Director of the Office of Administrative Law assign an administrative law judge to conduct the matter as an uncontested case pursuant to N.J.S.A. 52:14F-5(o) or arrange for assignment of a hearing officer to conduct the matter on behalf of the Department;
 - (2) Written notice of the hearing date(s) shall be sent to the district board of education and its legal representative;
 - (3) The district board of education shall effectuate notice to interested persons by announcing the hearing date at a district board of education meeting prior to the hearing date, and shall publish same in a minimum of two newspapers, one Statewide and one local,

with a minimum of 20 days' notice provided through both means, and with proof of both the announcement and the publication to be submitted to the assigned judge or hearing officer;

- (4) The hearing shall be conducted on an expedited basis and, to the extent possible, at a location close to the school district;
- (5) Interested persons shall be provided with a reasonable amount of time, as determined by the assigned judge or hearing officer, to present comments without unduly prolonging proceedings; and
- (6) The district board of education shall present, in a manner to be determined by the assigned judge or hearing officer, proofs as to why the school facilities project(s) for which it seeks to issue school bonds are necessary for provision of a thorough and efficient system of education in the school district.

- 3. Following review of the report and recommendation issued by the Office of Administrative Law pursuant to N.J.A.C. 1:1-21.5 or prepared by the assigned hearing officer in a manner consistent with N.J.A.C. 1:1-21.5, the Commissioner shall make in a written decision a final determination taking into consideration the report's recommended findings of fact and conclusions of law.

- i. Within 13 days of the date the report was mailed to the district board of education, or such longer period as may be requested by the school district and granted by the Commissioner, the school district may file with the Office of Administrative Law comments on the report and recommendation.

- 4. If the Commissioner finds that the school facilities project(s) is necessary for the provision of a thorough and efficient system of education in the school district, the written ordering decision shall authorize the district board of education to prepare to issue school bonds once the Division has approved the final eligible

costs of the school facilities project(s) pursuant to N.J.A.C. 6A:26-3.5 and to submit to the Division detailed plans and specifications, or if unavailable, the most complete documentation on the project.

- i. The Division shall then issue a preliminary project report and transmit the documentation to the Development Authority for purposes of a Development Authority recommendation of the final eligible costs of the school facilities project(s), pursuant to N.J.A.C. 6A:26-3.5.
 - ii. If the Development Authority has the detailed plans and specifications and/or documentation sufficient to make a recommendation of the final eligible costs of the project(s), the recommendation shall be forwarded to the Division. If the plans for the school facilities project(s) do not meet the criteria for detailed plans and specifications, the additional design work shall be funded so a final-eligible-cost recommendation can be made to the Division. The local share shall be adjusted to reflect the Development Authority's funding of the additional design work.
 - iii. Once the Commissioner approves the final eligible costs of the school facilities project(s) and issues to the Development Authority a final project report, the Commissioner shall approve the school facilities project(s) without excess costs and authorize the issuance of school bonds to fund the local share.
5. In addition to the amount of taxes determined by the legal voters of the school district at the annual school election, the district board of education secretary shall certify the amount required for the repayment of the interest and principal of the school bonds required to fund the local share approved by the Division in the same manner required for interest and debt-redemption charges pursuant to N.J.S.A. 18A:22-33. The amount certified shall be included in the taxes assessed, levied, and collected in the municipality(ies) comprising the school district.

6. Any school facilities project authorized pursuant to this subsection shall be constructed by the Development Authority pursuant to N.J.A.C. 6A:26-3.9.
- (i) Any ROD included in district factor group A or B as of July 18, 2000 may apply to the Commissioner for 100 percent State share of final eligible costs of a school facilities project in the event the school district is having difficulty financing the local share or the total costs of a school facilities project receiving State debt service aid. To receive from the Commissioner a recommendation for 100 percent State share of final eligible costs, a school district shall submit documentation demonstrating that:
 1. It sought approval of a school facilities project that did not have excess costs, and failed to receive such approval, and previously sought and failed to receive approval of the same school facilities project, with or without excess costs and:
 - i. The budget equalized tax rate of the school district is at least 130 percent of the State average; or
 - ii. The equalized municipal tax rate is above the State average; and
 2. The school facilities project is necessary for the provision of a thorough and efficient system of education in the school district.
- (j) Upon review of the application, the Commissioner shall determine whether to recommend to the Legislature that the school district receive 100 percent State share of the final eligible costs of the project. A school district will receive 100 percent State share only if the Legislature so determines upon receipt of the Commissioner's recommendation.
- (k) All school facilities projects approved pursuant to (i) and (j) above shall be constructed by the Development Authority pursuant to N.J.A.C. 6A:26-3.9. Final eligible costs of the project shall be determined in accordance with N.J.A.C. 6A:26-3.5 prior to the Development Authority undertaking construction of the school facilities project.

6A:26-3.8 Determination of State support for school facilities projects

(a) State support for school facilities projects shall be determined as follows:

1. State debt service aid for projects approved on or after July 18, 2000, shall be calculated as follows:

Aid is the sum of A for each issuance of school bonds issued for a school facilities project approved by the Commissioner on or after July 18, 2000, where:

$$A = B \times AC/P \times DAP \times M, \text{ with } AC/P = 1$$

whenever AC/P would otherwise yield a number greater than one, and where:

B is the school district's debt service for the individual issuance for the State fiscal year;

AC is the preliminary eligible costs determined pursuant to section 7 of EFCFA;

P is the principal of the individual issuance plus any other funding sources approved for the school facilities project;

DAP is the district aid percentage as defined pursuant to N.J.S.A. 18A:7G-3, except that DAP shall not be less than 40 percent and, for county special services school districts, DAP is that of the county vocational school district in the same county; and
M is a factor representing the degree to which a school district has fulfilled maintenance requirements for a school facilities project, and shall be 1.0 except when a different maintenance factor is required by N.J.S.A. 18A:7G- 9.

2. State debt service aid for school facilities projects approved prior to July 18, 2000, shall be calculated as follows:

Aid is the sum of A where

$$A = B \times CCSAID/TEBUD \text{ and where}$$

B is the school district's total debt service or lease purchase payment for the individual issuance for the State fiscal year;

CCSAID is the school district's core curriculum standards aid amount determined pursuant to N.J.S.A. 18A:7F-15; and

TEBUD is the school district's T & E budget determined pursuant to N.J.S.A. 18A:7F-13.

For county special services school districts, CCSAID/TEBUD shall be that of the county vocational school district in the same county.

3. The amount of a grant shall be determined as follows:

i. The State share payable to the school district shall equal the product of the school facilities project's final eligible costs and the district aid percentage or 40 percent, whichever is greater. The Development Authority shall provide grant funding for the State share pursuant to an agreement between the school district and the Development Authority, which shall set forth the terms of disbursement of the State share in addition to other terms and conditions.

(1) All grants and the corresponding local share shall be accounted for separately by project in the capital projects fund in accordance with N.J.A.C. 6A:26-4;

(2) Local share budgeted in capital outlay shall be transferred to the capital projects fund upon execution of the grant agreement with the Development Authority. Any unexpended transferred capital outlay funds remaining after completion of the school facilities project shall be transferred to the general fund in the current year or reserved and designated in the subsequent year's general fund budget.

6A:26-3.9 Design and construction of Development Authority school facilities projects

(a) The Development Authority shall design and construct school facilities projects in accordance with EFCFA and the Development Authority's rules.

1. The Commissioner shall develop an educational facilities needs assessment for each SDA district. The assessment shall be updated periodically by the

Commissioner in accordance with the schedule the Commissioner deems appropriate for the school district; except that each assessment shall be updated at a minimum within five years of the development of the school district's most recent prior educational facilities needs assessment.

2. The assessment shall be transmitted to the Development Authority to be used to initiate the planning activities required prior to the establishment of the educational priority ranking of school facilities projects pursuant to this subsection.
3. Following the approval of an SDA district's LRFP or of an amendment to the plan, but prior to authorization of preconstruction activities for a school facilities project included in the plan or amendment, the Commissioner shall establish in consultation with the SDA district an educational priority ranking of all school facilities projects in the SDA district based upon the Commissioner's determination of critical need in accordance with priority project categories developed by the Commissioner. The priority project categories shall include, but not be limited to, health and safety; overcrowding in the early childhood, elementary, middle, and high school grade levels; spaces necessary to provide in-district programs and services for current disabled students who are being served in out-of-district placements or in-district programs; and services for the projected disabled student population, rehabilitation and educational adequacy.
4. In consultation with the Commissioner, SDA districts, and the governing bodies of the municipalities in which the SDA districts are situated, the Development Authority shall establish a Statewide strategic plan pursuant to N.J.S.A. 18A:7G-5.m to be used in the sequencing of SDA district school facilities projects based upon the projects' educational priority rankings and issues that impact the Development Authority's ability to complete the projects.

- (b) To advance a school facilities project, a school district that is required to use the Development Authority and has an approved LRFP may request the initiation of preconstruction activities in connection with a school facilities project identified as a priority project in the Statewide strategic plan, provided that such activities are consistent with its approved LRFP and are undertaken under the auspices of the Development Authority.
1. School districts shall submit to the Division a preconstruction application setting forth all preconstruction activities - including feasibility studies, remediation, site development, demolition, design work, acquisition of and design work for temporary facilities, and acquisition of land - that need to be undertaken prior to submission of a school facilities project application. The Division shall review each application for consistency with the educational priority ranking, the Statewide strategic plan, and the approved LRFP. If the Division authorizes the Development Authority to undertake preconstruction activities, it shall forward the application to the Development Authority, which shall undertake such activities pursuant to procedures developed by the Development Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed eligible for a State share.
 2. For school districts in which the State share of final eligible costs of a school facilities project is 100 percent, the Development Authority shall provide the funding for these preconstruction costs.
- (c) A school district that is required to use the Development Authority shall seek approval from the Commissioner to acquire land pursuant to N.J.A.C. 6A:26-7. The Commissioner may approve the land purchase if the site is capable of supporting the applicable school facility in the approved LRFP. If the Commissioner approves the request, he or she shall notify the school district and the Development Authority. Any costs incurred pursuant to this subsection shall be allocated to the applicable school facilities project and shall be deemed

eligible for a State share. For school districts in which the State share of eligible costs for the school facilities projects is 100 percent, the Development Authority shall provide the funding for the cost of the land if approved by the Commissioner and the Development Authority.

- (d) The Development Authority shall submit detailed plans and specifications to the Department for review and approval pursuant to N.J.A.C. 6A:26-5.4. If the final plans and specifications prepared by the Development Authority change the number, size, location, configuration or use of educational spaces as set forth in the detailed plans and specifications required by N.J.A.C. 6A:26-5 submitted to the Department when a school facilities project was approved, the Development Authority shall submit the final plans and specifications to the Department for review and approval pursuant to N.J.A.C. 6A:26-5. For purposes of N.J.A.C. 6A:26-5.5, the detailed plans and specifications submitted by the Development Authority shall constitute final plans and specifications.
- (e) For all school facilities projects constructed by the Development Authority, or which the school district is constructing under delegation of the Development Authority pursuant to N.J.S.A. 18A:7G-13(a), the Development Authority shall notify the Department of any change order affecting the number, size, location, configuration or use of educational spaces and submit the change order to the Department for review and approval.
- (f) The Development Authority shall provide to the Division a copy of the final plans and specifications utilized when soliciting bids for a school facilities project and certify that no changes affecting educational adequacy were made between the detailed plans and specifications, and the final plans and specifications.
- (g) Upon completion of a school facilities project by the Development Authority, the school district shall submit to the Commissioner and the Development Authority a plan for school facility maintenance in accordance with N.J.A.C. 6A:26-20.

6A:26-3.10 Design and construction of ROD school facilities projects

- (a) The provisions of the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., and implementing rules are applicable to any school facilities project constructed by a school district.
- (b) Prior to UCC approval for construction of a school facilities project, a school district shall submit to the Division the final plans and specifications for final approval pursuant to N.J.A.C. 6A:26-5.4.
- (c) Upon completion of a school facilities project by a school district, the school district shall submit to the Commissioner a plan for school facility maintenance in accordance with N.J.A.C. 6A:26-20. All plans shall include a provision for a maintenance reserve fund. All maintenance reserve funds created in accordance with N.J.A.C. 6A:26-20 shall be funded annually with two-tenths of one- percent of the net replacement cost of the school facility, which shall be included in the annual budget of the school district. The monies in the maintenance reserve fund may be withdrawn at any time during the year to fund the maintenance mandated by N.J.A.C. 6A:26-20. The net replacement cost of the school facility shall equal the area cost allowance multiplied by the gross square footage of the building.

6A:26-3.11 Initiation of other capital projects

- (a) Other capital projects shall be reviewed by the Division based on the following criteria:
 - 1. Whether they are consistent with the school district's approved LRFP;
 - 2. The total amount of funds the school district intends to expend to complete the other capital project;
 - 3. The type of facility to be constructed; and
 - 4. Whether the facility, if it is to house students, conforms to educational adequacy requirements at N.J.A.C. 6A:26-5.2.
- (b) Other capital projects that require educational adequacy reviews are subject to the provisions of N.J.A.C. 6A:26-5. Land acquisition projects shall be reviewed pursuant to

N.J.A.C. 6A:26-7. Other capital projects shall conform to all other applicable statutes and regulations, including N.J.S.A. 18A:18A-1.1 et seq.

- (c) A school district may annually transfer by district board of education resolution an unbudgeted fund balance up to one percent of the school district's annual budget certified for taxes or \$50,000, whichever is higher, to capital outlay to fund other capital projects, except land acquisition projects, that received approval in accordance with (a) and (b) above. Once it exceeds the annual maximum-transfer amount, the school district shall receive approval for local funding for other capital projects as set forth below.

1. If the school district determines to issue school bonds to fund all or any part of the local funding, the school district shall proceed in accordance with (c)2 or 3 below, as applicable, and (c) 4 below. If the school district determines to fund the entire local funding through a means other than school bonds, it shall obtain approval of necessary line-items in the budget, obtain separate approval of the expenditure of local funds, and make withdrawals from capital reserve in accordance with N.J.A.C. 6A:23A-4.1. A school district also may fund the local funding for additions or improvements to an existing facility or equipment through a lease-purchase agreement not in excess of five years' duration if the school district obtains voter or board of school estimate approval of the lease-purchase agreement in accordance with N.J.S.A. 18A:20-4.2(f) and N.J.A.C. 6A:26-10.
2. Whenever the district board of education in a Type I or Type II school district having a board of school estimate shall determine it is necessary to sell school bonds to raise money for the local funding for an other capital project, it shall estimate by district board of education resolution the amount necessary to be raised for such other capital project(s), itemizing the estimate to make it readily understandable. The district board of education secretary shall certify to each member of the school district's board of school estimate a copy of the resolution.

The resolution shall include the amount needed to be raised by school bonds. If the board determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of the local funding to be raised through other funding sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.

3. Whenever the undertaking of an other capital project(s) to be funded by the proceeds of a school bonds issue is to be submitted to voters of a Type II school district at an annual or special school election for their approval, the district board of education shall frame and adopt the question(s) to be submitted so each other capital project is submitted as a separate question, or all or any of them are submitted as one question. The question shall state the other capital project(s) submitted, and the amounts to be raised for each other capital projects separately submitted or for each or all other capital projects jointly submitted, as the case may be. Any proposal for the purpose of land shall be sufficient to authorize its taking and condemning. If the district board of education determines to use a combination of school bonds and other funding sources, the question shall also include the portion of the local funding to be raised through other funding sources, listing separately each source and the amount from the source. Gifts, grants, other private sources, and municipal surplus shall also be listed but only for informational purposes of evidencing their portion of total costs and not for authorizing their use.
4. Whenever a State-operated school district shall determine it is necessary to sell school bonds to raise local funding for an other capital project, the school district shall estimate the amount necessary to be raised for the other capital project(s),

itemizing the estimate to make it readily understandable. The State school district superintendent shall certify to each member of the school district's capital project review board a copy of the resolution. The resolution shall include the amount needed to be raised by school bonds. The Capital Project Review Board shall review the project in accordance with the procedures in N.J.S.A. 18A:7A-46.2. If the school district determines to use a combination of school bonds and other funding sources, the resolution shall also include the portion of local funding to be raised through other funding sources, listing separately each source and amount from that source. Gifts, grants, and other private taxpayer sources, along with municipal surplus, shall also be listed but only for the informational purposes of evidencing their portion of total costs and not for authorizing their use.

5. If the school district issues school bonds for an other capital project under (c)2, 3, or 4 above, the resolution or question to the voters shall specifically state that the other capital project is not eligible for State support. In the case of a school facilities project for which a school district determines not to seek State support, the resolution or question shall state as follows: "The other capital project to be funded herein was potentially eligible for State support, in whole or in part, at a minimum amount of 40 percent for eligible components of the project. However, (add name of school district) determined not to seek State support for this other capital project." If a school district has not received approval of its LRFP, the school district shall submit a request to amend its LRFP to include the other capital project. Approval of the amendment shall be required prior to the review of the other capital project.

6A:26-3.12 Acquisition of land by school districts

- (a) Every acquisition of land, whether by purchase, condemnation, or by gift or grant, to be used as a school site shall comply with N.J.A.C. 6A:26-7 and receive approval thereunder.
- (b) School districts may seek to acquire land as part of a school facilities project or prior to approval of a school facilities project. If approval for land acquisition is sought prior to approval of a school facilities project and the school facilities project is subsequently approved, such school facilities project shall be deemed to have included the land acquisition.
- (c) Every land acquisition shall be approved by voters or the board of school estimate, unless otherwise provided in (c)1 through 3 below:
 - 1. If a school district intends to utilize school bonds to acquire the land prior to the approval of a school facilities project, the request for local-debt authorization shall state that the school bonds proceeds will be utilized to acquire land to be used for a school facilities project identified in the approved LRFP, and that the availability of State support for such a school facilities project will not be determined unless and until the school facilities project is submitted and approved as eligible for State support pursuant to EFCFA and this subchapter. School districts may also seek to acquire land as part of an other capital project or prior to its review and approval, if any.
 - 2. If a school district intends to utilize funds in its capital reserve account to fund an acquisition of land for a school facilities project in its approved LRFP, voter approval of the withdrawal from capital reserve is not required if the appropriation to the capital reserve account for the acquisition of land receives voter approval pursuant to N.J.A.C. 6A:23A-14.1.
 - 3. If a school district utilizes funds other than school bonds or funds from the capital reserve account to acquire the land, except for gifts, grants, other private sources, and

municipal surplus, the school district shall include as a line item in its annual school budget submitted to the voters the appropriation of funds for the land acquisition.

- i. An approved line-item appropriation for the acquisition of land in the annual budget certified for taxes shall not become part of the pre-budget-year net budget for purposes of calculating the spending-growth limitation of the subsequent year pursuant to N.J.S.A.18A:7F-1 et seq. Unused spending authority calculated pursuant to N.J.A.C. 6A:23A-10.3 that is created by such appropriation shall not be considered unused spending authority available to a district board of education in the next two budget years.

6A:26-3.13 Review, approval, and use of temporary facilities

- (a) As part of a school facilities project, a school district may propose providing temporary facilities pending the construction of a school facilities project either by the Development Authority or the school district. A school district may also propose providing temporary facilities not as part of a school facilities project and, therefore, to be locally funded as an other capital project. An approved private school for the disabled may also propose to provide temporary facilities, which are not part of a school facilities project and shall be reviewed as an other capital project.
- (b) All temporary facilities shall be approved by the Division pursuant to this section and, if housing students, pursuant to the educational adequacy requirements at N.J.A.C. 6A:26-5.4(c) and the temporary facility standards at N.J.A.C. 6A:26-8.
 1. If an SDA district seeks approval of a temporary facility and it is part of a school facilities project, and if approval is sought prior to the school facility project's approval, it shall submit to the Division a preconstruction application referencing the acquisition of a temporary facility (including related design work), pursuant to N.J.A.C. 6A:26-3.9.

- i. If the SDA district seeks approval of a temporary facility prior to approval of a school facilities project, the school district or the Development Authority on behalf of the school district, shall submit an application for approval of the temporary facility pursuant to this section. The Division shall then make a determination on the temporary facility, and notify both the school district and the Development Authority. When the SDA district later submits an application for the related school facilities project, the temporary facility submission shall be deemed to be included in the application. The preliminary eligible cost and final eligible cost determinations shall incorporate the eligible costs of the temporary facility.
- ii. If the SDA district seeks approval of a temporary facility at the time it seeks approval of a school facilities project, the school district, or the Development Authority on behalf of the school district, shall submit an application for approval of the temporary facilities pursuant to this section. The temporary facility cost estimate for the estimated actual costs of the temporary facility shall be included in the cost estimate for the school facilities project. The project and preliminary eligible cost, land, and educational adequacy determinations shall occur at the same time as its temporary facility determination pursuant to this section.
- iii. If the SDA district, or the Development Authority on behalf of the SDA district, seeks approval of a temporary facility after the time it seeks approval of a school facilities project, the cost estimate for estimated actual costs of the temporary facility shall be added to the cost estimate for the school facilities project, and the temporary facility determination shall occur after the project and preliminary eligible cost determinations are made by the Division.

2. If a ROD seeks approval of a temporary facility that is part of a school facilities project, the ROD shall engage an architect to undertake the design work required for the temporary facility to be approved as part of a school facilities project.
 - i. If the school district seeks approval of a temporary facility prior to approval of a school facilities project or at the time it seeks approval of a school facilities project, the school district shall submit an application for temporary facility approval, including a cost estimate for the temporary facility based on its estimated actual costs. A temporary facility approved prior to the approval of a school facilities project shall be funded locally. Once the project has been approved, the school district shall receive credit toward the local share of its final eligible costs, pursuant to N.J.A.C. 6A:26-3.8.
- (c) An application for a temporary facility, including in the case of an approved private school for the disabled, shall contain the following information:
1. If the temporary facility is to house students, all information set forth in N.J.A.C. 6A:26-5.4(c), relating to detailed plans and educational specifications, and all information demonstrating that the design of the facility complies with N.J.A.C. 6A:26-8, Temporary Facility Standards;
 2. All information to the extent applicable to temporary facilities in N.J.A.C. 6A:26-7.1 if the temporary facility includes the acquisition of land;
 3. If the temporary facility is part of a school facilities project and if intended to house students due to overcrowding, necessary updates to the enrollment projections in the school district's approved LRFP to support the temporary facility;
 4. The number of unhoused students, if any, to be housed in the temporary facility;
 5. A cost estimate for the temporary facility;
 6. A recommendation of the county superintendent of schools certifying the need for a temporary facility;

7. A resolution of the district board of education or the board of trustees of the approved private school for the disabled approving the application; and
 8. Where required by N.J.S.A. 40:55D-31 and 18A:18A-16, either proof that 45 or 55 days have passed, whichever time period is applicable, pursuant to N.J.A.C. 6A:26-3.2, from the planning board's receipt of the temporary facility application or the receipt of comments from the local planning board(s) on the temporary facility application, whichever is earlier. Such comments are to be sent to the Division, Office of School Facilities, PO Box 500, Trenton, New Jersey 08625-0500.
- (d) After the Division receives a completed temporary facility application, it shall make a determination on the temporary facility based on the following criteria:
1. Whether the temporary facility is consistent with the school district's approved LRFP;
 2. If intending a temporary facility to be part of a school facilities project and intending the temporary facility to house students due to overcrowding, whether the school district evidences through updates to its enrollment projections that the related school facility has a functional capacity of less than 90 percent of the facilities efficiency standards when the capacity is most efficiently utilized through scheduling and other means;
 3. If it is to house students, whether the facility conforms to educational-adequacy requirements at N.J.A.C. 6A:26-5.4(c);
 4. Whether the design of the facility demonstrates compliance with the temporary facility standards at N.J.A.C. 6A:26-8;
 5. If it includes land acquisition, whether the facility conforms to the applicable requirements at N.J.A.C. 6A:26-7.1;
 6. Whether the facility meets the facilities efficiency standards; and
 7. Whether the estimated actual cost of the temporary facility is reasonable.

- (e) If the temporary facility is intended to be funded as an other capital project, the school district shall conform to all other applicable statutes and regulations, including N.J.S.A. 18A:18A-1.1 et seq. and the local support provisions at N.J.A.C. 6A:26-3.11(c).
- (f) If a school district or an approved private school for the disabled houses public school students in a facility that was reviewed and approved as a substandard facility under the rules in effect prior to June 7, 2004, the facility shall not be required to be re-approved as a temporary facility under the rules in effect after June 7, 2004. Renewal of the facility's approval as a substandard facility shall be subject to standards for substandard facilities in effect prior to June 7, 2004.
- (g) A temporary facility may be approved by the Division for a term of two years, with three annual renewals if the school district, or the Development Authority on behalf of the school district, demonstrates satisfactory progress toward the provision of permanent facilities. No such approval shall remain in effect or be eligible for renewal unless the executive county superintendent determines in consultation with the Division and upon inspection of the temporary facility that:
 - 1. The temporary facility meets the educational-adequacy and temporary-facility standards as specified in this chapter;
 - 2. The school district or approved private school for the disabled demonstrates through the LRFP or other plan, in the case of the approved private school for the disabled, that students housed in the temporary facility will be housed in permanent school facilities; and
 - 3. The temporary facility meets N.J.A.C. 5:23 requirements for a certificate of occupancy for "E" (educational) group use.
- (h) When a school district receives State support pursuant to EFCFA for a school facilities project and temporary facilities are acquired by the school district to house students

pending completion of the school facilities project, the temporary facilities shall not be encumbered, sold or otherwise disposed of until the Division approves the action.

6A:26-3.14 Emergency stabilization

- (a) Emergency stabilization must qualify as an emergency pursuant to N.J.S.A. 18A:18A-7 and the rule promulgated pursuant thereto at N.J.A.C. 5:34-6.1. Emergency stabilization is not eligible for State support, and therefore the costs incurred by the school district in undertaking the emergency stabilization will not be eligible for reimbursement by the State in the event that it is determined that an emergent condition exists after undertaking such stabilization.
- (b) When a school district determines that an emergency exists pursuant to N.J.S.A. 18A:18A-7, it shall undertake emergency stabilization as follows:
 - 1. The school district shall, if possible, immediately undertake the actions necessary, including temporary repairs to alleviate the emergency;
 - 2. The school district shall conform to the Public Schools Contract Law and the applicable rule at N.J.A.C. 5:34-6.1 when undertaking such emergency stabilization; and
 - 3. The school district shall proceed as set forth in (d) or (e) below if, after undertaking emergency stabilization, it is necessary to undertake an emergent project.
- (c) Emergent projects can be either school facilities projects eligible for State support or other capital projects. Emergent projects that are school facilities projects shall proceed in accordance with (d) and (e) below. Emergent projects that are other capital projects shall proceed in accordance with (f) below. If a school district determines that an emergent condition exists after undertaking an emergency stabilization, the school district in applying for review and approval, if applicable, of the project shall submit evidence acceptable to the Division of the emergency stabilization costs.

- (d) Prior to the approval of a school district's LRFP, a school district may, on a form provided by the Commissioner, apply directly to the Commissioner for approval of a school facilities project when an emergent condition exists.
1. The Commissioner shall approve a school facilities project for an emergent condition only if, after an on-site inspection, the county superintendent of schools, in consultation with the Division, certifies that an emergent condition exists.
 2. If a school facilities project for an emergent condition is approved by the Commissioner, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The scope of work contained in the application shall be limited to action required to rectify the emergent condition.
 3. Notwithstanding the approval of a school facilities project for an emergent condition prior to approval of a school district's LRFP, pursuant to this section, preliminary eligible costs and final eligible costs for the school facilities project shall be determined consistent with this chapter.
- (e) After approval of a school district's LRFP, a school district may, on a form provided by the Department, apply directly to the Division for approval of a school facilities project when an emergent condition exists.
1. The Division shall approve a school facilities project for an emergent condition only after an on-site inspection, the county superintendent of schools, in consultation with the Division, certifies that an emergent condition exists.
 2. If the existence of the emergent condition has been certified pursuant to (e)1 above, the school facilities project application shall be forwarded to the Division for review, pursuant to N.J.A.C. 6A:26-3.3(a) through (o), on an expedited basis. The expedited basis shall include Division acceptance of school district submission of the school facilities project application or a predevelopment request in the case of

Authority managed projects, within 45 days of the date of such submission. If the emergent condition was not included in the school district's approved LRFP, the school district shall request an amendment to its LRFP as part of the project application and amend its LRFP within 45 days of such submission. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the school district's approved LRFP.

3. Preliminary eligible costs and final eligible costs for the school facilities project shall be determined consistent with this chapter.
- (f) If a school district determines that an emergent condition exists after undertaking an emergency stabilization, and the emergent project is an other capital project, the school district shall submit the information required by N.J.A.C. 6A:26-3.11, and the Division shall perform all required reviews on an expedited basis. The scope of work contained in the application shall be limited to those actions determined by the Division to be reasonable considering the emergent condition and the capital projects in the school district's approved LRFP.

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

- (a) School districts shall insure all insurable property, real or personal, in accordance with N.J.S.A. 18A:20-25.
- (b) Insurance proceeds and damages awards received by a school district shall be applied as follows: if the school district applies for approval of a school facilities project involving a facility for which there are insurance proceeds or a damages award, the insurance proceeds and/or damages award shall be applied to reduce the amount of State support as follows:

1. For locally constructed school facilities projects for which a school district elects to receive a State share pursuant to N.J.S.A. 18A:7G-15, the State share amount shall be reduced in the following manner:
 - i. Calculate the percentage of total project costs that would be funded by the State pursuant to N.J.A.C. 6A:26-3.8 if no insurance proceeds and/or damages award were received by the school district;
 - ii. Multiply the percentage by the amount of insurance proceeds and/or damages award to which the school district is entitled, minus any amount that would exceed the eligible costs of the project; and
 - iii. Reduce the State share by the amount determined in step ii.
2. For Development Authority-constructed school facilities projects with a local share, the local share shall be adjusted in the following manner:
 - i. Calculate the percentage of total costs that would be funded by local share if no insurance proceeds and/or damages award were received by the school district;
 - ii. Reduce the total costs by the amount of insurance proceeds and/or damages award to which the school district is entitled minus any amount that would exceed the eligible costs of the project;
 - iii. Multiply the local share percentage determined in (b)2i above by the amount determined in (b)2ii above; and
 - iv. Add the amount of insurance proceeds and/or damages award to the revised local share amount determined in (b)2iii above. The amount determined in this subparagraph shall be provided to the Development Authority before it undertakes a school facilities project.
3. For Development Authority-constructed school facilities projects without a local share, the State share shall be adjusted in the following manner:

- i. Reduce the State share by the amount of insurance proceeds and/or damages award to which the school district is entitled; and
 - ii. The amount determined in (b)3i above shall be provided to the Development Authority before it undertakes a school facilities project.
4. For locally constructed school facilities projects for which a school district elects to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9, the school district shall issue bonds only for the amount of the total projects costs minus the insurance proceeds and/or damages award.
 - i. If the bonds have already been issued, the insurance proceeds and/or damages award should be used to reduce the outstanding principal amount at the earliest call date or to annually reduce the amount of debt service payment. The calculation of State debt service aid shall be made from the reduced amount.
- (c) Gifts, grants, other private sources, and/or municipal surplus received by a school district shall be applied as follows: if the school district applies for approval of a school facilities project that will also receive funding through any of the above sources, such source of revenue shall be applied to the local share of the project, and may be applied to reduce the State support only if a Development Authority-constructed school facilities project does not have a local share, or for school facilities projects with a local share, the source of revenue exceeds the local share and, by its terms, may only be used for the school facilities project, in which case State share shall be reduced by the amount of the excess over local share.
 1. For locally constructed school facilities projects for which a school district elects to receive a State share pursuant to N.J.S.A. 18A:7G-15, and the revenue source exceeds the local share and, by its terms, may only be used for the school facilities project, such excess shall be applied to the State share of the project and reduce the amount of the grant before a disbursement is made.

2. For locally constructed school facilities projects for which a school district elects to receive State debt service aid pursuant to N.J.S.A. 18A:7G-9, the school district shall issue bonds only for the amount of the total project costs, minus the revenue source.
3. For Development Authority-constructed school facilities projects with a local share, the revenue source shall be applied toward the local share, and that amount shall be provided to the Development Authority before it undertakes the school facilities project, along with any amount in excess of the local share that by the terms of the revenue source must be used for the school facilities project, which shall be applied to reduce the amount of State share.
4. For Development–Authority-constructed school facilities projects without a local share, the revenue source shall be applied to reduce the amount of State share only if the terms of the revenue source require that it be used for the school facilities project, in which case that amount shall be provided to the Development Authority before it undertakes the school facilities project.

Subchapter 4. Management of Capital Projects

6A:26-4.1 Capital projects fund

- (a) All revenues and appropriations related to school facilities projects receiving funding pursuant to EFCFA and this chapter, and to other capital projects that utilize revenue sources identified in (b) below, shall be accounted for in the capital-projects fund defined in N.J.A.C. 6A:23A-1.2.
- (b) The source of revenue in the capital-projects fund includes the:
 1. Sale of school bonds;
 2. Issuance of temporary notes or loan bonds pursuant to N.J.S.A. 18A:24-3;
 3. Issuance of certificates of participation for a lease-purchase agreement greater than five years approved prior to EFCFA;

4. Grants received pursuant to N.J.S.A. 18A:7G-15; and
 5. All revenue sources identified in the referenda or resolution authorizing the issuance of school bonds pursuant to N.J.A.C. 6A:26-3.7 and 3.12.
- (c) The revenue source in the capital-projects fund also shall include capital-reserve withdrawals and other local revenues to fund the local share of a school facilities project not utilizing school bonds pursuant to N.J.A.C. 6A:26-3.7(c).
- (d) All revenue sources identified in the referenda or resolution pursuant to N.J.A.C. 6A:26-3.7 or 3.11 shall be transferred to the capital-projects fund upon voter, board of school estimate or capital project review board approval. The revenue sources shall be accounted for separately with, and accorded the same accounting treatment as, the corresponding school bonds.

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

- (a) The cost of a capital project covered by bond proceeds shall include costs associated with architects, lawyers, and construction managers even if not specifically stated in the referendum question approved by voters or in the resolution approved by the board of school estimate or capital project review board. A district board of education that budgeted and charged such costs to the general fund prior to the referendum has the option to reimburse the costs from the capital-projects fund after approval of the referendum or resolution.
- (b) Use of the capital-projects fund to account for bond proceeds and short-term notes shall be limited to the following:
1. Type I and Type II school districts with boards of school estimate shall be limited to the amount fixed by the board of school estimate pursuant to N.J.A.C. 6A:26-

3.7(e) for each capital project, or projects when jointly submitted, under N.J.S.A. 18A:22-19 and 30, and 18A:24-55.

2. Type II school districts without a board of school estimate shall be limited to the amount approved by voters for each capital project, or projects when jointly submitted, pursuant to N.J.S.A. 18A:22-39 and 18A:24-55.
 3. State-operated school districts shall be limited to the amount approved by the capital project review board.
 4. The local share of capital projects when jointly submitted in (b)1 or 2 above may be transferred among projects within an approved referendum as long as the school district adequately discloses in the referendum question that such transfers can be made and the district board of education can attest that all projects can be completed as approved, and no excess costs beyond those approved by voters shall be eligible for transfers.
 - i. If the ability to transfer was not disclosed in the referendum question, the Commissioner may approve the transfer upon the school district's written request of need and the district board of education's certification of its ability to complete all projects as approved and that no excess costs beyond those approved by voters shall be eligible for transfer.
- (c) Use by a district board of education of the capital projects fund to account for a lease-purchase agreement greater than five years is limited to the expenditures in the approved pre-EFCFA lease-purchase agreement greater than five years.
- (d) A district board of education shall not transfer capital-project cost overruns to general-fund current expense or capital outlay and shall not fund capital-project cost overruns by general-fund appropriations or surplus pursuant to N.J.S.A. 18A:22-8.2, unless such transfer is approved by the Commissioner to supplement proceeds from a school bond authorization or pre-EFCFA LPA agreement pursuant to N.J.S.A. 18A:22-8.2(c). After

consideration of alternative corrective actions, the Commissioner shall approve, according to N.J.A.C. 6A:26-4.4(a)5, the transfer only if it is in the best interests of both students and taxpayers.

- (e) Interest earned on investments in the capital-projects fund shall not be used to supplement the school-bond authorization, unless expressly authorized in the referendum or resolution pursuant to N.J.A.C. 6A:26-3.7, or expressly authorized in the pre-EFCFA LPA.

- 1. All transfers of interest shall be:

- i. Made by resolution to either the debt-service fund or the general fund at the discretion of the district board of education; and
 - ii. Completed annually and at the end of the project.

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

- (a) School districts shall use the capital-projects fund to account for an approved school facilities project where the school district elects to receive a grant pursuant to N.J.S.A. 18A:7G-15 and to fund the entire local share through a means other than school bonds or short-term notes.
- (b) Local share budgeted in capital outlay and/or withdrawn from capital reserve for a school facilities project not funded by school bonds or short-term notes shall be transferred to the capital-projects fund upon execution of the grant agreement with the Development Authority in accordance with N.J.A.C. 6A:26-3.8(a)3 and 9.1.
- (c) A district board of education may utilize by resolution general-fund surplus up to 20 percent above the awarded project cost in response to change orders allowed pursuant to N.J.A.C. 6A:26-4.9 and in accordance with N.J.A.C. 6A:26-4.4(b).

6A:26-4.4 Options where there are insufficient funds to complete a capital project

(a) A district board of education shall have the following options for referendum-authorized projects upon opening initial bids for the project, or at any other time when it is determined that there are not sufficient funds to complete the referendum-authorized project(s). The district board of education shall:

1. Reject all bids pursuant to N.J.S.A. 18A:18A-36 and re-advertise based on the same specifications, or on modified specifications that do not materially impact the nature and scope of the project and that have been approved by the Division pursuant to N.J.A.C. 6A:26-5;
2. If contracts were previously awarded, seek approval pursuant to N.J.A.C. 6A:26-4.9 for a change order for modifications to effect economies they would not materially impact the nature or scope of the project as approved by the Division and board of school estimate or voters, as applicable;
3. Seek approval of the board of school estimate or voters, as applicable, for additional funds to complete the project.
 - i. The sale of additional bonds, transfer of general-fund surplus, additional tax levy, capital reserve₂ and/or unexpended bond proceeds of a capital project authorization may be utilized upon voter or board-of-school-estimate approval according to procedures in N.J.A.C. 6A:26-4.6(b);
 - ii. Approval for the sale of additional bonds shall be by resolution or referendum in accordance with N.J.S.A. 18A:24-1 et seq.;
 - iii. Approval for the transfer of general-fund surplus, additional tax levy, and/or capital reserve to supplement an approved referendum may be through special appropriation in a Type I school district, separate question at a special election in a Type II school district without a board of school

estimate, or through the appropriate line-items and supporting documentation in the base budget at the annual election as follows:

- (1) Requests at the annual election through the appropriate line-items and supporting documentation in the base budget shall have a statement of purpose, as prescribed by the Commissioner, to be included in the advertised budget. Requests shall also be specifically discussed at the public hearing as documented in the district board of education minutes.
 - (2) Approved line-item appropriations in the annual budget certified for taxes for the requests in (a)3iii(1) above shall not become part of the pre-budget-year net budget for purposes of calculating the spending-growth limitation of the subsequent year pursuant to N.J.S.A. 18A:7F-1 et seq. Unused spending authority calculated pursuant to N.J.A.C. 6A:23A-10.3 that is created by such approvals shall not be considered unused spending authority available to a district board of education in the next two subsequent budget years;
4. Redefine/scale down the scope of the project and seek approval of the board of school estimate or voters, as applicable, to use the original proceeds for the redefined scope and/or new purpose. All such projects shall be resubmitted and the Division shall redetermine final eligible costs prior to seeking board-of-school-estimate or voter approval; or
5. Apply to the Commissioner for a transfer of general-fund surplus to the capital-projects fund to supplement the proceeds from a bond authorization or pre-EFCFA lease-purchase agreement greater than five years if determined and approved by the

Commissioner that a transfer is in the best interests of both students and taxpayers of the school district after consideration of alternative corrective actions.

- i. The school district application shall include a narrative on the need for the transfer and analysis of alternative corrective actions, including steps outlined in (a)1 through 4 above, a copy of the referendum question and detailed cost analysis of the capital project to support the need for the transfer request. The project cost analysis shall include, at a minimum, a comparison of the itemized budget as approved by the Division, including the determination of final eligible costs for a school facilities project; the itemized budget as approved by the voters, including pre-referendum and post-referendum costs; the itemized budget for the project upon bid award; and any change orders approved pursuant to these regulations or change orders pending approval.
- ii. The Commissioner's approval shall be based upon:
 - (1) A recommendation from the executive county superintendent that no further alternative corrective actions can be made after his or her review of the school district's application in consultation with the Division;
 - (2) The Division's recommendation that the capital project is within the facilities efficiency standards and necessary for educational adequacy after the Division's review of the school district's application. If the Division determines the project scope is beyond the facilities efficiency standards and the excess costs are greater than the transfer request, the Division shall take into consideration in its recommendation whether the excess costs are outside the control of the school district;
 - (3) School district certification that the transfer request is not due to contractor malfeasance subject to legal recourse. If the transfer request

is due to architect, engineer or contractor malfeasance, then the school district shall certify its intent to pursue all legal options. If the transfer request is approved by the Commissioner, any subsequent awards on the legal action shall be recorded as revenue in the general fund; and

(4) Other considerations as appropriate.

- iii. If the need for the transfer is due solely to inaccurate and/or insufficient project cost estimates, a district board of education may not request Commissioner approval for a transfer of general fund surplus without first seeking corrective action through board of school estimate or voter approval, as applicable, of additional funds and/or revised scope pursuant to (a)3 and/or 4 above.
- iv. The Commissioner shall not approve a transfer request if the district board of education did not include an adequate level of contingency at the time of contract award in accordance with N.J.A.C. 6A:26-4.8(c).
- v. If a capital project contains excess costs or is an other capital project, no transfer of general-fund surplus shall be approved by the Commissioner prior to a district board of education submission of the capital project for bids on at least two separate occasions.

(b) A district board of education shall have the following options for a school facilities project when the school district elects to receive a grant pursuant to N.J.S.A. 18A:76-15 and elects to fund the entire local share through a means other than school bonds if there are insufficient funds to complete the project upon opening initial project bids or any time thereafter. The district board of education shall:

- 1. Seek approval of the board of school estimate or voters, as applicable, for additional funds to complete the project. Sources that may be considered are:
 - i. The sale of bonds;

- ii. The transfer of general-fund surplus;
 - iii. A tax levy;
 - iv. Capital reserve; and/or
 - v. The unexpended proceeds of a capital-project authorization according to N.J.A.C. 6A:26-4.6(b); or
- 2. Transfer by district board of education resolution general-fund surplus in an amount not to exceed 20 percent of the school facilities project award price in response to change orders allowed pursuant to N.J.A.C. 6A:26-4.9; or
 - 3. Transfer from capital reserve pursuant to N.J.A.C. 6A:23A-14.1.

6A:26-4.5 Over-expending a capital project

- (a) Under the New Jersey Code of Criminal Justice, Title 2C of the New Jersey Statutes, it is a crime for a public official or employee to knowingly disburse, order, or vote for the disbursement of moneys or incur obligations in excess of appropriations or an amount limited by law. The Department shall notify the Office of Inspector General, and may notify the Director of the Division of Criminal Justice if an over-expenditure/deficit is detected in a capital project.
- (b) A district board of education over-expending the capital-projects fund also shall be subject to a reduction in its State aid and other actions pursuant to N.J.A.C. 6A:23A-16.10 and 6A:26-14.1, if applicable.

6A:26-4.6 Unexpended bond proceeds

- (a) A capital project shall be considered completed for the purposes of determining unexpended bond proceeds under this section when:
 - 1. The project has received its certificate of completion from the contractor;
 - 2. All retainage has been liquidated; and

3. A permanent certificate of occupancy has been received, if applicable.
- (b) Any school bonds proceeds that remain unspent upon completion of the capital project shall be disposed of by the school district in accordance with N.J.S.A. 18A:24-47 et seq. if issued by the school district for a school facilities project prior to July 18, 2000, and where the school district received no funding pursuant to EFCFA except for funding received pursuant to N.J.A.C. 6A:26-13.1(b), or issued for an other capital project.
1. Unexpended balances may remain in the capital projects fund for six years after the time of issuance or sale of bonds pursuant to N.J.S.A. 18A:24-48 and 51.
 2. Within six years of issuance or sale, if a new purpose(s) for the unexpended balances is determined, the board of school estimate, capital project review board, or voters may approve the change in purpose by resolution or ballot question pursuant to N.J.S.A. 18A:24-48 through 52.
 - i. The resolution or ballot question for the new purpose shall receive Commissioner approval pursuant to N.J.S.A. 18A:24-49 through 52 if the bonds mature beyond the period prescribed for the new purpose(s) by N.J.S.A. 18A:24-5.
 3. If no new purpose for the unexpended balances is determined within the six years from issuance or sale, the district board of education shall transfer by resolution the funds to either the general fund or debt-service fund.
 - i. To establish there is no new purpose, the school district's budgeted appropriations and actual expenditures for the transfer year may not reflect capital outlay spending.
 4. After six years from issuance or sale, unexpended balances shall be transferred by resolution to either the general fund or the debt-service fund.
- (c) Proceeds of school bonds issued by the school district or other revenue sources transferred to the capital-projects fund, pursuant to N.J.A.C. 6A:26-4.1, for the purpose

of funding all or part of the costs of ROD school facilities projects that remain unspent upon completion of the school facilities projects and/or other capital projects whose funding was authorized by the bonds shall be used by the school district to reduce the outstanding principal amount at the earliest call date or to annually reduce the debt service principal payments. The provision shall apply if any school facilities project funded by the school bonds receives the State share of eligible costs.

1. If the unexpended proceeds are used annually to make debt-service-principal payments, the proceeds shall remain in the capital projects fund and be appropriated in each subsequent year's budget certified for taxes to reduce in full each year the debt-service-principal payment until the proceeds are exhausted.
2. Use of unexpended bond proceeds to make principal payments shall be used in the determination of State debt service aid pursuant to N.J.A.C. 6A:26-3.8, if applicable.

6A:26-4.7 Oversight of ROD constructed school facilities projects

- (a) Every district board of education shall be subject to the following for every approved school facilities project receiving State support under this chapter:
 1. To provide the Commissioner assurance that the contracting process for design and construction contracts for school facilities projects conforms to all requirements of Title 18A of the New Jersey Statutes and all other applicable laws and rules, the school district shall, in a separate certification for each contract awarded for a school facilities project pursuant to (a)3 below, certify that the school district has followed the provisions of law related to:
 - i. Authorization to prepare plans and specifications;
 - ii. Preparation and contents of bid specifications;
 - iii. Approval of plans and specifications;
 - iv. Advertising for bids;

- v. Review and evaluation of proposals; and
 - vi. Award and execution of contracts.
2. The design and construction contracting process, contract administration and the payment of claims, and change orders for school facilities projects shall be subject to audit by the Commissioner.
 3. Upon the award of each design or construction contract, the school district shall submit a Commissioner-provided form certifying that the procurement process conformed to all requirements of statute and rules, including, but not limited to, the matters covered in (a) above, and that all contracts procured for the school facilities project conformed to Title 18A of the New Jersey Statutes and all other applicable laws. The form shall be certified by the school business administrator and approved by resolution of the district board of education.
 4. The school district shall maintain a project file that shall include, but not be limited to, the following:
 - i. All documents related to the project-approval process, including project siting; land acquisition; real estate (deeds, leases, title report including searches for easements, mortgages, judgments, liens, unpaid taxes, water and sewer, property description by metes and bounds); surveys; district board of education resolutions; referendum ballot questions or municipal debt ordinances; and all public notices pursuant to the Open Public Meetings Act;
 - ii. All documents related to the financing of the project including:
 - (1) Selection and payment of professionals, such as bond counsel and other attorneys; underwriters; financial and investment advisors; trustees; official printers; and bond insurers;
 - (2) Structuring of the financing, such as the method(s) of borrowing considered, complete financing estimates and cash flows, all

- number runs, including escrow sufficiency, if applicable, and yield calculations; the rationale for the plan of financing (resulting in the issuance of obligations under terms most advantageous to the school district) long-range plans or models, computerized models, private uses, and costs of issuance; and
- (3) Issues of debt, such as general, series, and supplemental bond resolutions; trust indentures; trust agreement; preliminary official statement; all disclosure materials; Official Notice of Sale or Purchase Contract; arbitrage certificate; tax regulatory agreement; IRS Form 8083, as appropriate; Disclosure Agreement; and TEFRA Notice, if applicable;
- iii. All documents related to the bidding process, evaluation of bids, award and execution of contracts, the specifications, request for proposal or other invitations to bidders; advertisements or public notices of the bid opportunity; logs of the bids received and the bids opened; bid evaluation worksheets; notices of contract award; and the executed construction contract documents;
- iv. All documents related to the construction of school facilities, including documents required by the construction contract documents to be kept; specifications; change orders; alternate submissions; approvals or rejections; unit prices; product data; time of performance schedules; construction photographs; quality control management reports; value engineering information; up-to-date project accounting system; intermediate and final audits; “as built” or other drawings documenting the actual facilities built and fixtures installed; close-out documentation on forms provided by the Department; related correspondence; vouchers; and certifications;

- v. All payroll certifications filed with the school district by all contractors and subcontractors; and
 - vi. All documents a school district is legally required to make, maintain, or keep on file as part of a construction project.
- (b) The documents in (a) above shall be maintained in a readily accessible place for review and inspection by the Department, the Development Authority, the Department of Community Affairs, and the Office of Government Integrity for the duration of the school facilities project and three years thereafter, or until completion of all litigation concerning any aspect of the school facilities project, if any. Destruction of the documents shall be consistent with the record retention schedule adopted pursuant to N.J.S.A. 47:3-15 et seq.
- 1. A standardized voucher form, where provided to school districts by the Department, shall be fully executed by contractors, delivered to the school district prior to a school district providing any payment to a contractor and maintained by the school district in the project file. Prior to the school district providing any payment, the voucher form shall be countersigned, where indicated, by the school district.
 - 2. School district shall include standardized contract provisions, where provided by the Department, in all contracts for the design and construction of a school facilities project.
 - 3. All contractors, and subcontractors in the four areas listed in N.J.S.A. 18A:18A-18, utilized by school districts to construct school facilities projects shall be pre-qualified pursuant to the Development Authority pre-qualification process.
 - 4. Upon completion of a school facilities project that received State share in the form of a grant pursuant to N.J.S.A. 18A:7G-15 or N.J.S.A. 18A:7G-13(a), the school district shall submit to the Division a copy of the documents required for the final completion disbursement: the certification by the school business administrator and the design consultant certification upon final completion. Upon completion of a

school facilities project for which State support is in the form of debt-service aid pursuant to N.J.S.A. 18A:7G-9 or 10, the school district shall submit, on a form to be provided by the Commissioner, a certification of the school business administrator, which shall be approved by resolution of the district board of education, certifying that the school facilities project was constructed consistent with the approved plans and specifications for the school facilities project and all approvals provided by the Commissioner pursuant to EFCFA.

- (c) School districts are encouraged to report to the Division of Wage and Hour Compliance, Department of Labor, on the failure to receive from contractors and subcontractors certified payroll records, required pursuant to the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq. School districts receiving certified payroll records with suspected inaccuracies or receiving other indications of noncompliance with the New Jersey Prevailing Wage Act are also encouraged to report to the Division of Wage and Hour Compliance, Department of Labor, and, as well, to take other steps such as verifying the accuracy of these certified payroll records by comparing them against other payroll-related records and gathering site inspection information from construction managers on a spot check basis.

6A:26-4.8 Bidding and awarding of contracts for ROD capital projects

- (a) Bids shall be advertised and received, and contracts awarded only after final approval of plans and specifications from the Department of Community Affairs, Division of Codes and Standards or the local enforcing agency if it performs the UCC review. Bids may be advertised but contracts shall not be awarded before the school facilities project or other capital project has received approval from the Division for final educational adequacy, pursuant to N.J.A.C. 6A:26-5.4, if applicable. If the school facilities project is not subject to either final educational adequacy review or UCC review, bids shall be advertised and

received, and contracts awarded only after final eligible costs have been determined pursuant to N.J.A.C. 6A:26-3.6.

- (b) In accordance with N.J.S.A. 18A:18A-36, school districts shall award contracts within 60 days of receipt of bids, and may apply to the municipal construction enforcing official for the required building permits.
- (c) At the time of contract award, school districts shall encumber a contingency in an amount equal to no less than five percent of the total costs of construction of a capital project, against which change orders may be approved in accordance with N.J.A.C. 6A:26-4.9. However, school districts shall not encumber an amount that would result in the total contract award plus any contingency totaling more than the approved referenda amount if the capital project is funded wholly or in part by bond proceeds.
- (d) School districts shall award one or more contracts for the entire approved scope of the capital project, unless there is prior Division approval in accordance with the following:
 - 1. The bid documents include one or more bid alternates that the school district may opt not to award, provided there is no impact on the educational adequacy or the total costs of a capital project; or
 - 2. The school district demonstrates to the Division that extraordinary circumstances require an award of the entire approved project scope in separate phases, and the school district has demonstrated that adequate funds are available to complete the entire approved project scope.

6A:26-4.9 Submission of change orders for ROD projects

- (a) Contract change orders for capital projects shall be governed by the following:
 - 1. Change orders may be approved by district boards of education for no more than the approved referendum amount for a capital project funded in whole or in part by bond proceeds, when necessitated by one of the following:

- i. Emergencies consistent with N.J.S.A. 18A:18A-7;
 - ii. Unforeseeable physical conditions; or
 - iii. Minor modifications to project scope that achieve cost savings, improve service or resolve construction conditions.
2. Upon its determination that an extraordinary circumstance exists, the Division shall approve all other change orders, including, but not limited to, the following:
 - i. Change orders that increase in the aggregate by more than 20 percent the original-award amount of each contract or of the entire project but for no more than the approved referendum, including changes funded by project contingency in N.J.A.C. 6A:26-4.8(c);
 - ii. Change orders that eliminate or affect the project scope that was the basis of the Division's determination of the final eligible costs of a school facilities project pursuant to N.J.A.C. 6A:26-3.6; or
 - iii. Change orders that affect the number, size, configuration, location or use of educational spaces.
3. Before the school district or Division may authorize a change order that increases the contract amount, the availability of funds shall be certified by the board secretary, on a form prescribed by the Commissioner that indicates:
 - i. The original contract amount and funds allocated to each contract in the overall project;
 - ii. All payments made to date;
 - iii. All change orders approved and pending to date;
 - iv. The percentage of the project that is completed, and the percentage of the contract cost remaining; and
 - v. The funds available to complete the project, including all change orders that were executed or are pending.

4. For change orders that must be approved by the Division pursuant to (a)2 above, the school district shall file with the Division the following:
 - i. Two copies of the change-order request indicating in detail the scope of the change order and the basis upon which the proposed change order may be approved pursuant to this subchapter;
 - ii. A certification of the availability of funds per (a)3 above; and
 - iii. A certification that no other solution is possible when a proposed change order affects the final eligible costs of a school facilities project, and that no excess scopes are proposed for inclusion in the project in lieu of the final eligible costs.
- (b) Upon receipt of all materials required in (a) above, the Division shall promptly undertake its review and determine whether a proposed change order is necessary. If approved, a copy of the change order request marked "Approved" by the Division shall be sent to the school district.
- (c) When the aggregate value of change orders undertaken pursuant to (a)1 above exceeds 20 percent of the total contract-award amount or the total project cost, necessitating Division approval pursuant to (a)2iii above, the school district shall submit on a form prescribed by the Commissioner and certified by the district board of education secretary a summary of each change order approved, the justification for each change order, and the change in the contract amount.

6A:26-4.10 Change orders for Development Authority school facilities projects

- (a) For projects constructed by the Development Authority, only change orders that affect the approved number, size, configuration, location₂ or use of educational space shall be submitted to the Division for review and approval.
- (b) The Development Authority shall submit to the Division periodic reports on each project being constructed under its auspices, indicating the contract-award amounts, the nature

and scope of each approved change order, the revised project amounts, and the total costs of change orders approved to date.

Subchapter 5. Review of Capital Projects for Educational Adequacy

6A:26-5.1 General provisions

- (a) All capital projects that affect any of the following criteria for educational adequacy shall be reviewed and approved by the Division according to this subchapter. The criteria are the number, configuration, size, location, or use of educational spaces within a school facility. The review for educational adequacy shall take into consideration the suitability of the number, configuration, size, location, and use of educational spaces; built-in furniture and equipment; and provisions for the disabled. Capital projects that involve the following types of building construction work shall be approved for educational adequacy:
 - 1. New school facilities including pre-fabricated facilities;
 - 2. Additions to existing school facilities;
 - 3. Alterations to the total number, dimension in volume and/or area, configuration or location of educational spaces or the number of any one kind of educational space; and
 - 4. Installation of temporary facilities.
- (b) Both Development Authority and ROD school facilities projects, along with other capital projects, shall be subject to educational adequacy reviews. The review process and types of documents subject to review will differ somewhat depending on whether the project is a school facilities project or other capital project, and, if a school facilities project, on whether it is a Development Authority project or a ROD project.
 - 1. For a Development Authority school facilities project, the Development Authority on behalf of the school district shall apply for the review and approval for educational adequacy in conjunction with the application for approval of a school

facilities project pursuant to N.J.A.C. 6A:26-3. The application shall be made prior to the review and approval of capital projects for compliance with the UCC, N.J.A.C. 5:23, by the Division of Codes and Standards in the Department of Community Affairs, and prior to local share authorization. The educational-adequacy review shall cover the following types of project documents: educational specifications; schematic plans and related documents; detailed plans and specifications; and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the Development Authority on behalf of the school district at the time of project application. Detailed and final plans and specifications shall be forwarded to the Division by the Development Authority after project approval but prior to the Division determination of final eligible costs and Department of Community Affairs review for UCC compliance.

2. For a ROD school facilities project, school districts shall apply for the review and approval for education adequacy in conjunction with the application for approval of a school facilities project. The educational-adequacy review shall cover the following types of documents: educational specifications, schematic plans and related documents, and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the school district at the time of project application. Final plans and specifications shall be submitted by the school district after project approval but prior to the UCC-compliance review.
3. For an other capital project, school districts shall apply for the review and approval for educational adequacy in conjunction with the application for the Division review for consistency with the school district's approved LRFP. The educational adequacy review shall cover educational specifications, schematic plans and related

documents, and final plans and specifications. The educational specifications, schematic plans, and related documents shall be submitted by the school district at the time the project is reviewed for consistency with the school district's approved LRFP. Final plans and specifications shall be submitted by the school district after the consistency review but prior to the UCC-compliance review.

- (c) The executive county superintendent shall approve any change of use of instructional space that is not a capital project.

6A:26-5.2 Educational specifications

- (a) Submissions of educational specifications for educational_adequacy reviews shall include the following:
 - 1. Details of the educational program activities and requirements for each space proposed in the capital project, and shall refer to the New Jersey Student Learning Standards wherever appropriate;
 - 2. An itemized list of furniture, equipment, and support spaces required to conduct the educational program specified for each space, together with their net areas in square feet, as well as the net of the total room area required for each space;
 - 3. Specific technical and environmental criteria, adjacencies, and other requirements for the educational program; and
 - 4. A building-space program that indicates the number and net area in square feet of each instructional, specialized instructional, administrative, and support space in each existing or proposed building included in the capital project and/or the temporary facility.

6A:26-5.3 Schematic plans and other related project documents

- (a) Submission of schematic plans for educational adequacy reviews shall include the following:

1. Four sets of schematic plans showing the entire existing and proposed building drawn to a scale of not less than 1/16 inch per foot. The approved use of each space, the proposed number of occupants, and the net square feet area, shall be clearly labeled on all existing and proposed spaces;
 2. Layouts of the built-in and moveable furniture and equipment for examples of all occupied spaces drawn to a scale of not less than 1/8 inch per foot;
 3. Information required to demonstrate compliance with the Facility Planning Standards at N.J.A.C. 6A:26-6, including dimensions, clearances, ceiling heights, and required equipment;
 4. Paths of travel for disabled persons;
 5. A completed plot plan when site work is required, including the intended location of the school and a layout of the locations of all other structures, multi-purpose physical education fields, playgrounds, walkways, roadways, access roads, buffer and set back zones, parking areas, deed restrictions, easements, protective covenants, right of ways, and environmentally sensitive areas. If the land for the site is being acquired, an application also shall be submitted for approval under N.J.A.C. 6A:26-7.1; and
 6. The signature and seal of a New Jersey licensed architect or professional engineer if there is an architect or engineer engaged for the project and signatures of the president of the district board of education and chief school administrator. In the case of Development Authority school facilities projects, schematic plans shall also be signed by the Development Authority, pursuant to N.J.S.A. 59:4-6.
- (b) Other project documents to be submitted with the schematic plans shall include:
1. A project cost estimate on a form provided by the Commissioner;
 2. A project schedule;

3. A copy of the dated transmittal letter to the executive county superintendent indicating project document submission to the Division; and
4. A copy of the transmittal letter indicating the date of plan submission to the local planning board, where required by N.J.S.A. 40:55D-31 and 18A:18A-16, including, but not limited to, whenever the project consists of a new building, the conversion of an existing building to school use, or the building footprint, volume, pedestrian or vehicular access are altered by the project.

6A:26-5.4 Detailed plans and specifications and final plans and specifications

- (a) In the case of a Development Authority school facilities project, the Development Authority on behalf of the school district shall apply upon completion of detailed plans and specifications for final approval of the project's educational adequacy. Detailed plans and specifications shall be considered adequate for calculations of final eligible costs if the plans and specifications are at least 60 percent complete. Final approval of the educational adequacy of the project shall occur prior to the calculation of the final eligible costs of the school facilities project, pursuant to N.J.A.C. 6A:26-3.5. The application for final approval shall include:
 1. Four individually packaged sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey licensed architect or professional engineer and signed by the president of the district board of education, chief school administrator, and the Development Authority, and specifications to sufficiently demonstrate the school facilities project conforms to schematic plans approved by the Division. To demonstrate such conformance, the submission shall include architectural floor plans, an architectural site plan, as applicable, and architectural drawings that will allow verification of ceiling heights and other applicable standards in N.J.A.C. 6A:26-6.3. If the Division determines the

documents are not sufficient to demonstrate conformity with the schematic plans, it may request additional drawings and/or technical specifications;

2. The fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5; and
3. In the event there is a change affecting the number, configuration, size, location, or use of educational spaces as set forth in the detailed plans and specifications submitted to the Department, the Development Authority shall submit to the Division the application with two sets of final plans and specifications, as set forth in (b)1 below. No additional fee shall be imposed.

(b) In the case of a ROD school facilities project or an other capital project, the school district shall apply upon the completion of final plans and specifications for final approval of the educational adequacy of the project. The application shall include:

1. Four individually packaged sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey licensed architect or professional engineer and signed by the president of the local district board of education and chief school administrator, and specifications to sufficiently demonstrate the capital project conforms to schematic plans approved by the Division as described in (a)1 above;
2. A properly executed copy of a “Request for Local Release of School Construction Plans” for a school district that chooses to have a municipal code enforcing agency review its plans for UCC conformance. The review shall include the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for application for a construction permit or for plan review, as appropriate. The school district’s chief school administrator and municipal code enforcing agency chief shall sign the form, which may be obtained from the Division; and
3. A check payable to the “Treasurer, State of New Jersey” for the fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5.

(c) In the case of a temporary facility, the school district, or the Development Authority on behalf of the school district for Development Authority school facilities projects, shall apply upon the completion of detailed plans and educational specifications for approval of the temporary facility's adequacy. Detailed plans and educational specifications shall be considered adequate for calculations of eligible costs if the plans and educational specifications are at least 60 percent complete unless otherwise provided in (c)9 below. The application shall include:

1. Four sets of detailed plans, drawn to a scale of not less than 1/8 inch per foot, signed and sealed by a New Jersey registered architect or licensed engineer and signed by the president of the district board of education and chief school administrator, as well as the Development Authority in the case of a temporary facility that is part of an Development Authority school facilities project, and educational specifications to sufficiently demonstrate the educational adequacy of the temporary facility and compliance with the temporary-facility standards at N.J.A.C. 6A:26-8;
2. A completed plot plan whenever site work is required for the temporary facility. On it shall be shown the intended location of the temporary facility and a layout of all other structures, play and recreation areas, athletic fields, walkways, roadways, access roads, buffer and set-back zones, and parking areas. It also clearly shall indicate the impact that placement of the temporary facility will have on the site of the permanent school facility;
3. A copy of the dated transmittal letter to the executive county superintendent indicating plan submission to the Division;
4. A copy of the transmittal letter indicating the date of plan submission to the local planning board, whenever required by N.J.S.A. 40:55D-31 and 18A:18A-16;

5. A temporary-facility schedule addressing the relationship to the school facilities project schedule, in the event that the temporary facility is part of a school facilities project;
6. The fee calculated according to the fee schedule pursuant to N.J.A.C. 6A:26-5.5. If the temporary facility is not part of a Development Authority school facilities project, payment shall be in the form of a check, payable to the “Treasurer, State of New Jersey”;
 - i. If the fee for the temporary facility is submitted to the Division prior to the submission of the fee for the final educational-adequacy review for the school facilities project, the amount paid for the temporary facility will be credited toward the fee for the school facilities project;
7. If the temporary facility is not part of a Development Authority school facilities project, a properly executed copy of a Request for Local Release of School Construction Plans for a school district that chooses to have a municipal code enforcing agency review its plans for conformance with the UCC. Such review shall require the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for application for a construction permit or for plan review, as appropriate. The school district’s chief school administrator and municipal code enforcing agency chief shall sign the form, which may be obtained from the Division; and
8. If the temporary facility was previously used for school purposes and a certificate of occupancy for Group E is in effect and no change of use is required, a floor plan with proposed occupancy in lieu of signed and sealed plans shall be submitted to the Division to meet the requirements of this section.

6A:26-5.5 Fee schedule

- (a) The Division shall collect fees for its reviews of detailed/final plans and specifications for educational adequacy in the case of Development Authority school facilities projects and

for its reviews of final plans and specifications for educational adequacy in ROD school facilities projects and other capital projects according to the following schedule:

Table 1 Educational Adequacy Project Review Fee Schedule

Construction Cost Estimate (CCE)	Educational Adequacy Project Review Fee
Up to \$1,000,000	0.5 percent of the CCE
\$1,000,001 to 10,000,000	\$5,000 plus 0.25 percent of the amount over \$1,000,000
Over \$10,000,000	\$27,500 plus 0.1 percent of the amount over \$10,000,000

- (b) For purposes of the table in (a) above, the construction cost estimate shall be as set forth in the final eligible cost of a school facilities project or in the cost estimate submitted for an other capital project.
- (c) The Division shall calculate the final educational-adequacy review fee for a school facilities project when it reviews and approves the school facilities project application pursuant to N.J.A.C. 6A:26-3.3 or reviews an other capital project application pursuant to N.J.A.C. 6A:26-3.12. If the Division approves an award of the project scope in separate phases, pursuant to N.J.A.C. 6A:26-4.8(d), the entire final educational-adequacy review fee shall be remitted to the Division when it reviews the first phase of the school facilities project or other capital project requiring final approval of its educational adequacy, pursuant to N.J.A.C. 6A:26-5.4.

6A:26-5.6 Capital projects not subject to educational-adequacy review

- (a) For a Development Authority school facilities project not subject to educational-adequacy review, the Division shall issue a preliminary project report and shall forward to the Department of Community Affairs for review the report along with drawings or narrative sufficient to delineate the scope of work, so the Department of Community

Affairs may review construction documents for UCC conformance. The review shall require the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for application for a construction permit or for plan review, as appropriate.

- (b) For a ROD school facilities project or other capital project not subject to educational-adequacy review, the Division shall make a determination of the project's final eligible costs and shall forward to the Department of Community Affairs for review the determination along with drawings or narrative sufficient to delineate the scope of work, so the Department of Community Affairs may review construction documents for UCC conformance. The review shall include the documentation required by the UCC, N.J.A.C. 5:23-2.15, for the requirements for a construction-permit or plan-review application, as appropriate. If the school district has submitted to the Division a properly executed copy of a "Request for Local Release of School Construction Plans," pursuant to N.J.A.C. 6A:26-5.4(b)2, the Division shall forward the release form to the Department of Community Affairs for its action.

Subchapter 6. Planning and Construction Standards for School Facilities

6A:26-6.1 Application of the Uniform Construction Code

- (a) All school construction shall be done in accordance with the UCC, as administered and enforced by the Department of Community Affairs, and with this subchapter.
- (b) The UCC enhancements, enumerated at N.J.A.C. 5:23-3.11A(c), shall be required of all capital projects at public schools, and shall be administered and enforced by the Department of Community Affairs. Charter schools shall be required to comply with the UCC enhancements where the health and safety of the building occupants are affected.
- (c) The educational facility planning standards, at N.J.A.C. 6A:26-6.3 and 6.4, shall be administered by the Department and cooperatively enforced by the Department and by the Department of Community Affairs. Pursuant to N.J.S.A. 18A:36A-10, charter schools

shall not be required to comply with the educational-facility planning standards except where the health and safety of the building occupants are affected.

- (d) Among the standards incorporated by reference into the educational facility planning standards, and administered and enforced according to (c) above, is the Barrier Free Subcode of the UCC, at N.J.A.C. 5:23-7.

6A:26-6.2 Exceptions

- (a) No exceptions from the requirements of this subchapter shall be made, except upon the following findings:
 - 1. That strict compliance with any specific requirement would result in practical difficulty to the school district; and
 - 2. That the exception, if granted, will not jeopardize the health, safety and welfare of occupants or intended occupants and the public generally.
- (b) An application for an exception pursuant to this section shall be filed in writing with the Assistant Commissioner of the Division of Administration and Finance, and shall provide statements of the following:
 - 1. The subchapter requirements from which an exception is sought;
 - 2. The manner by which strict compliance with said provisions would result in practical difficulties;
 - 3. The nature and extent of the practical difficulties; and
 - 4. Feasible alternatives to the subchapter's requirements that would adequately protect the health, safety, and welfare of the occupants, intended occupants and the general public.
- (c) The Division shall review the application, and shall deny or grant it within 90 days by written order stating the reasons therefor.

6A:26-6.3 Educational facility planning standards

- (a) The educational facility planning standards delineated in (b) through (h) below, in conjunction with the UCC, shall form the requirements for the design and construction of public schools. Specific standards for school facilities housing preschool students are set forth at N.J.A.C. 6A:26-6.4.
- (b) General design and construction requirements shall be as follows:
1. School facilities shall afford space for general instruction, specialized instruction, administration, and student services, the adequacy of which shall be pursuant to the requirements of this section. In addition, school facilities shall afford accommodations for approved vocational and special education programs;
 2. Instructional rooms with windows shall have no exterior obstructing wall within 20 feet of the major window wall;
 3. Inner courts shall have a minimum width of 20 feet;
 4. Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;
 5. Power tools and machines in shops that generate dust shall be provided with dust-collecting equipment. The equipment shall be either single- or multi-use vacuum packs or a central dust-collection system. Installed systems shall comply with National Fire Protection Association (NFPA) Standard 664 "Standards for the Prevention of Fire and Explosion in Wood Processing and Woodworking Facilities" (1998), incorporated herein by reference, as amended and supplemented, and N.J.A.C. 7:27-8. Copies of the NFPA Standard 664 may be obtained by contacting NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.
 6. The ceiling height of an academic classroom or other instructional space containing more than 300 square feet in area shall average nine feet six inches, and no part of the ceiling or other obstruction shall be lower than eight feet. Instructional spaces of

less than 300 square feet and areas of larger spaces devoted to clothing alcoves, storage or work space shall have a minimum ceiling height of eight feet;

7. Height of the ceiling or other obstruction in other areas shall provide a minimum clearance as listed below:

Gymnasium	22 feet
Auxiliary gymnasium	14 feet
Weight room	12 feet
Music room (vocal or instrumental)	12 feet

The minimum height from overall highest riser to ceiling shall be eight feet.

Cafetorium	18 feet
Cafeteria	12 feet
Industrial arts and vocational shop	12 feet
Library/media center	9½ feet

8. Public school corridors and all other administrative spaces shall have a minimum ceiling height of eight feet;
9. A health unit shall be provided and shall include a nurse's area, a waiting area, an examination area, a rest area with privacy, drinking water, and toilet facilities sized and arranged so physically disabled persons requiring assistance will be able to receive aid;
10. Instructional greenhouses shall meet the following standards in addition to the requirements of the UCC and the Fire Prevention Code:
- All doors shall be a minimum of three feet wide;
 - Drinking fountains shall not be located inside greenhouses; and
 - Greenhouses may be either attached to a school building or located at least 20 feet from the school building.

11. Wherever chemicals are stored or used, an eyewash fountain or similar device capable of providing a 15-minute continuous water flow shall be provided.
Eyewash devices shall also be provided per N.J.A.C. 6A:26-12.5;
 12. The minimum dimension of an instructional space or specialized instructional space shall be 10 feet; and
 13. The designs of new schools shall incorporate the guidelines developed by the United States Green Building Council known as Leadership in Energy and Environmental Design (LEED), “LEED for Schools,” which is incorporated by reference herein, to achieve maximum energy efficiency and environmental sustainability in the design of schools. A copy of the guidelines may be obtained from the Office of School Facilities, PO Box 500, Trenton, NJ 08625-0500.
- (c) Entrance and exit requirements shall be as follows:
1. Pick-up and drop-off areas shall be designed to provide safe entrances and egress for students and adults;
 2. There shall be clearly marked walkways from drop-off areas into school facilities, and entrances to the school facility shall be clearly marked;
 3. Minimum clear widths for egress corridors serving more than 100 students in pre-kindergarten and elementary schools (kindergarten through fifth grade) shall be:
 - i. Seven feet, wall to wall without lockers or wardrobes;
 - ii. Eight feet, wall to locker face with lockers or wardrobes on one side; and
 - iii. Nine feet six inches, locker face to locker face with lockers or wardrobes on both sides.
 4. Minimum clear widths at any point in middle and high schools, grades six through 12, shall be:
 - i. Seven feet six inches, wall to wall without lockers;
 - ii. Eight feet six inches, wall to locker face with lockers or wardrobes on one side; and

- iii. Ten feet, locker face to locker face with lockers or wardrobes on both sides.
 - 5. Minimum clear widths for secondary egress corridors serving 100 or fewer occupants shall be five feet.
 - 6. Doors from all spaces used by students and school staff, excluding lavatories, storage rooms, janitors' closets, instructional spaces under 300 gross square feet, and locker rooms, shall swing into the corridor and shall have a safety vision panel of 1/4 inch glazing that is at least 100 square inches.
- (d) The environment requirements shall be as follows:
- 1. Windowless classrooms and other occupied instructional spaces that do not have operable windows equal to at least four percent of the floor space shall be air conditioned, excluding gymnasiums, industrial shops, kitchens, and locker rooms; and
 - 2. School facilities shall be designed, constructed, and renovated consistent with the standards of the UCC and other applicable State and Federal laws for radon, lead, asbestos, and other contaminants, and subject to the enforcement of such standards by the applicable State or Federal agency.
- (e) Safety requirements shall be as follows:
- 1. Glazing in fire-rated assemblies shall be in accordance with the UCC. All other interior glazing shall be safety glazing;
 - 2. A check valve shall be installed in the line supplying gas to each classroom, laboratory, shop or the other area where gas is used by students, except home economics rooms;
 - 3. Science rooms, laboratories, shops, and other instructional spaces in which an open flame and/or the use of hazardous chemicals occurs, with the exception of home-economic rooms, shall be equipped with an emergency safety cold-water shower and a floor drain or a self-contained water receptacle or catch basin;
 - 4. All construction or alteration of playgrounds, playground equipment, and surfacing, including materials provided at the base of playground equipment, shall

comply with the playground-safety subcode of the UCC at N.J.A.C. 5:23-11, and with N.J.A.C. 5:23-7, the Barrier Free Subcode of the UCC;

5. When provided, a ceiling paddle fan shall be located at least eight feet above the floor and be enclosed with a metal guard;
 6. Playground equipment shall not be constructed of chromated copper arsenate treated wood; and
 7. The storage of pesticides shall be in a locked metal cabinet and vented to the exterior.
- (f) Electrical power and communications requirements shall be as follows:
1. Push-type emergency cut-out switches shall be provided at appropriate locations within shops to de-energize the electrical supply to non-portable machinery and shall have a clear unobstructed access of a minimum of 36 inches. The switches shall be provided on the basis of one for each 1,000 square feet or fraction thereof of floor area in the shop, but in no case less than two per shop. Reset of the interrupted service shall be by a key-operated switch located within the shop. The cut-off and reset circuits shall be designed and installed to negate the possibility of the control circuit being de-energized, thereby being inoperative;
 2. All non-portable motorized equipment and machinery shall be provided with magnetic-type switches to prevent machines from automatically restarting upon restoration of power after an electrical failure or activation of the above emergency cut-off;
 3. Instructional spaces shall be provided with sufficient electrical power, communication and data outlets to satisfy the school district's program and equipment needs as defined in the school district's approved technology plan or equivalent document and educational specifications for a school facilities project, with not less than two duplex outlets remotely located per space;
 4. Large group areas such as assembly rooms, auditoriums and other large group instructional spaces shall be provided with electrical power, data, and

communications outlets at appropriate locations and at the location of portable projectors and built-in speaker cables at stage and platform areas; and

5. A communication system shall be installed in each classroom to allow for emergency communication to local authorities. The communication system may be in the form of a telephone system capable of placing 9-1-1 calls.

(g) Lighting requirements shall be as follows:

1. Installed artificial lighting intensity shall comply with the following minimum footcandles, which shall be maintained on the task at any time:

Installed Lighting Intensity	Minimum Acceptable
<u>Locations</u>	<u>Footcandles</u>
Classrooms and instructional areas - study halls, lecture rooms, art rooms, offices, libraries, conference rooms, work rooms, shops, laboratories, and secondary school cafeterias	50
Drafting, typing, and sewing rooms	70
Reception rooms, gymnasiums, auditoriums, primary school cafeterias, all-purpose rooms, and swimming pools	30
Locker rooms, washrooms, toilet rooms, corridors containing lockers, and stairways	10
Corridors without lockers and storerooms	5
Classrooms for the partially sighted	70

2. As an alternative to compliance with the above requirements, instructional spaces shall comply with the American National Standards Institute standard number ANSI/IES RP3-00, Guide for Educational Facilities Lighting, (2000) incorporated herein by reference, as amended and supplemented, which is available for review

at the Division. The document may be purchased from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.

(h) Plumbing requirements shall be as follows:

1. The number of plumbing fixtures and ventilation requirements shall conform with the provisions of this chapter and be calculated according to the UCC;
2. General student toilet rooms shall be designed and labeled for student use, contain at least two of each required fixture and be directly accessible from a corridor or an open plan instructional space. Students housed within an instructional space in excess of 300 square feet shall not be required to travel through any other space except a corridor to reach a general pupil toilet room;
3. There shall be at least one general toilet room for each sex on each floor occupied by students, or all instructional rooms shall have individual toilet rooms. Where classrooms, shops, or physical education rooms are provided with self-contained individual facilities (water closet, lavatory, and drinking fountains), the pupil capacity of the rooms shall not be counted in computing the number of fixtures required in the general pupil toilet rooms;
4. Toilet facilities for preschool and kindergarten classrooms shall be provided as follows:
 - i. An individual toilet room shall be provided in each classroom and shall meet the following criteria:
 - (1) Be located and equipped in such a way as to ensure privacy for the students;
 - (2) Be accessible to physically disabled students and barrier free in design as per N.J.A.C. 5:23-7;
 - (3) Be equipped with an open front seat with a flood rim height no greater than 14 inches from the floor, and a lavatory (sink) with a flood rim height no greater than 26 inches from the floor.

- ii. In lieu of providing an individual toilet room in each classroom as required in (h)4i above, toilet rooms may be provided adjacent to or outside the classroom if the following criteria are satisfactorily addressed:
 - (1) No child or group of children shall be left unsupervised at any time when traveling to or from the facilities. Provisions shall be made for adult supervision in a manner that will not infringe upon instructional time;
 - (2) Toilet facilities shall be readily accessible and the toilet room and signage shall be visible to a child from the classroom door;
 - (3) Toilet facilities shall be provided for both boys and girls and shall meet the requirements of (h)4i(4) above.
- iii. If a school district chooses to provide toilet rooms adjacent to or outside the classroom in conformance with (h)4ii above, the chief school administrator shall certify to the executive county superintendent on forms prescribed by the Commissioner how the alternate method of compliance shall be addressed. The completed form and a copy of a resolution by the district board of education approving the alternate method of compliance shall be submitted to the executive county superintendent for approval. Thereafter, the chief school administrator annually shall resubmit the form certifying how the alternate method of compliance will be addressed. Any changes to the approved alternate method of compliance shall be submitted to the executive county superintendent for approval;
- 5. Entrance to toilet rooms and locker rooms shall be designed to prevent visibility into the room;
- 6. Water closets shall be separated by individual stall partitions, including doors that are of a smooth impervious material to permit effective cleaning;

7. Floors of all toilet, shower, and drying rooms shall be water-tight and impervious to moisture. Floors shall be provided with an integral cove base at least four inches high;
8. Flooring materials of ceramic tile, quarry tile, sheet vinyl, and plastic coatings designed for this purpose shall be deemed to meet the requirements of this subchapter except for use in showers. Resilient tiles or exposed concrete shall not be acceptable in toilet rooms;
9. Where showers are provided, shower heads shall be at least 30 inches apart, one shower head for each 10 students, with a shower head height of six feet, and 12 square feet of floor area shall be provided per shower head;
10. Preschool and kindergarten classrooms shall be equipped with a bubbler or water fountain; and
11. Arts and crafts classrooms shall be equipped with a water source, sink and appropriate sink trap.

6A:26-6.4 Educational facility planning standards for school facilities housing preschool students

- (a) The educational facility planning standards delineated in this subchapter shall apply to the design and construction of school facilities housing preschool students. Any standards not addressed in this section are addressed in N.J.A.C. 6A:26-6.3, in conjunction with the UCC. For community providers, the requirements of this section shall supplement but not supplant the requirement manual mandated by the Office of Licensing in the Department of Human Services, for community provider licensure. If this section's requirements exceed the requisites of the Department of Human Services' manual, the requirements of this section shall apply.
- (b) General design and construction requirements shall be as follows:

1. School facilities for preschool students shall afford space for instruction, administration, and student services, as set forth in the facilities efficiency standards in (h) below;
 2. Preschool classrooms shall be no higher than the second floor of a school facility;
 3. Preschool classrooms shall have a minimum of the square footage of usable space per child as set forth in the facilities efficiency standards, and usable space per child shall exclude storage, equipment, or furnishings that are either built-in or not easily movable;
 4. Each preschool classroom shall have an attached toilet room designed to accommodate the needs of physically handicapped students with features sized for the use of preschool students;
 5. Preschool classrooms shall have a resilient floor covering;
 6. Separate from the toilet room, each preschool classroom shall have access to an additional sink with a flood rim height no greater than 26 inches from the floor;
 7. Preschool classrooms shall be equipped with a bubbler or water fountain; and
 8. Preschool classrooms shall be designed to modulate interior noise and minimize exterior noise.
- (c) Entrances, egress, and security requirements shall be as follows:
1. All preschool classrooms shall have operable windows with inside locks and shall be equal to at least four percent of the floor space.
- (d) The outdoor play area requirement shall be sufficient to support the achievement of the New Jersey Preschool Teaching and Learning Standards of Quality as defined in N.J.A.C. 6A:13A and by the educational specifications under N.J.A.C. 6A:26-5, and evidenced by a sufficiency standard such as the following: 100 square feet of outdoor play space for each child using the space at one time.
- (e) The electrical power and communications requirement shall be as follows:

1. Child-safety receptacles shall be used throughout preschool classrooms and bathrooms and elsewhere in the school facility where applicable.
- (f) Lighting requirements shall be as follows:
1. Subject to the requirements of N.J.A.C. 6A:26-6.3(g), preschool classroom lighting shall be adjustable and varied across the space with a mixture of both natural and artificial light; and
 2. Preschool classrooms shall have child-safe windows to maximize natural light.
- (g) Plumbing requirements shall be consistent with N.J.A.C. 6A:26-6.3(h)4 except as follows:
1. Preschool classrooms toilet facilities shall be open to view as a safety precaution;
 2. Toilet facilities for preschool students shall be designated for their exclusive use and shall be so identified; and
 3. Preschool facilities shall provide a diaper/clothes changing area in the classroom.
- (h) The facilities efficiency standards for early childhood schools are the following:

Table 2 Early Childhood School Model for Three and Four Year Old Students

Early Childhood School Model

For Three and Four Year Old Students

Enrollment 294 FTE*

Utilization Factor 100% 1

<u>Room Designations</u>	Net	# of students	# of	# of	Net SF	Description
	SF**		students	rooms		
	per		per room			
	room					

Instructional Spaces

<u>Preschool Classroom</u>	950	270	15	18.00	17,100	See notes below

<u>Preschool Classroom</u>	950	24	12	2.00	1,900

Special Education

19,000	Subtotal Net SF of Instructional Spaces

1.00	Utilization Factor

19,000	Subtotal Net SF for Instructional Spaces w/Utilization Factor

Specialized Spaces

Kitchen	1,200			1.00	1,200

Multi-Purpose room /	3,400			1.00	3,400

Gross motor skills

Small Group	400			2.00	800

Instruction Room

(SGI)

5,400	Subtotal Net SF for Specialized Spaces

Administrative

Spaces

Nurse	400			1.00	400

Reception/Main	400			1.00	400

Office

Principal/Director	200			1.00	200

Office	125			2.00	250

Conference Room	300			1.00	300

Teacher Work Room	300			1.00	300

1,850	Subtotal Net SF for Administrative Spaces
26,250	Total Net SF
89.29	Net SF per student
1.4	Grossing Factor***
125.00	Gross SF per student
36,750	Total Gross SF for population of 294 FTE
\$143.00	Area Cost Allowance per SF
\$5,255,250	Cost of new Early Childhood School for population of 294 FTE

*Full time equivalent
(FTE)

**Square Feet (SF)

***Grossing factor = 40% of Total net SF for circulation, toilet rooms, storage, mechanical, receiving, communications, electrical, Adult handicapped accessible bathroom, etc.

Notes:

750 SF of floor area provided, 150 SF of casework and 50 SF of toilet room

A. Indoor Storage: There shall be varied and ample types of storage that meets the general classroom needs of both children and staff. Each classroom shall have open, accessible storage, such as cubbies for each child for coat storage, personal papers, and change of clothing.

B. Teacher Storage: Each classroom shall have a space allocated for the teacher's coat and personal items.

C. Classroom Storage: Additional storage shall include an area, inaccessible to children, to store cots, bedding, and storage of classroom materials such as manipulatives, puzzles and art supplies. Hanging mats are a reasonable option for small storage spaces.

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

- (a) This section shall govern review of project documents for capital projects at private schools for disabled students which are approved or seeking approval pursuant to N.J.A.C. 6A:14-7 and schools for disabled students operated by the Department of Human Services. Review and approval by the Division is required for the type of work set forth in N.J.A.C. 6A:26-5.1(a).
- (b) Submission and review of plans and specifications shall be conducted as follows:
 - 1. Educational specifications shall be prepared and submitted pursuant to N.J.A.C. 6A:26-5.2, and schematic plans shall be prepared and submitted pursuant to N.J.A.C. 6A:26-5.3 except that they shall be signed by the executive director and board president of the private schools for disabled students or the New Jersey Department of Human Services.
 - 2. A New Jersey registered architect or licensed engineer, as required by N.J.A.C. 5:23-2.15, shall submit project documents for the temporary and permanent construction, alteration, and rehabilitation of facilities to the Division on behalf of either the private schools for disabled students or the New Jersey Department of Human Services for review and subsequent approval for compliance with this chapter.
 - 3. For review and subsequent approval for compliance with the Uniform Construction Code (UCC), N.J.A.C. 5:23:

- i. Plans and specifications shall be submitted to the local construction official of the municipality in which the facility will be constructed, in the case of private schools for disabled students; and
 - ii. Plans and specifications shall be submitted to the New Jersey Department of Community Affairs, in the case of private schools for disabled students operated by the Department of Human Services.
- 4. The project documents shall be submitted to the Division and reviewed pursuant to N.J.A.C. 6A:26-5.
- (c) Acquisition of land shall be according to N.J.A.C. 6A:26-7.
- (d) Disposal of land shall be according to N.J.A.C. 6A:26-7.4.
- (e) Reviews of project documents for facilities of private schools for disabled students and schools for disabled students operated by the New Jersey Department of Human Services shall be done by the Division to assure that the design adheres to:
 - 1. School site sizes, N.J.A.C. 6A:26-7.1; and
 - 2. Educational facility planning standards, N.J.A.C. 6A:26-6.3 and 6.4.
- (f) Provisions for accommodation of students in temporary school facilities operated by private schools for the disabled or the New Jersey Department of Human Services shall be according to N.J.A.C. 6A:26-8.

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

6A:26-7.1 Approval of the acquisition of land

- (a) A school district may obtain voter approval pursuant to N.J.A.C. 6A:26-3 or 9 for funding of land acquisition prior to Division approval of the land acquisition. A school district shall not take any action to acquire the land prior to obtaining Division approval.
- (b) A school district, or the Development Authority on behalf of a school district, shall submit to the Division the following information to obtain approval under (a) above for

land in connection with a school facilities project. The following requirements do not address requirements of other State agencies having approval or permitting jurisdiction over land acquisition.

1. The following information shall be provided by the school district:
 - i. A written request for that shall include a statement, signed by the board president and the chief school administrator, indicating the immediate and ultimate proposed uses of the site, in terms of building use, grade organization, and potential maximum enrollment, and whether the land is, or will be, part of a school facilities project indicated in the school district's LRFP;
 - ii. A map of the school district showing the location of the land, the location of existing schools in the school district, the attendance area to be served by the school, and the number of students who reside within the attendance area;
 - iii. Data regarding the impact of the acquisition upon racial balance within the school district's public schools;
 - iv. A full, detailed appraisal of the market value of the property prepared by a licensed professional;
 - v. A title report on the property produced by any reputable title insurer licensed in the State of New Jersey evidencing that title is good and marketable;
 - vi. A feasibility study evidencing that school-district-owned land within the attendance area to be served by the school is not available, suitable, or sufficient to be used for school purposes, but only if the school district is required to use the Development Authority and seeking approval for a new acquisition of land and not merely a new use for already school district-owned land; and
 - vii. For a school district required to use the Development Authority and seeking approval for the acquisition of land, evidence that the school district has not indemnified the seller of the land for the costs arising from

the environmental remediation required for the property to be used for school purposes; acquired the land in its "as is" condition; or acquired the land under terms and conditions that would invalidate the statutory immunity of the school district from liability for the remediation costs associated with pre-existing contamination, whether discovered pre-closing or post-acquisition, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

2. The following information shall generally be provided by a licensed architect, professional engineer, or professional planner:
 - i. A statement from the licensed architect, professional engineer, or professional planner indicating whether the land is subject to regulation under the Coastal Wetlands Act (N.J.S.A. 13:9A-1 et seq.); the Freshwater Wetlands Act (N.J.S.A. 13:9B-1 et seq.); the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.); the Waterfront Development Act (N.J.S.A. 12:5-3); the Green Acres Acts (N.J.S.A. 13:8A-1 et seq., 13:8A-19 et seq., 13:8A-35 et seq., and 13:8C-1 et seq.); or other statutes, regulations or executive orders administered by agencies of State or Federal government.
 - (1) If so subject, the statement shall address the steps necessary to obtain approval from the agencies, and include adequate documentation to demonstrate to the Division the approvals will be obtained and not affect the educational adequacy of the site, as set forth in (d) and (e) below;
 - ii. A statement from a New Jersey licensed architect, professional engineer, or professional planner indicating whether the proposed use of the land to be acquired is consistent with the goals and strategies of the New Jersey State Development and Redevelopment Plan (State Plan). If inconsistent

with such goals and strategies, the statement shall include adequate documentation to demonstrate to the Division there are no alternative suitable sites available in the school district that are consistent with the State Plan's goals and strategies;

- iii. A statement from a New Jersey licensed architect, professional engineer, or professional planner indicating the land to be acquired is suitable for the proposed use;
- iv. A completed, signed and sealed plot plan of the land to be acquired showing topographical and contour lines; adjacent properties indicating current land uses; access roads; deed restrictions; easements; protective covenants; right of ways; and environmentally sensitive areas such as waterways and wetlands. The acreage and dimensions of the tract proposed for acquisition shall be included as per the application of the standards for minimum acceptable school site sizes in (d) below;
- v. If existing buildings or structures are located on the land to be acquired, the intended use and/or disposition of these buildings. Any building to be acquired and used shall comply with the requirements of the UCC for educational occupancy and N.J.A.C. 6A:26-5 that apply to the construction of a new building;
- vi. Adequate documentation to demonstrate to the Division that soil conditions for structural integrity and drainage have been examined by the New Jersey licensed architect or professional engineer; and
- vii. Adequate documentation to demonstrate to the Division that soil and groundwater conditions have been examined by a New Jersey licensed architect or professional engineer for suitability for septic systems, if applicable.

- 3. The following shall be submitted by the school district:

- i. A statement from a local or regional water purveyor or alternatively, a statement from a geologist or professional engineer if the source of water is groundwater, certifying that:
 - (1) The land can be adequately provided with the necessary water for the proposed maximum enrollment, and if the source of water is groundwater, that there will be sufficient groundwater available for the proposed maximum enrollment; and
 - (2) Potable water infrastructure is, or is not, in place to service the site;
- ii. A statement from a local or county sewerage agency certifying that:
 - (1) The land can be adequately provided with the necessary and acceptable sewage disposal system for the proposed maximum enrollment, as evidenced, for example, by consistency with the locally approved wastewater management plan; and
 - (2) Sewer infrastructure is, or is not, in place to service the site. If such infrastructure is not in place, adequate documentation from a professional engineer or licensed geologist to demonstrate that soil and groundwater conditions are suitable for a septic system or discharge to groundwater; and
- iii. Recommendations from the New Jersey Department of Environmental Protection (NJDEP) that there are no substantial reasons why the land acquisition should not proceed within 45 days of its receipt of an environmental site report submitted by the school district or the Development Authority on behalf of the school district addressing the items below, or evidence that 45 days have passed since the NJDEP's receipt of the environmental site report, whichever is earlier:
 - (1) A sewer service consistency determination;

- (2) Potable water supply;
- (3) Coastal and freshwater wetlands;
- (4) Green Acres land;
- (5) Stream encroachment;
- (6) Historical or archeological resources;
- (7) Endangered plant species;
- (8) Threatened or endangered animal species; and
- (9) An environmental site assessment to determine whether there is potential contamination on the land, submitted on a form provided by the Department.

4. The following shall be submitted by the school district:

- i. Recommendations of the planning board of the municipality in which the land is situated, and that has an approved master plan as required by N.J.S.A. 40:55D-31 and 18A:18A-16, or evidence that the applicable 45 or 55 days have passed, whichever is earlier, from the planning board's receipt of the land acquisition application. The recommendations shall be sent to the Division of Administration and Finance, Office of School Facilities, PO Box 500, Trenton, NJ 08625-0500, and forwarded promptly to the Division at the above address if received by the school district or its architect;
- ii. The recommendation of the executive county superintendent based on the requirements specified in this subchapter; and
- iii. Prior approvals of other agencies, such as the New Jersey Department of Agriculture, NJDEP, and the Pinelands Commission, where such approval is reasonably obtainable prior to acquisition.

(c) A school district that intends to acquire land not in connection with a school facilities project shall submit all of the information required under (b) above except (b)1ii and iii,

and shall further be excepted from the requirements of (d) and (e) below. If the school district later intends to change the use of the land and use as a school site, the school district shall be required to submit all of the information required under this section and the aforementioned exceptions shall no longer apply.

- (d) School site sizes shall be directly related to the acreage required for the structures and activities to be situated thereon. Except where specifically noted for multiple or shared use, the acreage shall be considered for single use.
- (e) All school sites shall have sufficient acreage for the following:
 - 1. The placement of the school facility;
 - 2. Expansion of the building to its maximum potential enrollment;
 - 3. The placement of all other structures, such as greenhouses; storage buildings; school-bus maintenance buildings or garages; and any other above- or below-ground structure that is to be placed thereon;
 - 4. Multi-purpose physical education field(s) and, for preschool-through-grade-five school facilities, a playground required to support the achievement of the New Jersey Student Learning Standards as defined by the number of physical education teaching stations applicable to the school facility pursuant to the facilities efficiency standards and the approved programmatic model;
 - 5. Disabled-accessible pedestrian walkways, roadways and parking areas on which people and vehicles access the building;
 - 6. Public- and service-access roads onto the site including, where warranted, a one-way school-bus road of 30-foot width and a two-way road of 36-foot width; a school bus drop-off area; and 18-foot-wide posted fire lanes for fire apparatus; and
 - 7. A 30-foot-wide access around the entire building.
- (f) Land owned by a district board of education that does not meet the standards of this section may be supplemented by adjacent municipally-owned land if it is formally leased

on a long-term basis to the district board of education for exclusive use during school hours and there are no deed restrictions that prohibit school district use.

- (g) The Division's approval shall remain effective for three years, after which time Division approval shall again be required to be obtained prior to acquiring the land.

6A:26-7.2 Approval of the acquisition of land in certain school districts under the Development Authority's auspices

The Development Authority may acquire land on behalf of a school district eligible for 100 percent State support of final eligible costs for school facilities projects that are consistent with the school district's approved LRFP. For such school districts, the Department shall require submission of all information set forth in N.J.A.C. 6A:26-7.1(b) to demonstrate compliance with this subchapter. The Development Authority may submit the required information on behalf of such school districts.

6A:26-7.3 Approval for the acquisition of existing facilities

- (a) A district board of education planning to acquire an existing facility through purchase, gift, lease, or otherwise shall comply with all procedures and rules pertaining to the appropriation and use of capital funds as required by N.J.S.A. 18A:20-4 and 4.2. The school district shall also have the facility approved in accordance with N.J.A.C. 6A:26-3, which applies to the acquisition of a school site and for the construction of a new facility.
- (b) Facilities to be procured for temporary use shall comply with N.J.A.C. 6A:26-8 if subject to educational-adequacy review pursuant to N.J.A.C. 6A:26-5.4(c) because the facilities will house students.

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

- (a) The school district shall make to the Division a written request for school district-owned land to be altered or disposed of through sale, transfer, or exchange of all or part of the total acreage, including rights or interest therein and/or improvements thereon, such as facilities, if applicable.
1. A copy of the request shall be sent by the school district to the executive county superintendent, who shall make recommendations to the Division. The executive county superintendent shall provide to the district board of education a copy of the recommendations.
 2. The request shall indicate whether the school district intends to convey the site, rights or interest therein, and/or improvements thereon under an exception to the public sale requirements per N.J.S.A. 18A:20-6.
 3. The request shall indicate whether the school district intends to convey the site, rights, or interest therein, and/or improvements thereon that had been conveyed to the school district from the Development Authority or funded in whole or in part by State share under EFCFA.
 4. If the land, rights, or interest therein, and/or improvements thereon have been conveyed to the school district from the Development Authority, the request shall provide evidence acceptable to the Department that the property has not reverted to the Development Authority as authorized under N.J.A.C. 19:34-3.6.
 5. If a school district seeks to dispose of land, rights, or interest therein, and/or improvements thereon funded in part with debt service aid pursuant N.J.S.A. 18A:7G-9 or 10, and the land and/or improvements are either not needed or not being used for the purposes for which the bonds were issued, any proceeds from the disposal shall be used by the school district first to reduce the outstanding

principal amount at the earliest call date or to annually reduce the debt-service principal payments. A district board of education may request approval from the Commissioner to apply the proceeds over the term of the outstanding debt or by some other distribution mechanism if, for example, it is beneficial to stabilizing the school district's debt-service tax levy.

- (b) The Division shall determine whether the disposal is consistent with the school district's approved LRFP or has a negative impact on the educational adequacy of an individual site.
- (c) The Division shall notify the school district of its approval or disapproval and send a copy to the executive county superintendent. If the disposal includes a site, rights, or interest therein and/or improvements thereon conveyed to the school district from the Development Authority, is funded in whole or in part by State share under EFCFA, or is in a school district that is required to use the Development Authority, the Division shall also notify the Development Authority.
- (d) A school district may convey and transfer, without consideration, its right, title, and interest in and to any trunk or other sewer lines to a municipality, pursuant to N.J.S.A. 18A:20-9.1 without requiring approval from the Division.

6A:26-7.5 Approval for the closing of a school facility

- (a) To receive approval for the closing of a school, the district board of education shall provide the Division and the executive county superintendent with the following assurances:
 - 1. The proposed closing is consistent with the school district's approved LRFP because:
 - i. The school district has demonstrated that sufficient school-building capacity exists to house students for the five years following the closing; or
 - ii. The school district has demonstrated through a feasibility study that the benefits of undertaking new construction outweigh those of rehabilitating the school proposed for closure.

2. The use of temporary facilities in the remaining schools does not result or increase from an overall facilities shortage caused by the school closing; and
 3. The re-assignment of students to other schools in the school district does not produce, sustain, or contribute to unlawful segregation, separation, or isolation of student populations on the basis of race or national origin.
- (b) A request for approval from the Division for the school closing shall include the recommendation of the executive county superintendent.
 - (c) A letter of approval from the Division based on the information in (a) above shall be required before the school's closing.
 - (d) The Division shall notify in writing the school district of its determination with respect to the requested school closing, with a copy provided to the executive county superintendent.
 - (e) Starting in August 2017, the Division of Executive Services shall maintain a list of closed, unused, or unoccupied school facilities, consistent with N.J.A.C. 6A:26-2.2, and make it available on the Department's website.

Subchapter 8. Temporary School Facilities

6A:26-8.1 Temporary facilities standards

- (a) This subchapter sets forth the standards that apply to temporary facilities, whether included as part of a school facilities project, funded as an other capital project, or provided by an approved private school for the disabled. It addresses the applicability of the facilities efficiency standards to temporary facilities, compliance monitoring by the county superintendent of schools, budgeting for deficiencies, and the construction and design standards for a variety of types of temporary facilities, such as leased buildings and pre-manufactured temporary classroom units. Any temporary facility to be used as a school shall comply with the applicable requirements of the UCC, evidenced by a valid certificate of occupancy for the use. If the building currently is not classified as Group E

pursuant to the UCC, then it is to comply with the UCC requirements for a change of use at N.J.A.C. 5:23-6.31. If the building is a school that predates the UCC, then it shall comply with the applicable requirements of the Uniform Fire Code.

- (b) When considering educational adequacy, the Division and the executive county superintendent shall apply the minimum-square-foot standards permitted under the facilities efficiency standards. If a district board of education or approved private school for the disabled seeks relief from the minimum-square-foot requirements of the facilities efficiency standards, relief shall be determined upon application to the Division under the procedures for requesting an exception set forth in N.J.A.C. 6A:26-6.2.
- (c) Executive county superintendents shall annually monitor the temporary facilities of school districts and approved private schools for the disabled for compliance with the standards in this subchapter. District boards of education or approved private schools for the disabled shall provide funds in the next immediate annual budget to correct deficiencies about which they are notified by the executive county superintendent on or before October 1 annually. If the correction of the deficiencies is part of a school facilities project and eligible for the State share, State share shall be applied to meet this budgetary requirement. Failure to budget for the correction of deficiencies and to implement the corrections by the next September 1 following the October 1 notice shall result in the executive county superintendent, in consultation with the Division, ordering that the facility be abandoned immediately.
- (d) In making a determination about an application for the use of temporary facilities, the following factors shall be taken into account:
 - 1. Accommodations of students in temporary spaces in an existing public school, in other school-district-owned facilities or in rented or leased buildings not on a school-district-owned site shall comply with the following:
 - i. Safety factors:

- (1) The floors, walls, and ceilings of rooms used for instruction shall be free of moisture, peeling paint, and potentially hazardous materials;
 - (2) The hardware on doors of any space occupied by students shall permit egress from the room at all times. Key-operated locks, thumb-turn locks, hasps or similar types of locking devices shall not be permitted;
 - (3) Instructional room doors opening into the corridor shall have vision panels;
 - (4) Directions for exiting from the building in case of emergency shall be posted in each space by the exit;
 - (5) Concrete floors in all instructional areas, except shops, shall be covered with a resilient floor covering;
 - (6) All educational spaces shall be equipped with a telephone connected to the main office and capable of emergency communication to local authorities. Such communication system may be in the form of a telephone system capable of placing 9-1-1 calls; and
 - (7) Provision shall be made for storage of students' clothing in other than a corridor or exitway.
- ii. The average ceiling height shall be at least eight feet for instructional spaces in temporary facilities in an existing public school, in a school-district-owned facility, and in rented or leased buildings not on school-district-owned sites.
 - iii. Heating and ventilation requirements shall be as set forth in N.J.A.C. 6A:26-6.3 and the UCC;
 - iv. Toilet facilities shall meet existing UCC requirements for the E Use Group as determined by the construction official. Toilet facilities shall be available within a reasonable distance not more than one floor away, and shall be equipped with an exterior operable window sash or mechanical exhaust

- ventilation. Toilet facilities shall be provided for students in preschool and kindergarten programs as per N.J.A.C. 6A:26-6.3 and/or 6.4;
- v. Potable water shall be available and drinking fountains shall be provided for students in preschool and kindergarten programs in accordance with N.J.A.C. 5:23-7;
 - vi. At least 50 footcandles of uniformly distributed artificial illumination shall be provided in all instructional areas;
 - vii. Furniture and equipment that is in good condition and suitable for the age and size of the students and purposes of instruction shall be provided;
 - viii. Instruction:
 - (1) Chalkboard, or other appropriate writing surface, and a display board suitable for the instructional program shall be provided; and
 - (2) Sufficient electrical duplex outlets shall be provided to satisfy the program needs as provided in N.J.A.C. 6A:26-6.3; and
 - ix. The outside physical education area for students shall include, but not be limited to, sufficient space, equipment, and safe surfaces for the temporary facility enrollment and program needs and be protected from hazards or traffic conditions.
2. Pre-manufactured temporary classroom units, vans, and other mobile units shall comply with the following:
- i. Pre-manufactured temporary classroom units shall be reviewed and approved by the Division for educational adequacy pursuant to N.J.A.C. 6A:26-5.4(c). The Department of Community Affairs or the local construction official shall review and approve the installation and shall issue the certificate of occupancy. Each pre-manufactured temporary classroom unit shall:

- (1) Have a seal affixed by the manufacturer that indicates it meets the requirements for construction and certification of industrialized/modular buildings for educational use at N.J.A.C. 5:23-4A;
- (2) Contain square footage appropriate to its use as specified in this chapter;
- (3) Meet code requirements for educational facilities as specified in the UCC and in N.J.A.C. 6A:26-6.3 and 6.4, to the extent the latter code requirements are applicable to temporary facilities;
- (4) A pre-manufactured temporary classroom unit in excess of 20 feet in length shall have two means of clear and unobstructed egress that are remote from each other, consistent with the UCC;
- (5) Have sturdy steps that include a handrail and are barrier free, consistent with the UCC;
- (6) Have heat that provides a temperature of 68 degrees Fahrenheit;
- (7) Have a ceiling height as follows:
 - (A) Vans and other mobile units – seven feet minimum;
 - (B) Temporary classroom unit – seven feet six inches minimum.
- (8) Have provisions for the storage of students' clothing;
- (9) Have a chalkboard and display board appropriate to the instructional program;
- (10) Have floor covering of either carpet that meets UCC requirements or asbestos-free resilient flooring;
- (11) Have interior ceiling and wall materials that are certified free of toxic materials;
- (12) Be provided with an electric smoke detection unit that has an audible alarm for each 900 square feet, or portion thereof, or for each instructional space and that is tied in to the main building fire alarm system; and

- (13) Be situated on a site approved by the Division pursuant to N.J.A.C. 6A:26-5.4(c) and approved by the Division pursuant to N.J.A.C. 6A:26-7.1 if land is acquired for the temporary facility.
- ii. Nonconformance to requirements in (d)2i(1) through (13) above that is found during an evaluation of any pre-manufactured unit placed in service after June 4, 1986, or in a subsequent inspection of a unit approved according to (d)2i(1) through (13) above, shall be corrected within 30 days of the evaluation. Staff of the Division or county offices of education shall order a unit immediately abandoned if the school district fails to correct deficiencies with respect to such requirements.
- iii. A self-propelled van or other pre-manufactured mobile unit used for instruction shall:
 - (1) Have mechanical ventilation and exhaust that provides air change per occupant per hour in accordance with the UCC;
 - (2) Have interior ceiling and wall materials that are certified non-toxic and non-combustible;
 - (3) Contain a minimum of 100 square feet;
 - (4) Have electric heat that provides a temperature 68 to 72 degrees Fahrenheit;
 - (5) Provide at least 50 footcandles of uniformly distributed artificial illumination;
 - (6) Have a minimum ceiling height of seven feet;
 - (7) Have two means of clear and unobstructed egress that are remote from each other;
 - (8) Be provided with door hardware that is lever-operated and fully operable at all times from the interior and exterior;

- (9) Be provided with an electric smoke-detection unit that has an audible alarm that can be heard clearly within the unit;
 - (10) Be furnished with an electric hook-up cable that is copper, a maximum of 28 feet in length and contains a 220 volt four-prong receptacle that is plugged into an approved twist-type outlet;
 - (11) Be furnished with a 2A-10BC fire extinguisher that is maintained in operating order at all times;
 - (12) Be furnished with electrical fixtures that meet the UCC;
 - (13) Have electrical wire of a minimum size to meet the UCC;
 - (14) Have floor covering of either carpet that meets UCC requirements or asbestos-free resilient flooring;
 - (15) Be furnished with furniture and equipment that is stabilized while in transit;
 - (16) Pass an annual inspection by the New Jersey Motor Vehicle Commission;
 - (17) Be evaluated and approved annually by the executive county superintendent; and
 - (18) Be furnished with wheel chocks to assure the unit will not move in any direction when parked.
- iv. Nonconformance to requirements in (d)3iii(1) through (18) above that is found during an evaluation of any van and/or mobile unit place in service after June 4, 1986, or a subsequent inspection of a van and/or mobile unit approved according to the standards set forth in this subsection, shall be corrected within 30 days of the evaluation. Staff of the Division or the county offices of education shall order a van and/or other mobile unit immediately abandoned if the school district fails to correct deficiencies.
- v. Pre-manufactured vans or mobile units in service longer than five years shall be evaluated by the executive county superintendent in consultation

with the Division. The unit shall be abandoned if the evaluation indicates it cannot meet the provisions of this subsection.

Subchapter 9. (Reserved)

Subchapter 10. Lease-Purchase and Lease Agreements

6A:26-10.1 Use of lease-purchase agreements

- (a) A school district may acquire improvements or additions to school facilities through lease-purchase agreements of five years or less provided that the lease-purchase agreement provides for the funding in full to the school district upon commencement of construction of the school facilities project. School districts shall not enter into lease purchase agreements of more than five years' duration.
- (b) Subject to (a) above, a school district may utilize a lease-purchase agreement to fund the local share or total costs of a school facilities project receiving State debt service aid or to provide the local funding for an other capital project as long as:
 - 1. There are no contingencies pursuant to which such funding could be withheld in whole or in part; and
 - 2. In funding the local share or total costs of a Development Authority-constructed school facilities project, the school district does not encumber what has been lease purchased in favor of another party, such as the lender or trustee unless said interest is subordinated to the Development Authority.
- (c) Lease-purchase agreements in excess of five years duration entered into prior to July 18, 2000, may continue in effect through the term of the agreement. However, as of July 18, 2000, no lease-purchase agreement entered into by a school district for improvements or additions to school buildings or for equipment shall exceed five years' duration.

(d) A school district may acquire equipment, as provided in N.J.A.C. 6A:26-3.2(a), through lease-purchase agreements that are not subject to the ground-lease requirements of N.J.A.C. 6A:26-10.5. Lease-purchase agreements for acquisition of equipment do not require Commissioner approval, but shall be filed with the executive county superintendent and shall include:

1. The lease-purchase agreement, which shall contain the following provision:
“Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f)”;
2. A resolution of the district board of education approving the application on a Commissioner-prescribed form and authorizing submission to the executive county superintendent; and
3. Evidence acceptable to the Department that the school district has procured the equipment in accordance with N.J.S.A. 18A:18A-1 et seq.

6A:26-10.2 Costs of lease-purchase agreements of five years or less

- (a) All payments by a school district and other costs arising from a lease-purchase agreement of five years or less shall not be considered to constitute debt service and shall not be eligible for State debt service aid under EFCFA and/or this chapter.
- (b) Payments of lease-purchase agreements of five years or less shall be recorded as an expenditure of the school district’s general fund.

6A:26-10.3 Approval of lease-purchase agreements for improvements or additions to school facilities

- (a) School districts shall submit to the Division for approval pursuant to this section all lease-purchase agreements to fund the local share or a portion of the total costs of a school facilities project for improvements or additions to a school facility that has no excess

costs. No lease-purchase agreement that will fund excess costs of a school facilities project for improvements or additions to a school facility or the local funding of an other capital project shall be submitted to the Division for approval. If the Division does not approve a lease-purchase agreement, the school district shall frame a separate question to authorize the lease-purchase agreement and obtain voter or board of school estimate approval to enter into the agreement. No lease-purchase agreement for a capital project shall be executed by a school district unless it has received written approval of the Division, voters, or board of school estimate, as appropriate.

- (b) School districts shall file with the Division a copy of all lease-purchase agreements approved by voters or the board of school estimate.
- (c) A school district shall not enter into a lease-purchase agreement until the Division has notified the school district of the final eligible costs of a school facilities project or the consistency of an other capital project with the school district's approved LRFP and other applicable standards, as set forth in N.J.A.C. 6A:26-3.11.
- (d) The Division shall approve a lease purchase-agreement for local share or total costs of a school facilities project receiving State debt service aid payments that does not include excess costs only upon a demonstration by the school district that the payments for a lease-purchase agreement and any operating expenses related to the agreement can be included within the school district's net budget spending growth limitations and will not result in the need for approval by voters or the board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities.
- (e) All requests for approval of lease-purchase agreements for capital projects that are required to be filed with, and approved by, the Division shall include the following:
 - 1. A copy of the Department's approval letter for the school facilities project and calculation of final eligible costs;
 - 2. The lease agreement in accordance with N.J.A.C. 6A:26-10.4;

3. If applicable, an intercept agreement among the school district, the lessor and the State, executed by the school district and the lessor, providing that the State shall have the right to withhold the portion of State support owed to the school district necessary to make timely payments under the lease-purchase agreement and the agent agreement if the school district should fail to make timely payment of amounts owed under the lease-purchase and agent agreements, and apply the withheld State support to pay the school district's obligation, subject to available State appropriation;
 4. The ground lease in accordance with N.J.A.C. 6A:26-10.5, except for the lease-purchase of equipment only;
 5. Evidence of clear title to the proposed building site(s) and any land stated in the ground lease except for the lease-purchase of equipment only;
 6. A resolution of the district board of education approving the application and authorizing submission to the Division of an application on a form prescribed by the Commissioner;
 7. A copy of the newspaper advertisement for the public hearing;
 8. A copy of the newspaper advertisement for request for proposals;
 9. A copy of detailed board minutes for the public hearing resolution and vote on the approval of the lease-purchase concept, approval of the projected maximum funding level, assurance that annual lease payments can be included within the school district's base budget spending growth limitation, and authorization for the chief school administrator or board secretary to advertise for proposals for the selection of underwriter/lessor; and
 10. Any additional information that a school district deems relevant for the Division's review of the lease purchase agreement.
- (f) Upon receipt of an application for approval of a lease-purchase agreement for a capital project, the Division shall review the application and inform the school district in writing

whether the application is complete. If the application is determined incomplete, the Division shall request additional information from the school district.

- (g) After reviewing and assessing a complete application, the Division shall notify the school district in writing whether the lease purchase is approved and, if the lease purchase is not approved, the reason(s) for not approving it.
- (h) For lease-purchase agreements that must be submitted to the Division, a district board of education shall conduct a minimum of one public hearing prior to adoption of a resolution endorsing the lease-purchase concept and approving the submission of an application to the Division. All provisions of the Open Public Meetings Act (N.J.S.A. 10:4-6 through 21) shall be followed for the public hearing. In addition, notice of the public hearing shall be published not less than seven days prior to the date fixed for each public hearing in at least one newspaper published in the school district or circulating in the school district if no newspaper is published therein. The notice shall fix a date, place, and time for holding the public hearing and shall include a description of the proposed capital project, the estimated cost and the proposed method of project financing.
 - 1. The public hearing shall provide taxpayers and other interested persons an opportunity to present to the district board of education questions or other commentary with respect to the proposed capital project, the estimated cost thereof and the proposed financing method.
 - 2. After the public hearing, a district board of education shall adopt by affirmative vote of at least two-thirds of the full board membership a resolution that includes the following provisions:
 - i. Approval of the lease purchase concept;
 - ii. Approval of the projected maximum funding level;
 - iii. An assurance that annual lease payments and any operating expenses related to the agreement can be included within the school district's net

budget spending growth limitations and will not result in the need for approval by the voters or board of school estimate, as appropriate, of additional spending proposals to maintain existing instructional programs or extracurricular activities; and

- iv. Authorization for the chief school administrator and board secretary to advertise and solicit proposals for the selection of a lessor and underwriter in connection with a lease-purchase agreement and to request Departmental approval of a lease-purchase agreement not including excess costs.
- (i) A district board of education having entered into a lease-purchase agreement for a capital project shall not terminate, materially change, or alter the approved lease-purchase agreement and accompanying legal documents without first obtaining the Division's written approval.
- (j) Upon completion of the transaction, the school district shall file with the Division an opinion from the school district's legal counsel stating the following:
 - 1. The transaction is in conformance with local, State and Federal law; and
 - 2. The parties hereto are properly organized; are in good standing; have the requisite power; and have been properly authorized to enter into the transaction.
- (k) Upon completion of a lease-purchase agreement, a district board of education shall file with the Division the Official Statement (Prospectus) of the transaction.

6A:26-10.4 Contents of lease-purchase agreement

- (a) Lease-purchase agreements shall contain the following provisions:
 - 1. Payments shall be subject to the annual appropriation of funds sufficient to meet the required payments or shall contain an annual cancellation clause pursuant to N.J.S.A. 18A:20-4.2(f);

2. All construction contracts let by public school districts, developers, or owners of property used for school purposes shall be competitively bid pursuant N.J.S.A. 18A:20-4.2(f); and
3. The district board of education may refinance the lease-purchase agreement or purchase the leased premises, by defeasance or otherwise, at any time during the lease period.

6A:26-10.5 Contents of ground lease

- (a) A ground lease shall contain the following provisions:
 1. A legal description of the land;
 2. Lease of the land and the term of the lease;
 3. A warranty that the district board of education has good and marketable title to the land;
 4. A warranty that the land is properly zoned for school purposes including the proposed project;
 5. A warranty that the leased land and current land uses comply with all local, State, and Federal environmental laws;
 6. Termination; and
 7. Use of land.

6A:26-10.6 Approval procedures to refinance a lease-purchase agreement

- (a) A district board of education proposing to refinance a lease-purchase agreement entered into at any time, including lease-purchase agreements in excess of five years, shall adopt a resolution requesting the Division's approval of the transaction.
- (b) A district board of education requesting approval to refinance a lease-purchase agreement shall submit to the Division on a Commissioner-prescribed form an application for refinancing. A district board of education shall also file with the Division the following documents:

1. A copy of the district board of education resolution requesting approval of the refinancing and the board's vote;
2. An opinion of counsel stating that the refinancing is permitted under the original or modified lease-purchase agreement and is in conformance with local, Federal, and State statutes;
3. The list of persons and/or firms the district board of education contacted concerning the refinancing, the one selected and the specific reasons for the selection;
4. A copy of the amended rent payment schedule;
5. A schedule of sources and uses of the lease-purchase agreement refinancing proceeds;
6. An analysis of the escrow account under the proposed refinancing;
7. A copy of the documents in final draft form with amendments and modifications to the lease-purchase, ground lease, trustee or agent, and assignment agreements, if necessary, that effect the refinancing;
8. A copy of the updated insurance or other credit-enhancement commitment, modified to cover refinancing, if applicable;
9. Proposed credit ratings on the issue and credit-rating agencies; and
10. A detailed analysis of the percentage of net present value cost savings to the school district of at least three percent using the effective interest cost method as the discount rate based on an analysis of the total refunding issue that includes the following for each payment:
 - i. Date;
 - ii. Prior debt service;
 - iii. New debt service;
 - iv. Savings (prior debt service minus new debt service);
 - v. Present value factor;
 - vi. Present value savings (savings times present value factor);

- vii. Cumulative present value savings; and
 - viii. Totals of items in (b)10ii through vii above.
- (c) After the receipt of the refinancing application on a Commissioner-prescribed form and related documents, the Division shall endorse the application if satisfied that the refinancing is in the school district's best interest.

6A:26-10.7 Approval procedures for a defeasance of lease-purchase agreements

- (a) A district board of education proposing to seek voter or board of school estimate approval for the defeasance of a lease-purchase agreement entered into at any time, including lease-purchase agreements in excess of five years, through the issuance of general-obligation bonds shall adopt a resolution requesting the Division's approval of the transaction.
- (b) A district board of education requesting approval for the defeasance of a lease-purchase entered into at any time, including lease-purchase agreements in excess of five years, shall submit to the Commissioner an application for defeasance on a Commissioner-prescribed form and the following documents:
 - 1. A copy of the district board of education resolution requesting the Division's approval of the defeasance of the lease-purchase agreement through the issuance of general obligation bonds and the district board of education's vote;
 - 2. An opinion of counsel stating that the prepayment of the lease-purchase agreement is in conformance with local, State, and Federal statutes;
 - 3. A copy of the documents in final draft form with amendments and modification to the lease-purchase, ground lease, trustee or agent, and assignment agreements, if necessary, that effect the defeasance;
 - 4. A schedule of sources and uses of bond issue proceeds; and
 - 5. A detailed analysis of the percentage of net present value cost savings to the school district using the effective interest cost method as the discount rate based

on an analysis of the total new bond issue to include the following for each payment:

- i. Date;
- ii. Prior debt service;
- iii. New debt service;
- iv. Savings (prior debt service minus new debt service);
- v. Present value factor;
- vi. Present value savings (savings times present value factor);
- vii. Cumulative present value savings; and
- viii. Totals of items in (b)5ii through vii above.

- (c) The application shall support a net present value cost savings and shall be reviewed strictly on the merits of the cost savings without consideration of any debt service aid to which the district board of education may be entitled.
- (d) After the receipt of the application for defeasance and related documents, the Division shall endorse the application, if the Division determines the defeasance of the lease-purchase agreement is in the school district's best interest. Approval shall be contingent upon board of school estimate approval or voter adoption of the specific ballot question, as applicable.

6A:26-10.8 Lease-purchase agreements entered into prior to July 18, 2000

- (a) Approved lease-purchase agreements in excess of five years duration shall be accorded the same accounting treatment as school bonds. The payments by a school district on such lease-purchase agreements shall be considered debt service and may be eligible for State debt service aid under EFCFA.
- (b) The provisions of N.J.A.C. 6A:26-10.6 and 10.7 shall apply to lease-purchase agreements entered into prior to July 18, 2000.

- (c) A district board of education having entered into a lease-purchase agreement prior to July 18, 2000 for a capital project shall not terminate, change, or alter the approved lease-purchase agreement and accompanying legal documents without first obtaining the Division's written consent.
- (d) Upon completion of a lease-purchase agreement entered into prior to July 18, 2000, a district board of education shall file with the Division the Official Statement (Prospectus) of the transaction.
- (e) A school district that entered into a lease-purchase agreement prior to July 18, 2000, and applies for a State support under EFCFA for any school facilities project relating to a site or school building subject to the lessor's lien under the lease-purchase agreement shall be required to enter into an intercept agreement with the State and the lessor that provides the State shall have the right to withhold that portion of State support owed to the school district necessary to make timely payments under the lease-purchase and agent agreements if the school district fails to make timely payment of amounts owed under agreements. The State also shall have the right to apply the withheld State support to pay the school district's obligation, subject to available State appropriation. The Division's receipt of an intercept agreement executed by the school district and lessor, and acceptable to the Division, shall constitute a prior condition for the school district to receive State support under EFCFA for any school facilities project relating to a site or school facility subject to the lessor's lien under the lease-purchase agreement.

6A:26-10.9 Approval of lease agreements for facilities to be used for school purposes

Without authority first obtained from voters, the board of school estimate or the capital project review board, as appropriate, a school district may rent facilities to use for school purposes on a year-to-year basis or for up to five years in case of emergency. "Emergency" for the purposes of this section shall include an emergent condition or the circumstances that warrant emergency stabilization as defined in N.J.A.C. 6A:26-1.2.

6A:26-10.10 Limitation on multiyear leases of facilities

All multiyear leases of facilities, including one- or two-year extensions, shall contain a clause making them subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation, or shall contain an annual cancellation clause.

6A:26-10.11 Public hearing for facility leases in excess of five years

- (a) A district board of education shall conduct a minimum of one public hearing prior to adoption of a resolution endorsing a facility lease in excess of five years. All provisions of the Open Public Meetings Act, N.J.S.A. 10:4-6 through 21, shall be followed for the public hearing. In addition, notice of the public hearing shall be published not less than seven days prior to the date fixed for each public hearing in at least one newspaper published in the school district, or circulating in the school district if no newspaper is published therein. The notice shall fix a date, place, and time for holding the public hearing and shall include a description of the proposed facilities to be leased, the estimated cost, and the proposed method of funding the lease.
- (b) The public hearing shall provide taxpayers and other interested persons an opportunity to present to the district board of education questions or other commentary with respect to the proposed lease, the estimated cost, and the proposed funding method.
- (c) After the public hearing, a district board of education shall adopt by affirmative vote of at least two-thirds of its full membership a resolution that includes the following provisions:
 - 1. Approval of the lease concept;
 - 2. Approval of the projected maximum funding level;
 - 3. An assurance that annual lease payments and any operating expenses related to the lease agreement can be included within the school district's net budget spending growth limitations and will not result in the need for approval by the voters, board of school estimate, or capital project review board as appropriate, of

additional spending proposals to maintain existing instructional programs or extracurricular activities; and

4. Authorization for the district board of education to request approval of an amendment of the LRFP to reflect the leased facility and request any other approvals needed to enter into the lease.
- (d) In the case of an SDA district, the district board of education shall provide the Department with a copy of the proposed lease and a copy of detailed board minutes for the public hearing resolution and vote on the approval of the lease concept.

Subchapter 11. County Vocational School District Facilities Rehabilitation Fund

6A:26-11.1 County vocational school district facilities rehabilitation fund

Subject to appropriation and availability of funds, a county vocational school district may apply to the Commissioner for a maximum grant of \$500,000 to be matched dollar for dollar by the school district to fund health and safety school facilities rehabilitation projects. The grant and matching funds shall be maintained by the school district in a special revenue fund as certified by the district board of education and its chief financial officer and shall be subject to annual audit. A project funded through the grant fund shall not require the Commissioner's approval pursuant to N.J.S.A. 18A:7G-5 but shall meet all other requirements of EFCFA and this chapter pertaining to school facilities projects.

6A:26-11.2 Application for funds

- (a) Any county vocational school district seeking a grant from the County Vocational School District Facilities Rehabilitation Fund shall apply to the Commissioner on a Commissioner-provided form. The application shall, at a minimum, contain the following information:
1. A description of the school facilities project to be undertaken with the funds;

2. A schematic drawing of the project or, at the option of the school district, preliminary plans and specifications for the project to be funded;
 3. A delineation and description of each of the functional components of the project to be funded;
 4. The estimated cost to complete the project as determined by the school district on a form prescribed by the Commissioner; and
 5. Any additional information the Commissioner deems relevant for the project's review.
- (b) The Division shall review an application for funds. If the project conforms with the requirements of EFCFA and regulations for approval of school facilities projects, the Division shall notify the county vocational school district of the amount of any grant within 90 days of receiving a grant application.
- (c) Any county vocational school district that receives grant funding pursuant to N.J.S.A. 18A:7G-32 and N.J.A.C. 6A:26-11.1 shall not be eligible to receive State support pursuant to any other provision of EFCFA for a period of five years from the school district's receipt of the grant, except that the school district may receive debt service aid pursuant to N.J.S.A. 18A:7G-10; and any county vocational school district that receives aid under any provision of EFCFA other than N.J.S.A. 18A:7G-10 shall not receive a grant pursuant to this subsection for five years after approval of a project that is otherwise funded under EFCFA.

Subchapter 12. Safety Requirements for School Facilities

6A:26-12.1 Facilities maintenance requirements

All facilities and structures and parts thereof shall be maintained in a safe, healthy, and energy-efficient condition. All service equipment, means of egress, devices, and safeguards that are required by the UCC in a building or structure, when erected, altered, or repaired, shall be maintained in good working order.

6A:26-12.2 Policies and procedures for school facility operation

- (a) District boards of education shall adopt written policies and procedures regarding the following:
 - 1. Safe and sanitary operation and maintenance of school facilities and grounds according to the provisions of this chapter;
 - 2. Supervision of pupil safety in school facilities that shall include:
 - i. Safe storage and use of potentially hazardous materials on school property;
 - ii. Compliance with community right-to-know requirements;
 - iii. Prevention of accidents, panic, and fire; and
 - iv. Provision and maintenance of suitable and safe equipment;
 - 3. Organization of school safety patrols pursuant to N.J.S.A. 18A:42-1, if the decision is made to organize safety patrols; and
 - 4. Prohibition of smoking in public school buildings pursuant to P.L. 1989, c.96.

6A:26-12.3 Health facilities, equipment and supplies

District boards of education shall provide the necessary facilities, equipment, and supplies for the performance of the duties required under State law and rules by health services personnel.

6A:26-12.4 Safe drinking water

- (a) The rules in this subchapter for the provision of safe drinking water shall apply to all New Jersey public school districts, charter schools, renaissance schools, jointure commissions, educational services commissions, approved private schools for students with disabilities acting under contract to provide educational services on behalf of New Jersey public school districts, State-funded early childcare facilities pursuant to N.J.A.C. 6A:13A, and receiving schools as defined by N.J.A.C. 6A:14-7.1(a). Throughout this subchapter, “district board of education” refers to the governing authority for all of the entities identified in this subsection, unless otherwise indicated.

- (b) District boards of education shall assure the availability of potable drinking water through sanitary means in school facilities or upon school grounds in accordance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and 6A:26-6, Planning and Construction Standards for School Facilities.
- (c) Testing of school drinking water quality shall be in accordance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and 6A:26-6, Planning and Construction Standards for School Facilities.
- (d) All district boards of education shall conduct lead sampling and analysis, as described in (d)1 and 2 below, in all drinking water outlets to which a student or staff member has, or may have, access, in each school facility, other facility, or temporary facility, as those terms are defined in this chapter. Any district board of education granted an extension of time to conduct initial testing beyond the July 13, 2017, deadline shall complete the initial testing no later than July 13, 2018. District boards of education that completed initial testing prior to July 13, 2017, shall perform follow-up testing in accordance with the schedule in (g) below.
 - 1. Sampling shall be conducted in accordance with a lead sampling plan, which shall include:
 - i. A plumbing survey for each facility that identifies how water enters and flows through each facility, the types of plumbing materials used in the facility, such as the service line, piping, solder, fixtures, drinking water outlets where students or staff have or may have access, and point of use treatment, such as drinking water filters;
 - ii. The names and responsibilities of all individuals involved in sampling; and
 - iii. The following sampling procedures:
 - (1) Samples shall be taken after water has sat, undisturbed in the school pipes for at least eight hours but no more than 48 hours before the sample is taken.

- (A) 24-hour school facilities shall collect first-draw samples at drinking water outlets following a stagnation time that would likely result in the longest standing time;
 - (2) At least eight hours prior to sampling, signs shall be posted to indicate that water shall not be used and access to the buildings subject to the sampling shall be restricted to all but authorized staff members;
 - (3) Existing aerators, screens, and filters shall not be replaced or removed prior to or during sampling; and
 - (4) All samples shall be collected in pre-cleaned high-density polyethylene (HDPE) 250 milliliter (mL) wide-mouth single-use rigid sample containers that are properly labeled.
2. Analysis of samples shall be conducted as follows:
- i. Analysis shall be conducted by a certified laboratory to analyze for lead in drinking water;
 - ii. The laboratory shall use an approved analytical method pursuant to the Federal Safe Drinking Water Act at 40 CFR 141.23(k)(1); and
 - iii. Sample analysis shall be conducted in accordance with a Quality Assurance Project Plan (QAPP), which shall be signed by the district board of education, the certified laboratory, and the individual responsible for conducting sampling. The QAPP shall include the identification of analytical methods, chain of custody procedures, data validation and reporting processes, detection limits, reporting to three significant figures, field blanks, and quality control measures required by the certified method.
3. The Department, in consultation with the Department of Environmental Protection (DEP), will develop a technical guidance manual to assist district boards of education in complying with the sampling and analysis requirements of this subchapter.

- (e) The district board of education, or its designee, shall complete a review of final laboratory results within 72 hours of receipt. Within 24 hours after the district board of education, or its designee, has reviewed the final laboratory results, the district board of education shall:
1. Make the test results of all water samples publicly available at the school facility in accordance with (f) below and make the results from the most recent required Statewide testing available on the district board of education's website; and
 2. If any results exceed the permissible lead action level, provide written notification to the parents/guardians of all students attending the facility, facility staff, and the Department. This written notification shall also be posted on the district board of education's website and shall include a description of the following:
 - i. Measures taken by the district board of education, or its designee, to immediately end use of each drinking water outlet where water quality exceeds the permissible lead action level;
 - ii. Any additional remedial actions taken or planned by the district board of education;
 - iii. The measures taken to ensure that alternate drinking water has been made available to all students and staff members at the school(s) where the water outlet(s) is located; and
 - iv. Information regarding the health effects of lead.
- (f) The district board of education's test results of all water samples shall remain publicly available in accordance with the timeline established by the Department of the Treasury in the [Records Retention Schedule under record series number 0021-0000](#), which is available at https://www.nj.gov/treasury/revenue/rms/pdf/m700104_001.pdf.
- (g) Notwithstanding the results or date of any prior testing, all district boards of education shall continue to test drinking water outlets as provided below in the designated

Statewide required testing year, which shall be every third school year beginning with the 2021-2022 school year and subsequently occurring in the 2024-2025 school year:

1. By no later than June 30 of the designated Statewide required testing year, all district boards of education shall test all drinking water outlets. Sampling shall be prioritized, such that buildings and facilities that previously had outlets with results above the action level or identified in the plumbing profile as high risk for lead shall be sampled first in accordance with the sampling plan; and
 2. All district boards of education shall sample for lead after the replacement of any drinking water outlet or any other alteration to plumbing or service lines that may impact lead levels at the outlet.
- (h) If district boards of education test drinking water outlets for lead more frequently than the three-year cycle set forth at (g)1 above, the notification requirements set forth in (e) and (f) above shall apply.
1. District boards of education that test drinking water outlets more frequently in accordance with (h) above shall make the most recent results for each facility available on the district board of education's website.
- (i) All district boards of education shall submit to the Department by June 30 each year a statement of assurance that lead testing was completed in accordance with this section, that notifications were provided consistent with this section, and that alternate drinking water continues to be made available to all students and staff in accordance with this section.
- (j) District boards of education may request an exemption from the testing requirements set forth in (d) above if they can demonstrate that they do not use any drinking water outlets for consumption or food preparation in any of their facilities. District boards of education seeking an exemption pursuant to this provision shall submit an application to the Department documenting that no drinking water outlets are used in their facilities and the provisions for an alternative source of drinking water. A district board of education that

receives an exemption from the Department from testing pursuant to this subsection shall make available for public inspection at the school facility and on the district board of education's website, if applicable, confirmation that the district board of education is exempt from testing. No later than June 30 of each Statewide required testing school year as set forth in (g) above, a district board of education shall either begin testing procedures in accordance with (g) above or reapply for an exemption under this subsection.

- (k) All district boards of education shall be eligible to be reimbursed for the water supply testing and analysis conducted pursuant to (g) above after July 1, 2021, as approved by the Department and subject to available funds. To be eligible to receive reimbursement, the district board of education shall complete and submit to the Department a reimbursement application on a form, or in a format, supplied by the Department. The Department will make the reimbursement application available on its website. Nonpublic schools that conducted testing in accordance with (g) above after July 1, 2021, may submit a reimbursement application to the Department, approval of which is subject to available funds. A school district that conducts additional testing in a year other than the Statewide required testing school year as set forth in (g) above shall not be eligible for reimbursement.
- (l) A district board of education's failure to comply with any requirement in this section may result in any of the following:
 - 1. The district board of education's disqualification for reimbursement pursuant to (k) above;
 - 2. The Department's initiation of an investigation by the Office of Fiscal Accountability and Compliance; and
 - 3. The Commissioner's withholding of State aid pursuant to N.J.A.C. 6A:2-1.2.

6A:26-12.5 Eye protection in schools

- (a) Each district board of education shall require each student, staff member, and school visitor, including individuals present for evening adult-school programs, to wear appropriate eye

protective devices while participating in educational activities and programs as defined in N.J.A.C. 6A:7-1.3 that use caustic or explosive chemicals or materials, hot liquids, or solids, or molten materials, or that engages in welding operations of any type, repairing, or servicing of vehicles, heat treatment or tempering of metals, the shaping of solid materials, laser-device operation and experimentation, or any similar process or activity is engaged in, exposure to which might have a tendency to cause damage to the eyes.

- (b) The term "appropriate eye protective device" shall include plain or prescription lenses provided the lenses and other portions of the device meet or exceed the prescribed specifications for the device. Specifications for appropriate eye protection for various activities shall meet or exceed standards described in (b)1 and 2 below. The standards, with all subsequent amendments and supplements, are hereby adopted as rules and incorporated herein by reference.
 - 1. American National Standard Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1989.
 - 2. American National Standard Practice for the Safe Use of Lasers, ANSI Z136.1-1986 and eye protective procedures recommended by the manufacturer of the laser device.
- (c) The documents in (b)1 and 2 above are available for review at the Office of School Facilities, 200 River View Plaza, Trenton, New Jersey. The documents can be purchased from the American National Standards Institute, Inc., 11 West 42nd Street, New York, New York 10036.
- (d) Emergency eye wash fountains, or similar devices capable of a minimum 15 minutes continuous flow of eye-wash solution, shall be provided in classrooms, shops, laboratories, or other area where pupils or instructors are exposed to caustic materials that can cause damage to the eyes.
- (e) The following types of eye protective devices shall be used to fit the designated activities or processes:

1. Caustic or explosive - Goggles, flexible fitting, hooded ventilation; add plastic-window face shield for severe exposure;
 2. Dust-producing operations - Goggles, flexible fitting, hooded ventilation;
 3. Electric arc welding - Welding helmet in combination with spectacles with eye cup or semi- or flat-fold side shields;
 4. Oxyacetylene welding - Welding goggles, eye-cup type with tinted lenses; welding goggle, coverspec type with tinted lenses or tinted plate lenses;
 5. Hot liquids and gases - Goggles, flexible fitting, hooded ventilation; add plastic-window face shield for severe exposure;
 6. Hot solids - Clear or tinted goggles or spectacles with side shields;
 7. Molten materials - Clear or tinted goggles and plastic- or mesh-window face shield;
 8. Heat treatment or tempering - Clear or tinted goggles or clear or tinted spectacles with side shields;
 9. Glare operations - Tinted goggles; tinted spectacles with side shields or welding goggles, eye cup or coverspec type with tinted lenses or tinted plate lenses;
 10. Shaping solid materials - Clear goggles, flexible or rigid body; clear spectacles with side shields; add plastic-window face shield for severe exposure;
 11. Laser device operation or experimentation - Appropriate for specific hazard;
 12. Vehicle repair or servicing - Clear goggles, flexible or rigid body; clear spectacles with side shields;
 13. Other potentially eye-hazardous processes or activities - Appropriate for specific hazard.
- (f) Each district board of education shall establish and implement a specific eye protective policy and program to assure:
1. No staff member, student or visitor shall be subjected to any hazardous environmental condition without appropriate eye protection;
 2. The detection of eye hazardous conditions shall be continuous;

3. Eye protection devices shall be inspected regularly and adequately maintained;
 4. Shared eye protective devices shall be disinfected between uses by a method prescribed by the local school medical inspector;
 5. All eye protective devices shall meet or exceed the appropriate specifications for the various types of devices and suppliers of eye protective devices shall certify, in writing, that the devices meet or exceed said specifications;
 6. Specific policy and procedures shall be established to deal with individuals who refuse to abide by established eye-safety practices and procedures;
 7. The use of contact lenses shall be restricted in learning environments that entail exposure to chemical fumes, vapors, or splashes, intense heat, molten metals, or highly particulate atmospheres. When permitted, contact lenses shall be worn only in conjunction with appropriate eye protective devices, and the lens wearer shall be identified for appropriate emergency care in eye hazardous learning environments;
 8. All spectacle-type eye protective devices shall have side shields of the eye-cup, semi- or flat-fold type; and
 9. Pupils, staff members, or visitors wearing personal corrective eyewear shall be required to wear cover goggles or similar devices unless a competent authority can certify the personal eyewear meets or exceeds standards identified in (b) above.
- (g) Each school district shall provide annual training and appropriate supplies and equipment to all school personnel responsible for implementing the eye-safety policies and program. The training shall cover all aspects of eye protection in schools as described in (a) through (f) above.

Subchapter 13. (Reserved)

Subchapter 14. Withholding of State Support for Non-Compliance

6A:26-14.1 Withholding of State support for non-compliance

- (a) Pursuant to N.J.S.A. 18A:55-2, the Commissioner shall direct the State Treasurer to withhold funds payable by the State from any school district that fails to obey the law, or the rules or directions of the State Board or the Commissioner. “Funds payable by the State” include State support under EFCFA. A failure to obey the rules shall include non-compliance with this chapter. The non-compliance may:
1. Constitute a default under a grant agreement between the Development Authority and the school district for school districts receiving State support under N.J.S.A. 18A:7G-5 (preconstruction activities), 13(a), or 15. It also may subject the school district to Development Authority remedies for the default, including the reimbursement or withholding of State support under EFCFA. If the Development Authority refers the matter to the Department in lieu of withholding State support under EFCFA, the Department may upon review of the matter direct the State Treasurer to withhold funds payable by the State from the school district;
 2. Result in reducing to zero the “M” factor in the debt-service-aid formula in N.J.A.C. 6A:26-3.8 pursuant to N.J.S.A. 18A:7G-9.b(1) and (2) and/or subject the school district to a withholding of State support under EFCFA if the school district receives debt service aid under N.J.S.A. 18A:7G-9 or 10; or
 3. Subject a school district for which the Development Authority constructs the school facilities project to a withholding of funds payable by the State, including State support under EFCFA.
- (b) Pursuant to N.J.S.A. 18A:4-23, the Commissioner shall enforce these rules by any means permitted by law, including, but not limited to, issuing to the school district under N.J.A.C. 6A:3-3.1 an order to show cause why the reimbursement or withholding of State support should not be imposed.

Subchapter 15. (Reserved)

Subchapter 16. Certified Educational Facilities Manager

6A:26-16.1 Certified educational facilities manager

- (a) Effective September 1, 2002, no person shall be employed by a district board of education to supervise buildings and grounds unless he or she meets the criteria established in N.J.S.A. 18A:17-49 et seq.
- (b) An applicant for certification as an educational facilities manager shall submit to the Division documentation demonstrating compliance with one of the criteria in N.J.S.A. 18A:17-49 et seq. After verifying compliance with one of the criteria, the Division shall issue to the applicant an authorization to serve as an educational facilities manager and shall add the applicant to the Division's master list of certified educational facilities managers.
- (c) When a vacancy occurs in a position in which the duties of a supervisor of buildings and grounds are performed, a district board of education may select a person who is not a certified educational facilities manager to perform the duties of a supervisor of buildings and grounds for a period not to exceed two years commencing on the vacancy date. At the expiration of the two-year period, the district board of education shall employ to supervise its buildings and grounds a person certified by the Division as an educational facilities manager.

Subchapter 17. Appeals

6A:26-17.1 Appeals of Commissioner determinations

- (a) All appeals of final determinations made by the Commissioner pursuant to EFCFA and this chapter shall be to the Appellate Division of the Superior Court.
- (b) Appeals arising from decisions of the Department's Division of Administration and Finance may be requested in writing, and an opportunity given for an informal hearing before the

Assistant Commissioner or other designated official. A written request for an informal hearing shall be made within 30 days of the school district's receipt of the Division's decision.

- (c) In the event of an adverse decision after an informal hearing under (b) above, or if a school district determines not to seek an informal hearing, a school district may request, within 90 days of the decision of the Assistant Commissioner or the Division's determination if an informal hearing is not sought, a formal hearing pursuant to N.J.S.A. 18A:6-9 and 18A:6-24 and N.J.A.C. 6A:3, Controversies and Disputes.

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

6A:26-18.1 Eligibility for section 15 grants for RODs, not including county vocational school districts

- (a) Any ROD applying for a section 15 grant shall conform at a minimum with the requirements of this subchapter, as applicable.
- (b) Any eligibility determination for a section 15 grant shall be subject to the availability of funds.
- (c) If the school facilities project or a portion of it is eligible for State support, the ROD may request State debt service aid pursuant to N.J.S.A. 18A:7G-9 in lieu of a section 15 grant.
- (d) All of the following conditions shall apply regarding eligibility for a section 15 grant:
 - 1. A ROD shall have an approved LRFP, pursuant to N.J.A.C. 6A:26-2.1(b).
 - 2. The school facilities project has been approved pursuant to N.J.A.C. 6A:26-3.3 and has no excess costs.
 - 3. The proposed school facilities project shall fall within one or more of the priority project categories described below.
 - i. Level 1 are school facilities projects that address the most critical operational building needs, including health and safety issues, and program mandates. The projects shall consist of one or more of the following:

- (1) Upgrades to essential building systems;
 - (2) Repair or replacement of a building skin element;
 - (3) Fire or life safety building code issues;
 - (4) Upgrades consistent with the Americans with Disabilities Act;
 - (5) Hazardous materials abatement;
 - (6) Security and communication systems;
 - (7) Site drainage to correct existing conditions;
 - (8) Upgrades to existing elementary school playgrounds as per N.J.A.C. 6A:26-3.2(a)5;
 - (9) Renovated or up to a maximum of six new early childhood classrooms; or
 - (10) Special population needs.
- ii. Level 2 are school facilities projects that address the rehabilitation of existing buildings, the easing of overcrowding, and/or improving the quality of existing instructional spaces. The projects shall consist of one or more of the following:
- (1) Repair or replacement of existing building systems and components not included in Level 1;
 - (2) Existing site upgrades excluding upgrades to athletic fields or tracks; or
 - (3) Renovation or new construction of capacity-generating classrooms to address overcrowding or a substandard condition.
- iii. Level 3 are school facilities projects that are either new construction or rehabilitation that also qualifies as reconstruction. For purposes of this subsection, “reconstruction” means reconstruction as defined in the UCC, N.J.A.C. 5:23-6.3. Reconstruction and/or new construction projects shall be evaluated based upon the following attributes:
- (1) Districtwide unhoused students and overcrowding;

- (2) Early childhood program accommodations;
 - (3) Compliance with facilities efficiency standards;
 - (4) Use of temporary or leased facilities;
 - (5) Building age;
 - (6) Project scope; and
 - (7) Prior section 15 funding.
- (e) If the school facilities project fits into more than one of the priority project categories, the entire school facilities project shall be deemed to fall within the lowest category for which it qualifies.
- (f) If a ROD submits more than one application for a section 15 grant for a school facilities project that includes new construction, all applications for section 15 grants shall not have any excess costs to qualify for a section 15 grant.
- (g) A ROD shall be eligible to receive a section 15 grant for a school facilities project involving the replacement of a building system that was all or part of a school facilities project that previously received State support, provided the building system to be replaced has approached or exceeded its life expectancy. The school district shall provide documentation concerning the building system's life expectancy, including, but not limited to, the original installation date or the building system manufacturer's warranty.
- (h) A ROD may request on a Department-supplied form a preliminary ROD grant eligibility determination for the scope of work of a school facilities project.
- (i) RODs may take one of the following actions, as applicable, for a school facilities project that has been submitted to the Department for approval or has received approval from the Department prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a):
- 1. A ROD that has submitted to the Office of School Facilities an application for approval of a school facilities project but has not yet received project approval may submit an application for a section 15 grant pursuant to this subchapter in

accordance with the grant deadlines set forth in this subchapter.

2. If a ROD plans to submit an application for a section 15 grant pursuant to this subchapter for a project that previously was reviewed pursuant to N.J.A.C. 6A:26-3.12 as an “other capital” project, the ROD shall withdraw from the Office of School Facilities the prior application and resubmit a new one.
 3. If a ROD plans to submit a school facilities project for a section 15 grant pursuant to this subchapter for a school facilities project that previously was approved for State debt service aid and has accepted the preliminary eligible costs as the final eligible costs prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a), the ROD shall withdraw from the Office of School Facilities the prior application and resubmit a new one.
 4. If a ROD plans to submit a school facilities project for a section 15 grant pursuant to this subchapter for a school facilities project that previously was approved for State debt service aid but has not accepted the preliminary eligible costs as the final eligible costs prior to the deadline established pursuant to N.J.A.C. 6A:26-18.3(a), the ROD may request that the school facilities project be considered for a section 15 grant instead of State debt service aid.
 5. If a school facilities project is cancelled pursuant to this subsection and an application for a section 15 grant for the project is then submitted, the school facilities project must meet the eligibility requirements and deadlines set forth in this subchapter.
 6. Any submission by a ROD for a section 15 grant pursuant to this section shall include a resolution from the school board of the district requesting the cancellation of the prior application and submission of a new application for a section 15 grant for the specified school facilities project.
- (j) A school facilities project or other capital project shall not be eligible for a section 15 grant pursuant to this subchapter where:

1. A construction contract has been awarded in connection with the school facilities project or other capital project; or
2. The local share for the school facilities project or other capital project has already been approved pursuant to N.J.A.C. 6A:26-3.7.

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

- (a) If the school facilities project met the criteria for inclusion in one of the three priority project categories but was not awarded funding in a grant cycle, the ROD may resubmit in a subsequent grant cycle an application for a section 15 grant for the school facilities project.
- (b) If the school facilities project did not fall into one of the three priority project categories or contained work that prevented its placement in a higher priority project category, and was not awarded funding, the ROD may revise and resubmit in a subsequent grant cycle an application for a section 15 grant for the school facilities project.
- (c) If a ROD does not obtain a section 15 grant for the school facilities project and also does not want State debt service aid, the ROD may instruct the Office of School Facilities to consider its application for the school facilities project as an other capital project and fully fund the project without State support.

6A:26-18.3 Deadlines for submission of section 15 grant applications for RODs, not including county vocational school districts

- (a) The Commissioner annually shall determine the amount of funds allocated to section 15 grants for the year, and shall notify the RODs regarding the amount of funds allocated, and the date on which the Commissioner shall begin to receive applications for the funding.
- (b) Applications for section 15 grants shall be submitted by school districts within 90 days of the date upon which the Commissioner indicates applications may be filed.

- (c) Within any grant cycle, section 15 grants shall be awarded first to school facilities projects that fall within Level 1. If the total amount of section 15 grants approved in any grant cycle for Level 1 school facilities projects is less than the amount of the annual allocation, section 15 grants shall be awarded to school facilities projects that fall within Level 2. If the total amount of section 15 grants approved in any grant cycle for Level 2 school facilities projects is less than the amount of the annual allocation, section 15 grants shall be awarded to school facilities projects that fall within Level 3. If the total amount of section 15 grants approved in any grant cycle is less than the amount allocated by the Commissioner for grant cycle, the amount remaining shall be added to the allocation for the next grant cycle.
- (d) A ROD shall obtain the local share pursuant to N.J.A.C. 6A:26-3.7 within 18 months of notification by the Department of the final eligible costs. If the local share is not obtained within such time period, the award of a section 15 grant shall be rescinded. The ROD may resubmit a grant application for reconsideration in a future grant cycle.
- (e) Changes to a school facilities project after notification of the final eligible costs shall be submitted to the Department for its approval. The school facilities project shall meet the eligibility requirements to continue to be eligible for the section 15 grant.

6A:26-18.4 Section 15 grants for county vocational school district school facilities projects

- (a) A county vocational school district school facilities project shall be eligible for a section 15 grant provided the school district has an approved LRFP pursuant to N.J.A.C. 6A:26-2.1(b), there are no excess costs, and the project falls within either the Level 1 or Level 2 priority project categories described as follows:
 - 1. Level 1 county vocational school district school facilities projects.
 - i. Level 1 county vocational school district school facilities projects address the most critical operational building needs, including health and safety

issues. The projects must consist of one or more of the following:

- (1) Capital maintenance projects (maintenance intended to extend the useful life of a school facility, including upgrades and replacement of building systems such as structure, enclosure, mechanical, plumbing, and electrical systems, and can be considered to constitute or be part of a school facilities project);
- (2) Projects that address handicapped accessibility, including site and building access, toilet room renovations, or program expansion or educational adequacy for special population needs;
- (3) Building code issues; or
- (4) Technology infrastructure for classroom instruction in accordance with the Department's Technology Plan, not including equipment.

2. Level 2 county vocational school district school facilities projects.

i. Level 2 county vocational school district school facilities projects must consist of one or more of the following:

- (1) Upgrades to existing vocational instructional space to meet certification requirements;
- (2) Renovations to existing vocational instructional space to support new programs approved by the Office of Career and Technical Education; or
- (3) Additions for existing vocational instructional space to meet industry certification standards.

ii. Level 2 projects shall be evaluated based upon attributes that include, but are not limited to, the following:

- (1) Industry certification requirements or standards;
- (2) Gap analysis between existing facilities and industry requirements or standards;

- (3) Enrollment or anticipated enrollment;
 - (4) Priority of the related career cluster in the State and local approved Carl D. Perkins Career and Technical Education five-year plan; and
 - (5) Labor market demand.
- (b) Section 15 grants shall be allocated to school facilities projects in the county vocational school districts that fall first within Level 1 and then Level 2 in the following order of priority until the entire allocation has been awarded:
 - 1. County vocational school districts that received no State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects. If the total amount requested by county vocational school districts in this category exceeds the amount available, the State share of the preliminary eligible costs approved shall be adjusted on a pro rata basis calculated by multiplying the eligible State share by the ratio of the available funds divided by the total eligible State share. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.
 - 2. County vocational school districts that received less than \$1,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.
 - 3. County vocational school districts that received greater than \$1,000,000 but less than \$5,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county

vocational school district school facilities projects. The Department may notify the county vocational school districts of the State share of the final eligible costs in this category prior to the determinations of the State share of the final eligible costs in the following categories.

4. County vocational school districts that received greater than \$5,000,000 in State funding support for its school facilities projects from the \$100,000,000 of bond proceeds originally allocated for the State share of county vocational school district school facilities projects.
 5. If the entire \$50 million available for school facilities projects in county vocational school districts has not been allocated pursuant to (c)1 through 4 above, additional allocations shall be made based on the same order of funding indicated in (c)1 through 4 above₂ and on the total of new funding received from the allocation and funding received from the original allocation.
- (c) If a school facilities project has been previously approved by the Department and the county vocational school district would like it to be considered for section 15 grant funding, one of the following options may be selected based on the type of project approval:
1. If the project was approved as an other capital project, the county vocational school district may cancel the project application and resubmit to the Department a new project application in accordance with the grant deadlines established pursuant to N.J.A.C. 6A:26-18.3(a) and (b).
 2. If the project was approved for State debt service aid, two options shall be available:
 - i. If the county vocational school district has accepted the preliminary eligible costs as the final eligible costs, it may cancel the project and submit to the Department a new project application.

- ii. If the county vocational school district has not accepted the preliminary eligible costs as the final eligible costs, it may request the school facilities project to be considered for a section 15 grant.
- 3. All cancellation requests and resubmissions shall include a resolution from the county board of chosen freeholders requesting the cancellation and resubmission of the specified project and shall meet the grant application deadlines established pursuant to N.J.A.C. 6A:26-18.3(a) and (b).
- (d) If a county vocational school district elects to cancel a project and apply for a section 15 grant, the school facilities project shall meet the eligibility requirements listed in (a) above.
- (e) If a school facilities project in a county vocational school district does not receive section 15 grant funding, the county vocational school district shall have one of the options listed below, depending upon the type of school facilities project.
 - 1. If the proposed school facilities project is not included in Level 1 or Level 2 project priority categories per (a) above, the county vocational school district may revise and resubmit the school facilities project.
 - 2. If the school facilities project has eligible costs for State support, the county vocational school district may request State debt service aid instead of a section 15 grant pursuant to N.J.S.A.18A:7G-9.
 - 3. If the county vocational school district does not want State debt service aid, it may revise and resubmit an application for an other capital project pursuant to N.J.A.C. 6A:26-3.1(b) and for full funding without State support.

Subchapter 19. Management of A School Facilities Project by A Schools Development

Authority (SDA) District

6A:26-19.1 Purpose

The rules in this subchapter are adopted to implement subsection 13.e(1) of the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, as amended by section 24 of P.L. 2007, c. 137, to set forth the requirements that a Schools Development Authority district must satisfy to be considered eligible by the Development Authority to manage a school facilities project or projects. N.J.S.A. 18A:7G-13, as amended, requires the Commissioner, in making this determination to consider the school district's fiscal integrity and operations, the school district's performance in each of the five key components of school district effectiveness under Quality Single Accountability Continuum (QSAC), N.J.S.A. 18A:7A-10 et seq.; N.J.A.C. 6A:30; and other relevant factors.

6A:26-19.2 Determination of eligibility by the Commissioner

- (a) An SDA district, upon authorization by its district board of education, may request in writing that the Commissioner determine whether it has satisfied the requirements necessary to be considered eligible by the Development Authority to manage its own school facility project(s) pursuant to N.J.S.A. 18A:7G-13.e. The school district's written request shall include:
1. A resolution or certified minutes of the district board of education authorizing the request;
 2. A description of the SDA district personnel who will be managing the school facilities project(s), including the individual(s)' title, certification held, and minimum experience in managing projects of similar scope and complexity to the projects for which the school district might be eligible; and

3. A statement that the school district has not received an adverse opinion or a disclaimer of opinion by its independent audit in its annual audit required pursuant to N.J.S.A. 18A:23-1 for the school year prior to the request for a determination of eligibility.
- (b) The Commissioner shall determine whether an SDA district that submitted a request pursuant to (a) above is eligible to be considered by the Development Authority to manage a school facilities project(s). The determination shall be based upon review of the school district's submission of the items in (a) above and its performance in each of the five key components of school district effectiveness under QSAC in accordance with N.J.S.A. 18A:7A-10 at the time of the application, and other relevant factors as set forth in this subchapter.
1. To be eligible for consideration by the Development Authority to manage a school facilities project(s), the SDA district shall attain the high-performing school district designation for QSAC as defined in N.J.A.C. 6A:30-1.1.
 2. In determining whether an SDA district is eligible to be considered by the SDA to manage a school facility project or projects, the Commissioner may also consider whether the district meets the criteria to have a fiscal monitor appointed to the district pursuant to N.J.S.A. 18A:7A-55.
- (c) A school district determined eligible by the Commissioner for consideration by the Development Authority to manage a school facilities project(s) shall be presumed to be eligible during the intervening years between QSAC reviews. If the Commissioner orders a comprehensive review pursuant to N.J.A.C. 6A:30-3.1, the Commissioner may re-evaluate the school district's continued ability to manage school facilities projects.

6A:26-19.3 Notification of SDA districts

- (a) The Commissioner shall notify the school district regarding the results of the eligibility determination. If determined eligible, the Department shall notify SDA that the school

district was determined eligible to be considered by the Development Authority to manage a schools facilities project(s).

- (b) A school district that the Commissioner determines to be ineligible for consideration by the Development Authority to manage a school facilities project may request that the Commissioner review its eligibility determination upon the school district satisfying the requirements described in N.J.A.C. 6A:26-19.2.
- (c) If the Commissioner orders a comprehensive review pursuant to N.J.A.C. 6A:30-3.1 of any school district previously found eligible to manage a school facilities project, and finds that the school district is no longer able to manage school facilities projects, the Commissioner shall notify the Development Authority that the school district has lost its eligibility based on the Commissioner's assessment as per N.J.A.C. 6A:30-3.1. The Commissioner may rescind at any time a school district's eligibility determination if circumstances arise such that the school district no longer meets the eligibility requirements.

6A:26-19.4 Limitation of the subchapter's applicability

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

Subchapter 20. Comprehensive Maintenance Plans

6A:26-20.1 Purpose

The rules are intended to implement the provisions of EFCFA, specifically N.J.S.A. 18A:7G-3, 9.b(3), and 13.d, which require the Commissioner to promulgate rules requiring school districts to have comprehensive maintenance plans for school facilities and to make the appropriate investment in the maintenance of school facilities.

6A:26-20.2 Scope

- (a) The rules in this subchapter shall apply to every school district that owns school facilities or operates school facilities owned by another party, when the operating school district is responsible for maintenance of the school facilities.
- (b) Each school district that operates school facilities owned by other school districts shall include the school facilities in the operating school district's comprehensive maintenance plan, and shall forward a copy of the comprehensive maintenance plan to the owning school district.

6A:26-20.3 Required maintenance activities

- (a) Required maintenance activities shall include, but are not limited to, the following:
 - 1. Periodic inspection, testing, and certification of building systems or components required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
 - 2. Periodic service required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
 - 3. Periodic replacement of consumable parts required to maintain system warranty or guaranty provisions performed in accordance with manufacturer instructions and owner manuals;
 - 4. Repairs or localized replacements of system components resulting from breakage, misuse, or vandalism;
 - 5. Refinishing of interior floors and walls, including preparation, stripping, painting, and refinishing;
 - 6. Consulting services needed to determine required maintenance; and
 - 7. Tests to monitor indoor air quality.

- (b) Each school district shall determine the required maintenance activities to reasonably maintain each school facility in the school district, and shall report the activities in its annual comprehensive maintenance plan pursuant to N.J.A.C. 6A:26-20.5.

6A:26-20.4 Required maintenance expenditures

- (a) Expenditures for required maintenance activities set forth in N.J.A.C. 6A:26-20.3 shall qualify as investments in maintenance for purposes of calculating the required maintenance expenditure in (d) and (e) below, the annual required maintenance budget amount pursuant to N.J.A.C. 6A:26-20.8, and the maintenance factor (M) in N.J.S.A. 18A:7G-9.
- (b) Expenditures that qualify as required maintenance include supplies and materials, contracted labor, and salaries of school district employees who are exclusively dedicated to the performance of required maintenance activities or for the payment of contracts for required maintenance.
 - 1. When school district personnel who are not exclusively dedicated to the performance of required maintenance activities perform required maintenance activities, school districts may credit that portion of the salaries of such personnel to required maintenance expenditures where task-specific documentation of such activities is available and subject to audit.
- (c) School districts shall maintain their accounting records for required maintenance at the school-facility level and report the final expenditures by school facility in the school district's comprehensive annual financial report. School districts shall have available the expenditure records, detailed by school facility, for verification by the school district auditor.
- (d) Beginning in the fourth year after occupancy of a school facility that was funded as a school facilities project under EFCFA, the required maintenance expenditure shall be equal to or exceed 0.2 percent of the related school facility's replacement cost per year.

- (e) For existing school facilities for which a school district seeks State facilities aid pursuant to EFCFA for rehabilitation or alteration, the required maintenance expenditure shall be equal to or exceed two percent of its replacement cost over the previous 10 years.

6A:26-20.5 Requirements for comprehensive maintenance plans

- (a) Each school district shall develop a comprehensive maintenance plan to document prior-year required maintenance activities and expenditures, and the school district's planned required maintenance activities and budgeted costs for the filing year and one subsequent year. The plan shall incorporate the requirements of N.J.A.C. 6A:26-3.9(h) or 3.10(c), as applicable. The plan shall not include activities for capital maintenance or routine maintenance.
 - 1. The comprehensive maintenance plan shall be submitted to the executive county superintendent by November 15 of every school year accompanied by a district board of education resolution approving the submission of the plan.
- (b) Each school facility in the school district shall be included in the comprehensive maintenance plan. Other facilities shall not be included in the comprehensive maintenance plan. However, school districts are encouraged to maintain other facilities.
- (c) The comprehensive maintenance plan shall contain the following information:
 - 1. For the year prior to the filing year, a list of the completed maintenance activities for each school facility that corresponds to the actual expenditure for each school facility as reported in the school district's most recent comprehensive annual financial report (CAFR) on the schedule of required maintenance expenditures. A copy of the CAFR's schedules of required maintenance expenditures shall be attached to the activities list.
 - i. The expenditures for required maintenance activities for the years prior to the filing year shall be reported by school facility in the school district;

2. A worksheet in a Commissioner-provided format of total expenditures for required maintenance by school facility for 10 years prior to the filing year, compared to each school facility's required maintenance expenditure amount under N.J.A.C. 6A:26-20.4(d) and (e), as applicable;
3. For the filing year, the required maintenance activities planned for each school facility and estimated costs included in the filing-year budget;
4. For the year subsequent to the filing year:
 - i. The required maintenance activities planned for each school facility and estimated costs; and
 - ii. The required annual maintenance budget amount for each school facility pursuant to N.J.A.C. 6A:26-20.8;
5. Asbestos abatement activities planned for the year, in conformance with the school district's asbestos management plan pursuant to Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §§ 2641 et seq.;
6. A schedule for required radon testing for each school facility specifying the spaces to be tested every five years pursuant to N.J.S.A. 18A:20-40 and safe drinking-water testing per N.J.A.C. 7:10; and
7. A plan to correct deficiencies identified in the approved LRFP regarding substandard spaces, temporary classroom units, and dual-use spaces approved by the executive county superintendent for use in the school district pursuant to N.J.A.C. 6A:26-8.1(d).

6A:26-20.6 Submission and review of comprehensive maintenance plans

- (a) The comprehensive maintenance plans shall be submitted to the executive county superintendent by district board of education resolution every school year.

- (b) The district board of education resolution shall include a certification that the comprehensive maintenance plan:
 - 1. Is complete and in compliance with this chapter; and
 - 2. Includes activities and expenditures for each school facility that qualify as required maintenance pursuant to N.J.A.C. 6A:26-20.3, are reasonable to ensure the facilities are kept open and safe for use or in their original condition, and maintain the validity of warranties.
- (c) The executive county superintendent shall notify a school district if a comprehensive maintenance plan is found to be deficient based upon the standards set forth in this chapter. In response to the notification, the school district shall submit to the executive county superintendent a revised comprehensive maintenance plan that addresses the identified deficiencies. The revised comprehensive maintenance plan shall be submitted within 30 days from the date of notification. The plan shall be deemed approved if a school district does not receive notification from the executive county superintendent within 90 days from submission date.
- (d) The executive county superintendent shall review the implementation of the comprehensive maintenance plans in each school district at the time of cyclical evaluations of the school district pursuant to N.J.S.A. 18A:33-1 et seq. and N.J.A.C. 6A:30-2 to ensure the plan addresses required maintenance activities and the reported activities actually occurred.

6A:26-20.7 Requirements for a maintenance package for newly completed school facilities projects

- (a) As a condition for the completion of a school facilities project, the school district shall obtain from the architect or engineer, or the Development Authority in the case of an SDA project, a certification that the contractor for the school facilities project has provided a maintenance package containing all of the following:

1. Manufacturer's warranties;
 2. Owner's and training manuals;
 3. Required maintenance and testing instructions; and
 4. A summary of (a)1 through 3 above.
- (b) The maintenance package shall cover the useful life of the school facilities project and be incorporated into the school district's comprehensive maintenance plan.
- (c) At the completion of a school facilities project, the school district shall certify in writing to the Office of School Facilities that the architect, engineer, or contractor provided all of the required items listed in (a) above to close out the school facilities project.

6A:26-20.8 Required maintenance budget amount

- (a) The required annual maintenance budget amount for each school district, as reported in its comprehensive maintenance plan, shall be included in the school district's annual budget certified for taxes in the required maintenance line-item accounts and/or as a deposit into the maintenance reserve in accordance with N.J.A.C. 6A:23A-14.2.
- (b) The required annual maintenance budget amount shall be calculated by totaling the sum of the replacement cost as of the current year for each school facility multiplied by 0.002 and shall correspond to the amount reported in the most recent comprehensive maintenance plan submitted pursuant to N.J.A.C. 6A:26-20.6.
1. The required annual budget amount may be adjusted up or down, with the executive county superintendent's approval, based upon prior-year expenditures to ensure an overall expenditure of two percent on required maintenance per school facility over 10 years.
 2. The replacement cost of the current year of a school facility shall be calculated by multiplying the area cost allowance by the current gross square footage of the building.
- (c) If a school district does not annually include in the budget certified for taxes the required amount calculated pursuant to this section, the executive county superintendent shall not

approve the school district's budget unless he or she determines that the school district may budget less than the full amount as follows:

1. If a school district determines it cannot budget the required amount, the school district shall submit to the executive county superintendent along with its budget acceptable proof of its inability to budget the required amount. The proof shall be accompanied by a plan to ensure that the required two percent will be expended over 10 years pursuant to EFCFA and this chapter.
 - i. If the executive county superintendent concurs with the school district's explanation of its inability to budget the full amount and approves its plan, the school district may budget less than the full amount as approved. The executive county superintendent shall not reject the school district's budget on this ground.
 - ii. If the executive county superintendent does not concur with the school district's explanation of its inability to budget the full amount or does not approve of its plan, the school district shall budget the full amount. The executive county superintendent shall not approve a budget that does not comply with this section.

6A:26-20.9 The maintenance factor in State debt service aid

- (a) State debt service aid shall be calculated pursuant to N.J.A.C. 6A:26-3.8. The Maintenance Factor "M," pursuant to N.J.A.C. 6A:26-3.8(a), shall be 1.0 except when one of the following conditions applies, in which case the maintenance factor shall be as specified:
 1. The maintenance factor for aid for reconstruction, remodeling, alteration, modernization, renovation, or repair, or for an addition to a school facility, shall be zero for all school facilities projects for which the school district fails to demonstrate that over the 10 years preceding issuance of the school bonds it incurred a net investment in maintenance of the related school facility of at least two percent of the replacement cost of the school facility, pursuant to N.J.S.A.

18A:7G-7.b and N.J.A.C. 6A:26A-4.1, using the area cost allowance of the year

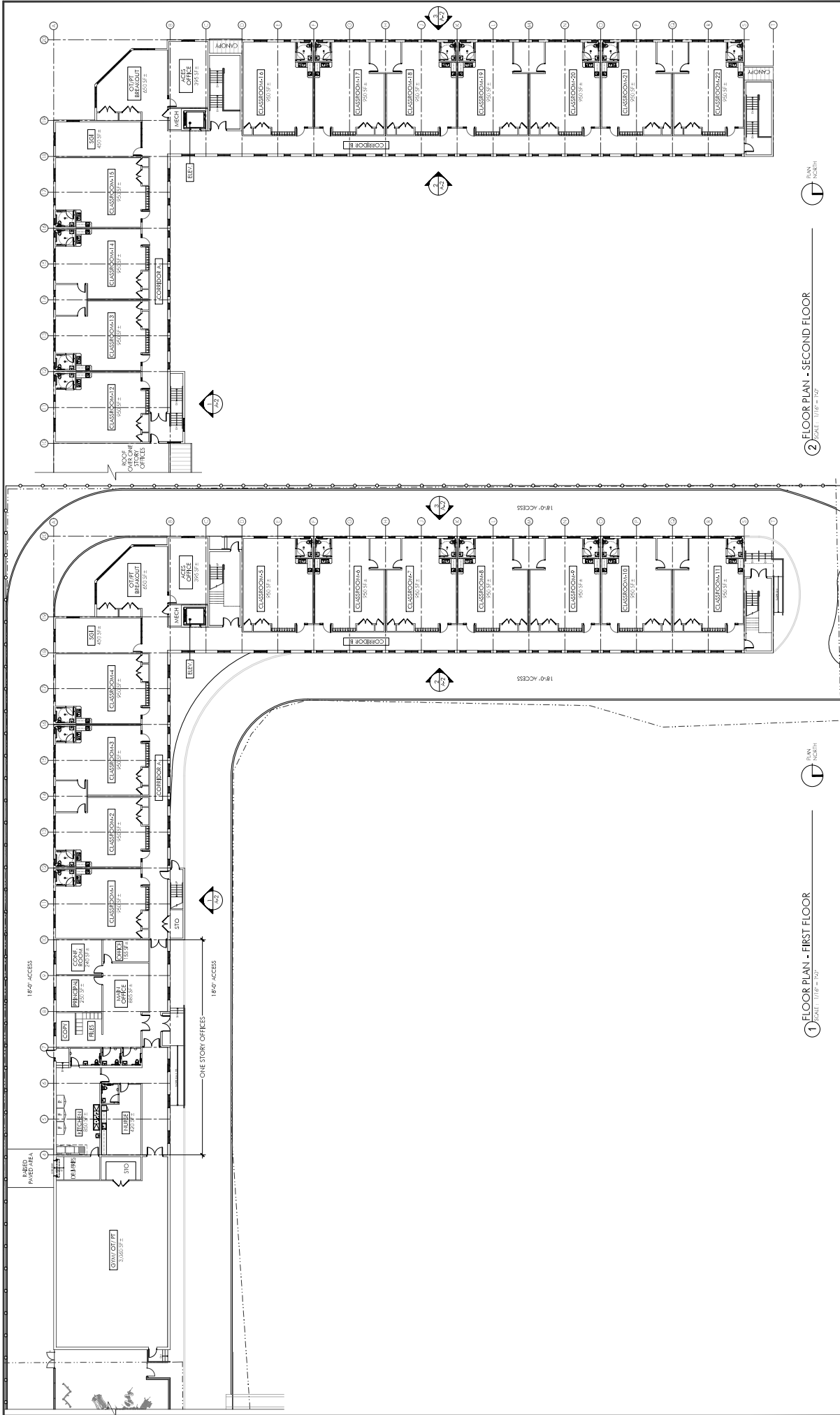
10 years preceding the year in which the school bonds are issued; or

2. For new construction, additions, and school facilities aided under N.J.S.A. 18A:7G-7.b supported by financing issued for projects approved by the Commissioner after July 18, 2000, beginning in the fourth year after occupancy of the school facility, the maintenance factor shall be reduced according to the schedule in (b) below for all school facilities projects for which the school district fails to demonstrate in the prior fiscal year an investment in maintenance of the related school facility of at least 0.002 percent of the replacement cost of the school facility, determined pursuant to N.J.S.A. 18A:7G-7.b and N.J.A.C. 6A:26-20.8.

- (b) A school district's failure to make the required expenditures for maintenance for existing or new facilities pursuant to (a) above shall result in a Maintenance Factor (M) of less than one, and shall reduce debt service aid as follows:

Table 3 Maintenance Factor (MF)

Annual Maintenance Percentage	Maintenance Factor (M)
.199 percent to .151 percent	75 percent
.150 percent to .100 percent	50 percent
Less than .100 percent	Zero



① FLOOR PLAN - FIRST FLOOR
SCALE: 1/16" = 1'-0"

② FLOOR PLAN - SECOND FLOOR
SCALE: 1/16" = 1'-0"

NO.	DATE	DRAWN	CHECKED	DESCRIPTION
2	-	-	-	-
1	-	-	-	-

DESIGNED BY: GL
DRAWN BY: DB
CHECKED BY: GL
SCALE: AS NOTED
NOT FOR CONSTRUCTION
SUBJECT TO JURISDICTIONAL REVIEW

GRACE LYNCH AIA PP
PP 000 ALEP LEE-LAP
N.J. LIC. NO. 211000700
N.J. LIC. NO. 2300045500
N.J. LIC. NO. 2100000200
N.Y. LIC. NO. 031180

GRACE LYNCH AIA PP
L-C DESIGN CONSULTANTS PA
ARCHITECTURE ENGINEERING PLANNING
One Marine Plaza, Suite 205 North Bergen, NJ 07047
Phone 201-866-7171 Fax 201-866-7395

SCHEMATIC FLOOR PLANS

A-1

EARLY CHILDHOOD CENTER- NORTH HUDSON PARK
NORTH BERGEN BOARD OF EDUCATION
GL 0941

**Green Acres Program
State House Commission Pre-Application
Local Parkland—Major Disposal/diversion**

ATTACHMENT IV: PERMIT/APPROVAL CHECKLIST

This is a listing of any Federal, interstate, State and local approvals or permits required for the proposed project. Please include the application, permit, or docket number, the status of each permit or approval and the name and phone number of the contact at the Federal, interstate, State or local agency responsible for giving approval or permit issuance.

☐ Federal Approvals/Permits: N/A

☐ Federal Consistency Determination: N/A

☐ Interstate Approvals/Permits: N/A

☒ County/Municipal Approvals: Future improvements on the subject site are subject to County and Municipal review.
Township of North Bergen Building Department / Code Enforcement: 201 392 2051

State Approvals/Permits

☐ CAFRA
Exemption Request: N/A
Individual Permit: _____
General Permit: _____
Permit by Rule: _____

☐ D&R Canal Commission Certificate: N/A

☐ Dam Safety Permit: N/A

☐ Freshwater Wetlands
Exemption: N/A
Individual Permit: _____
Transition Area Waiver: _____
Letter of Interpretation: _____
General Permit (specify #): _____
Open Water Fill Permit: _____

☐ Highlands
Resource Area Determination: N/A
Preservation Area Approval: _____
HPAA with Waiver: _____
HPAA Emergency: _____
Pre- Application: _____

**Green Acres Program
State House Commission Pre-Application
Local Parkland—Major Disposal/diversion**

☐ Pinelands Certificate of Filing: NA

☐ Stream Encroachment
Waiver: N/A
Permit: _____

☐ Tidal Wetlands (1970) Permit: N/A

☐ Tidelands (Riparian) Conveyance: N/A

☐ Upland Waterfront Development
Residential: N/A
Commercial: _____

☐ Water Quality Certificate: N/A

☐ Waterfront Development Permit
Individual: N/A
Commercial: _____

☒ Jurisdictional Determination: Future improvements are subject to NJ DOE review for educational requirements; NJ State and local building code review (North Bergen Bldg Dept 201 392 2051); and local Municipal Utilities Authority 201 422 0100).

☐ Permit Modification (Specify # & type) N/A

☐ Other: _____

I hereby certify that the information provided in this Permit/Approval Checklist is true and accurate.

for the Township of North Bergen

Date

Preparer of Application