



# New Jersey School Boards Association

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## **Testimony on the Accountability Regulations N.J.S.A. 6A:23A-1 through 15 January 9, 2017**

The Fiscal Accountability, Efficiency and Budgeting Procedures code (*N.J.A.C.* 6A:23A), which encompasses the Accountability Regulations, was originally scheduled to expire on November 25, 2014. However, a 2011 statute (P.L. 2011, c. 45) amended the state's Administrative Procedures Act and extended from five to seven years the expiration date of nearly all chapters in the New Jersey Administrative Code. As a result, the sunset date for these regulations was extended by two years.

The State Board of Education has initiated the first phase of the re-adoption process for sections 16 through 22 of *N.J.A.C.* 6A:23A, the provisions over which it has control. The proposed re-adoption of these sections, which address finance and business services, came before the state board at first discussion level on September 7, 2016.

The remainder of *N.J.A.C.* 6A:23A, sections 1 through 15, was first adopted in 2008 and re-adopted in November 2009 through a special rule-making process established by a 2008 statute (P.L. 2008, Chapter 37). Under this special process, the Commissioner of Education, rather than the State Board of Education, has authority to adopt regulations governing the implementation of statutes that address the following subjects, among others:

- School district fiscal accountability;
- Early termination of superintendent contracts;
- Review of employment contracts for central office administrators;
- Certificate revocation of superintendents, assistant superintendents and school business administrators;
- The property tax cap;
- The office of the Executive County Superintendent;
- Regionalization plans;
- School district travel regulations;
- Efficiency standards, and
- Budget procedures.

In anticipation of the expiration and re-adoption of these regulations, the New Jersey School Boards Association organized a task force in November 2015 to examine these regulations and make recommendations. The Task Force included local school board members; resource persons representing the state's executive county school business administrators and the New Jersey Association of School Business Officials; local school district administrators, and NJSBA staff.

In reaching its findings and recommendations, the Task Force considered several principles and factors, including preservation of local governance; the impact of the state's 2 percent property tax cap; the need for clear, precise code language; and the reaffirmation of practices that promote effective and efficient expenditures. The Final Report of the Task Force on New Jersey's Accountability Regulations issued 63 recommendations designed to ensure responsible and efficient operations in our public schools, without placing excessive administrative and/or financial burdens on local school districts.

The NJSBA believes the authority for management of public schools should rest with local boards of education and State authority over school districts should not exceed the scope necessary to fulfill the constitutional mandate for a thorough and efficient system of free public education. The NJSBA believes that hiring the chief school administrator is one of the most critical board responsibilities and that the authority to select the most appropriate and suitable candidate should continue to rest with the local board of education.

The NJSBA's commentary on these proposed regulations is extensive and comprehensive. At the outset, the NJSBA wishes to highlight particular concerns about key provisions that impact the operations of school districts:

1. *N.J.A.C. 6A:23A-3.1 – Review of Employment Contracts for Superintendents, Assistant Superintendents, School Business Administrators*—The NJSBA recommends the elimination of the Chief School Administrator Salary Cap because it is unnecessary, overly rigid and threatens local control. Salary caps tied to district enrollment are overly rigid and do not take into account variables, such as consolidation of additional administrative responsibilities in the position of the superintendent. In many smaller school districts, the chief school administrator also serves as a principal. In other districts, the superintendent assumes responsibilities that eliminate the need for an additional administrative position, resulting in cost savings to the district. Further, the statutory 2% property tax levy cap and the administrative spending growth limit, along with other provisions of the Accountability Regulations, render a superintendent salary cap unnecessary. It is a “cap within the cap.” The NJSBA does recommend that the Executive County Superintendent retain review of all new contracts for chief school administrators, required under this section, as such a review provides a necessary and practical control against exorbitant compensation, while maintaining an appropriate level of local discretion and authority.
2. *N.J.A.C. 6A:23A-7.11 – Subsistence Allowance – Overnight Travel*—The NJSBA recommends eliminating the “50-mile” restriction on reimbursement for overnight travel. Subparagraph (d) permits reimbursement for travel expenses only for individuals whose home-to-conference commute exceeds 50 miles. This provision is unnecessary. Sufficient safeguards are provided by other provisions of this section. These include the necessity for the commissioner of education to grant a waiver to make a specific multi-day conference eligible for overnight travel reimbursement and the maximum reimbursement rates for overnight accommodations. The 50-mile provision limits affected board members’ and school employees’ access to training at multi-day statewide programs. Additionally, in situations where the 50-mile limit runs through the school district, some board members can attend the conference, stay over and be reimbursed, while other board members in the same school district cannot.
3. *N.J.A.C. 6A:23A-6.2 – Nepotism Policy* – Because sufficient protection exists through other regulations, state law and guidance documents, the NJSBA recommends the elimination of this requirement. In addition to the New Jersey School Ethics Act, the Code of Ethics for School Board Members and policy models in NJSBA’s Critical Policy Reference Manual provide sufficient guidance to prevent nepotism and conflicts of interest in hiring decisions. Should the Nepotism Regulation not be eliminated, the NJSBA recommends that the Accountability Regulations definitions of “relative” and “immediate family member,” set forth at *N.J.A.C. 6A:23A-1.2*, match the School Ethics Act definitions, rather than those in the State Conflict of Interest Law.
4. *N.J.A.C. 6A:23A-5.2 – Public Relations and Professional Services; Board Policies; Efficiency* – NJSBA recommends the elimination of Section (a) (2), Legal Services. *N.J.A.C. 6A:23A-5.2* is overly proscriptive and micro-manages school districts. With the strictures of the 2% tax levy cap, the process of how and when the board attorney may be contacted, the quality of paper, whether glossy or otherwise, used to communicate with the public, executive county

superintendent review of board publications within 90 or 60 days of an election and the types of public relations activities which can be undertaken by the board should be a matter of local district policy, not a statewide mandate.

5. *N.J.A.C. 6A:23A-9.3 (c)* – NJSBA recommends the elimination of the provision which restricts employment of public relations personnel to half time. A full-time public relations professional may be cost-effective and beneficial to county vocational-technical schools, academies, choice school districts, special services school districts, educational services commissions and local school districts with specialized programs. NJSBA additionally recommends that the provisions restricting the number of custodians, limits on the amount of overtime, restrictions on the ability to offer employees incentives to waive health coverage, budgeting of vacant positions at no higher than step 1 on the salary guide, prohibiting use of teacher aides not specifically required by law and the self-sufficiency of food service operations be eliminated. Local school districts are in the best position to determine the resources needed to implement their responsibilities within the constraints of the 2% tax levy cap.

Along with the provisions highlighted above, the NJSBA offers the following thorough and extensive commentary on the entirety of the Commissioner’s proposal, N. J.A.C. 6A:23A-1 through 15. The NJSBA looks forward to working with the Commissioner and her staff as this proposal makes its way through the regulatory process:

- *N.J.A.C. 6A:23A-2* – A 2007 law (P.L. 2007, chapter 63) strengthened the authority of the state Department of Education’s county officials (now called “Executive County Superintendents”) over local school district budgeting and operations. It also gave the Executive County Superintendents the specific task of developing plans to regionalize school districts within their jurisdictions. This section of the Accountability Regulations was designed to provide the structure to implement the various responsibilities of the Executive County Superintendent (ECS).
  - *N.J.A.C. 6A:23A-2.2* – Requires the ECS to create a School District Regionalization and Consolidation of Services Advisory Committee. NJSBA recommends the elimination of this section. The Advisory Committees are neither necessary nor operational at this time. Each county has identified a grouping of school districts that may be “ready” for regionalization. The Department of Education has established an Office of Regionalization and Consolidation, the representatives of which visit school districts that may be ready for regionalization. Discussions are continuing, particularly among school districts involved in sending-receiving tuition arrangements. This recommendation is consistent with the recommendations of the Education Transformation Task Force.
  - *N.J.A.C. 6A:23A-2.3* – This section requires the ECS to study, and make recommendations on, the consolidation of school district administrative services, creation of new administrative service providers or shared administrative arrangements. The provision specifies certain school district configurations and shared administrative models to be considered. NJSBA recommends the elimination of this section, except for the requirement that consolidated administrative services be discussed quarterly at superintendents’ and school business administrators’ county roundtables (subparagraph g). The required studies have been completed, and information is available in county offices. Subparagraph (g), however, should be amended to reflect the current reality. The concept of sharing services is discussed on a regular basis and implemented where possible, particularly among secondary regional and constituent elementary districts and districts in sending-receiving relationships. This recommendation is consistent with the recommendations of the Education Transformation Task Force.

- *N.J.A.C. 6A:23A-2.4* – Districts that do not operate schools. This provision requires the ECS to submit to the Commissioner a plan to eliminate non-operating districts—i.e., districts that have no schools and send their students to a neighboring district or districts through a sending-receiving tuition arrangement. The NJSBA recommends the elimination of this section. The ECS reports on non-operating school districts have been completed, and the plans have been submitted to the commissioner. As such, the goals of the legislation (P.L. 2007, chapter 63) have been accomplished, and there is no longer a need for the code provision. On July 1, 2009, 13 of the state’s 26 non-operating school districts were merged with the neighboring school districts where their students were already attending classes. Each of the 13 eliminated districts was engaged in a sending-receiving relationship with a single school district. In the remaining non-operating districts, certain considerations, including the impact on multiple sending receiving partners, need to be addressed before merger could be effectuated.
- *N.J.A.C. 6A:23A-2.5* – Plans to create K-12 regional school districts. This provision requires the ECS to study consolidation of elementary-only and secondary-only school districts with neighboring districts, resulting in all K-12 systems, and to submit the regionalization plans to the commissioner by March 15, 2010. (The plans were not to have involved county vocational or special services districts.) NJSBA recommends the elimination of this section. The ECS reports on consolidation have been completed and filed. As such, the goal of the legislation (P.L. 2007, chapter 63) has been accomplished, and there is no need for this code provision. This recommendation is consistent with the recommendations of the Education Transformation Task Force.
- *N.J.A.C. 6A:23A-2.6* – Transportation Efficiency Study Requires each ECS to complete a study of pupil transportation services no later than July 12, 2009 and sets forth factors to be considered in the study. The purpose of the study was to identify ways to provide pupil transportation in a more cost-effective and efficient manner. The NJSBA recommends the elimination of this section. Transportation efficiency studies were completed and filed in July 2009. Therefore, the goal of this code provision has been accomplished. This recommendation is consistent with the recommendations of the Education Transformation Task Force.
- *N.J.A.C. 6A:23A-2.7* – Shared Special Education Services – Requires the ECS to facilitate the sharing of special education services within the county and places certain requirements on school districts. The NJSBA recommends the elimination of subparagraphs i, ii, iii and iv of paragraph 3, which involve procedures to be followed prior to out-of-district placement. These provisions are overly prescriptive. Further, NJSBA recommends the elimination of Sections 6 through 9, which involve development of lists of appropriately certified professionals, investigation into the sharing of special education staff members and creation of inventories of surplus equipment unless the state can fund and staff these initiatives. Special education directors meet on a regular basis in each county and share this type of information. The Task Force found these concepts to be “good ideas” but only if they were supported by adequate county office staffing. As such, it concluded that there is no need to retain these provisions if they are not operational. These recommendations are consistent with the recommendations of the Education Transformation Task Force.
- *N.J.A.C. 6A:23A-3.1* – Review of Employment Contracts for Superintendents, Assistant Superintendents, School Business Administrators—The NJSBA recommends the elimination of the Chief School Administrator Salary Cap. The NJSBA believes the superintendent salary cap is unnecessary. The NJSBA believes in, and actively advocates for, local control and management over school district operations and finances. Consistent with this policy, NJSBA opposes the

imposition of a hard cap on the salaries of chief school administrators. Salary caps tied to district enrollment are overly rigid and do not take into account variables, such as consolidation of additional administrative responsibilities in the position of the superintendent. In many smaller school districts, the chief school administrator also serves as a principal. In other districts, the superintendent assumes responsibilities that eliminate the need for an additional administrative position, resulting in cost savings to the district. Further, the statutory 2% property tax levy cap and the administrative spending growth limit, along with other provisions of the Accountability Regulations, render a superintendent salary cap unnecessary. It is a “cap within the cap.” As part of its study, the NJSBA issued a survey on the superintendent salary cap. In that survey, 68.6 of survey respondents indicated that it had a negative impact on their districts. Concerns included superintendent turnover, lack of continuity and the experience level of candidates.

- The NJSBA does recommend that the ECS retain review of all new contracts for chief school administrators, required under this section, provides a necessary and practical control against exorbitant compensation, while maintaining an appropriate level of local discretion and authority.
- *N.J.A.C. 6A:23A-3.1 (e) (6)*, School Administrator Contributions, which prohibits reimbursement of employee contributions toward benefits required by law (such as Social Security) or through the district’s teachers contract (e.g., health benefits, life insurance). This section should be clarified. Much confusion exists over whether benefit and employee contribution levels in contracts for superintendents, assistant superintendents and school business administrators could be greater than those for other school district employees. Issues have arisen over the level of health coverage (single v. family, prescription, dental, vision) and the level of contributions. County office responses to these issues in the administrator contract approval process have been inconsistent.
- *N.J.A.C. 6A:23A-3.1 (e) (7)*, Compensation for Accumulated Sick Leave, should be revised so that it references both of the statutes that addressing payment for unused sick leave. The current code references N.J.S.A. 18A:30-3.5, which limits payment for unused sick leave. It should also cite N.J.S.A. 18A:30-3.6, which specifically applies to new administrator hires and limits supplemental compensation for accumulated sick leave to \$15,000. All employees hired after June 2010, including school administrators, are subject to this accumulated sick leave cap.
- *N.J.A.C. 6A:23A-3.1 (e) (9)*, should be revised so that it references a 240-day work year for 12-month employees. A 240-day work year is more consistent with that used for other 12-month teaching staff employees. The current code references a 260-day work year.
- *N.J.A.C. 6A:23A-3.1 (e) (10)*—The NJSBA believes this section should be eliminated. This provision sets forth the criteria and process for implementing the qualitative and quantitative merit goal bonuses under the superintendent salary cap. NJSBA believes there should be no salary cap, so there is no need for bonuses under that cap.
- *N.J.A.C. 6A:23A-3.1 (e) (15)* – Additional Compensation for Graduate Degree, Tuition Reimbursement – This provision should reference the need to comply with statute, N.J.S.A. 18A:6-8.5, which sets the following criteria for tuition reimbursement:
  - In order for a board of education to provide to an employee tuition assistance for coursework taken at an institution of higher education or additional compensation upon the acquisition of additional academic credits or completion of a degree program at an institution of higher education;

- The institution shall be a duly authorized institution of higher education as defined in section 3 of P.L.1986, c.87 (C.18A:3-15.3);
  - The employee shall obtain approval from the superintendent of schools prior to enrollment in any course for which tuition assistance is sought. In the event that the superintendent denies the approval, the employee may appeal the denial to the board of education. In the case of a superintendent, the approval shall be obtained from the board of education; and
  - The tuition assistance or additional compensation shall be provided only for a course or degree related to the employee's current or future job responsibilities.
- *N.J.A.C. 6A:23A-4* – The School District Fiscal Accountability Act, N.J.S.A. 18A:7A-54, et seq. provides the Commissioner of Education with the authority to appoint staff, including a state monitor, to provide direct oversight of school district business operations and personnel decisions under certain conditions including, but not limited to, an adverse, disclaimer or qualified opinion in the annual audit, or a finding of a weakness in internal controls. The regulations set forth in this section were designed to provide the structure to implement this fiscal oversight.
    - *N.J.A.C. 6A:23A-4.1* – Additional Powers of Commissioner to Achieve Fiscal Accountability. Amend Subsection (a), Appointment of External Entity to Perform Compliance Audit, so that it contains a definitive standard of due process for the board of education. Notice and an opportunity to respond should be provided to a board of education before the appointment of an external entity, which may result in a significant cost to the state and potentially to the school district. Guidance should be provided to boards of education in this area. Revise Subsection (d), Payment for the Compliance Audit to state that school district reimbursement to the Department of Education must be related to the audit findings. As currently written, any finding of non-compliance—no matter how insignificant—triggers total cost reimbursement to the Department of Education. The amount of reimbursement should be related to the compliance audit findings. Balance, materiality and relevancy are keys. The greater the lack of compliance with statute and regulations, the greater should be the level of reimbursement.
  - *N.J.A.C. 6A:23A-5* – The provisions of this section to be extremely proscriptive and, in many respects, unnecessary. The reality is that the 2% tax levy cap places significant control over all school district spending, requiring a deliberate review of all costs in search of the most effective and efficient expenditure of school funds. Boards of education and school administrators should have greater flexibility and control, as they are in the best position to determine program needs and spending priorities in their schools.
    - *N.J.A.C. 6A:23A-5.2* – Public Relations and Professional Services; Board Policies; Efficiency—NJSBA recommends the elimination of Section (a) (2), Legal Services. Identifying who may contact the board attorney, requiring that requests for legal advice be made in writing and maintained on file, establishing a process to determine whether a request warrants legal advice, keeping a detailed contact log, etc., should be determined by the client, the board of education, through policy, and not through state regulation. The requirement that other in-house resources must be consulted before calling the attorney may be detrimental programmatically and financially, and may create legal exposure for school districts. If this section is retained, expenditure controls should take into account regional cost differences. In addition, it should permit retainer agreements for basic legal services, a process that can be extremely cost-effective for school districts. This recommendation is consistent with those from the Education Transformation Task Force.

- *N.J.A.C. 6A:23A-5.2 (c) and (d)*—NJSBA recommends the elimination of these two sections as they are overly proscriptive and micro-manage school districts. The 2% tax levy cap is in place to govern the expenditure of these funds.
- *N.J.A.C. 6A:23A-5.2 (e)* – This section prohibits various public relations activities, ranging from district-sponsored booths at conferences to community events and school opening ceremonies. These programs are valuable opportunities for school districts to share exemplary programs and services and provide education-related opportunities for students. In particular, County Vocational Technical Schools and Academies, Choice School Districts, Special Services School Districts, Educational Services Commissions and local school districts with specialized programs would benefit from such activities. This section’s prohibition of promotional efforts to advance a particular position on school elections or referenda is supported by NJSBA. However, that restriction is already reflected in long-standing and widely known case law and is normal practice throughout the state.
- *N.J.A.C. 6A:23A-5.4* – NJSBA recommends revising this section of the code. The penalty for a violation of the Public School Contracts Law should be proportional to the frequency, severity and materiality of the violation, not the full amount of the contract awarded, as currently stated. A more balanced approach is necessary. This recommendation is consistent with the recommendations of the Education Transformation Task Force.
- *N.J.A.C. 6A:23A-5.5* – Expenditure and Internal Control Auditing – Requires additional audits—separate from the annual audits required under state law, N.J.S.A. 18A:23-1—in school districts with budgets comprising 50% or greater state aid, with more frequent additional audits for those districts with state aid levels of 75% or higher. NJSBA recommends the elimination of this section of the code. The provision is unnecessary and, to NJSBA’s knowledge, has not been implemented within the timeframe indicated in the code. The cost of these state-required additional audits would be completely borne by the school district. If implemented, it would pose an undue cost burden on school districts, particularly those least able to pay. Because school districts are already subject to NJQSAC review (state monitoring), annual audits and the Statements of Assurance, this provision is redundant. This recommendation is consistent with the recommendations of the Education Transformation Task Force
- *N.J.A.C. 6A:23A-5.8* – Board of Education Expenditures for Non-Employee Activities – Establishes allowable and prohibited expenditures by boards of education for various school related activities, including meals and refreshments at school district events. NJSBA recommends amending this section to allow for reasonable expenditures for staff recognition events (e.g., breakfast on back-to-school day). School district expenditures based on limits set forth in state travel regulations or Office of Management and Budget circulars would be reasonable and not excessive in any way. In addition, even if reasonable expenditures were permitted, nothing would prevent a school district from continuing what has become a common practice: having a vendor or the local teachers’ association donate the refreshments in return for the ability to display signage or make a statement regarding the donation.
- *N.J.A.C. 6A:23A-6* – This section requires compliance with certain financial standards, policy requirements and operational controls as conditions for receiving state aid.
  - *N.J.A.C. 6A:23A-6.2* – Nepotism Policy – Requires that every school district have a nepotism policy that places restrictions on the hiring of relatives of the chief school administrator and board of education members; limits administrator supervision of relatives; and limits board of education and school administrator participation in collective negotiations when a relative receives the benefit of the in-district contract or when an immediate family member is working in another school district and receives the

benefit of the contract from a similar statewide union with which the board of education is negotiating. These restrictions were originally part of the Commissioner's Abbott Regulations; they became applicable to all school districts through the Accountability Regulations in 2008.

NJSBA recommends the elimination of this requirement. In addition to the New Jersey School Ethics Act, the Code of Ethics for School Board Members and policy models in NJSBA's Critical Policy Reference Manual provide sufficient guidance to prevent nepotism and conflicts of interest in hiring decisions.

Should the Nepotism Regulation not be eliminated, the NJSBA recommends that the Accountability Regulations definitions of "relative" and "immediate family member," set forth at *N.J.A.C. 6A:23A-1.2*, match the School Ethics Act definitions, rather than those in the State Conflict of Interest Law. In enacting the School Ethics Act, the Legislature stated, "To ensure and preserve public confidence, school board members and local school administrators should have the benefit of specific standards to guide their conduct..." At time of enactment, the Legislature already had in place the State Conflict of Interest Law, to govern the activities of state officials, and the Local Government Ethics Act, to govern the activities of municipal and county officials. The Legislature could have amended either of these to include school officials; it did not. Instead, it created a separate law, the School Ethics Act, to govern school officials' conduct.

The actions of the Legislature should be acknowledged and respected and not clouded with definitions from other statutes that govern behavior of other public officials. The School Ethics Act, at *N.J.S.A. 18A:12-23*, defines "relative" and "immediate family member" as follows: "Member of immediate family" means the spouse or dependent child of a school official residing in the same household; "Relative" means the spouse, natural or adopted child, parent, or sibling of a school official. These definitions should be incorporated into the Accountability Regulations. Additionally, the Task Force recommends that the school district boundary should be line of demarcation for conflicts, particularly in collective negotiations. The NJSBA believes that board members and school administrators should be authorized to fully participate in the collective negotiation process where their conflict is limited to an out-of-district union affiliation.

As such, the NJSBA recommends that Section (a) (6) be eliminated as it pertains to out-of-district same statewide union affiliation conflicts in negotiations. For in-district conflicts, the NJSBA believes that the preclusion on negotiations participation should be limited to in-household conflicts. NJSBA long-standing policy states: The NJSBA believes that board members and school administrators should be precluded from participation in the collective negotiation process when they have immediate family members employed in the district in the bargaining unit in question. Therefore, the NJSBA recommends that Section (a) (5) be amended to limit the collective negotiations participation exclusion to "immediate family members" who work in the school district, and not to the more expansive "relatives."

- *N.J.A.C. 6A:23A-6.2(b)* states, "A school district or county vocational school district may exclude per diem substitutes and student employees from its board nepotism policy." The NJSBA recommends that this exception to nepotism policy be eliminated. While the NJSBA acknowledges that it is ultimately a matter of local control, it sees no reason for the exception.
- *N.J.A.C. 6A:23A-7* – This section requires boards of education to establish and implement policy and procedures pertaining to travel expenditures for its employees and school board members that



are in accordance with provisions of the 2007 School District Accountability Act, codified at of N.J.S.A. 18A:11-12, and various Office of Management and Budget circulars. These policies and procedures shall ensure that all travel by employees and board members is educationally necessary and fiscally prudent. The statute sets forth numerous standards to be included in school district policy and procedures. The NJSBA finds many of these requirements to be overly prescriptive and unnecessary, given the 2% tax levy cap and its impact on school district spending. (This finding is consistent with that of the Education Transformation Task Force.)

- *N.J.A.C. 6A:23A-7.3 – Maximum Travel Budget* – Requires a school board to annually establish a maximum travel expenditure amount for school district staff and officials. It also sets maximum annual travel amounts per employee for “regular school business travel” and a maximum individual registration fee for programs for employees and board members. The section also includes a definition of “regular school business travel.”

This section should be revised to include a maximum annual dollar amount per board member for regular school business travel. Subparagraph (b) (1) of this section includes a maximum dollar amount for employees’ regular school business travel. However, board members must also attend training and meetings on behalf of the school district. The travel regulations should recognize this fact and include a maximum annual dollar amount per board member for travel and professional development, for which additional board approval is not required. In addition, the maximum amount per employee and per board member should be set at \$3,000 and adjusted annually for inflation through a factor such as the Consumer Price Index. The current maximum, \$1,500, was set almost ten years ago. Additionally, the NJSBA recommends increasing the maximum “in-state” registration fee for in-state professional development for which board of education approval is not required. The current maximum registration fee for in-state professional development, \$150, was set almost ten years ago. It should be increased to \$300 for activities included in the definition of “regular business travel,” and adjusted annually for inflation through a factor such as the Consumer Price Index. This recommendation is consistent with the recommendations of the Education Transformation Task Force.

- *N.J.A.C. 6A:23A-7.4 – Travel Approval Procedures* – Prescribes the approval processes for board member and staff travel, including the board of education’s and superintendent’s roles in the approval process, conditions for pre-approval of travel, and restrictions on post-approval of travel in unforeseen situations. The NJSBA recommends revising the regulations to allow post-event approval for board member attendance at conferences, training events and programs, within certain established parameters. On occasion, a board member may become aware of a valuable program when there is no board of education meeting scheduled in time to obtain pre-approval. Establishing a maximum dollar amount for board member travel would assist local districts. However, the NJSBA believes that allowing post event approval of board member travel is still necessary.
- *N.J.A.C. 6A:23A-7.8 – Prohibited Travel Reimbursement* – This section should be amended so that it clearly permits reimbursement of board member training related to board of education responsibilities. As currently written, subparagraph (a) (3) could be misinterpreted to restrict board member participation in programs addressing their responsibilities in labor relations, policy, school law and other areas because such training might not be specifically required under statute. The section should be rewritten to make it clear that reimbursement for training related to board of education responsibilities is permissible.
- *N.J.A.C. 6A:23A-7.11 – Subsistence Allowance, Overnight Travel* – The NJSBA recommends eliminating the “50-mile” restriction on reimbursement for overnight travel. Subparagraph (d) permits reimbursement for travel expenses only for individuals whose home-to-conference

commute exceeds 50 miles. This provision is unnecessary and unfair. Sufficient safeguards are provided by other provisions of this section. These include the necessity for the commissioner of education to grant a waiver to make a specific multi-day conference eligible for overnight travel reimbursement and the maximum reimbursement rates for overnight accommodations.

The 50-mile provision limits affected board members' and school employees' access to training at multi-day statewide programs. Additionally, in situations where the 50-mile limit runs through the school district, some board members can attend the conference, stay over and be reimbursed, while other board members in the same school district cannot. The NJSBA also recommends eliminating the prohibition on meal reimbursement for the day prior to the conference and after check-out time on the last day. If an employee or board member has an early morning event at a conference, either as a presenter or attendee, it may be safer and more efficient for him or her to arrive the night before. On the last day, check-out times vary, some as early as 11 a.m., yet conference programming may run for the full day, perhaps as late as 5 p.m. Subsistence reimbursement should be permitted in these circumstances.

- *N.J.A.C. 6A:23A-7.11(f)* – The NJSBA recommends that this provision be clarified to specify if the per diem rate applies to lodging per person or per room. A per person rule would encourage room-sharing and save school districts money.
- *N.J.A.C. 6A:23A-7.12* – Meal Allowance – Special Conditions – and Allowable Incidental Travel Expenditures. The NJSBA recommends eliminating the prohibition on lunch reimbursement on in-service days for staff members, who travel from other parts of the school district (Subsection (c) (3)). Many school districts do not provide refreshments at in-service days. The regulations should permit reimbursement for lunch at modest rates in accordance with meal allowances in the Office of Management and Budget circular. This recommendation is consistent with the recommendations of the Education Transformation Task Force.
- *N.J.A.C. 6A:23A-7.12(f)(5)* – The NJSBA recommends eliminating the requirement that leftover food from board meetings be donated to charitable shelters since few such facilities accept left-over food. While noble in concept, the requirement, in Subsection (f) (5), is not practicable. Donating leftover food to homeless shelters is difficult, if not impossible. Such facilities often will not accept food unless it is untouched and the packaging has not been opened. This recommendation is consistent with the recommendations of the Education Transformation Task Force.
- *N.J.A.C. 6A:23A-8.3* – Administrative Cost Limits – The NJSBA recommends the elimination of the Administrative Cost limits from the regulations because they are unnecessary and constrain local decision-making concerning the allocation of resources. The administrative cost limits, which reflect statute (N.J.S.A. 18A:7F-5), are unnecessary because of other state-level controls that are in place and budgeting practice among New Jersey's school districts. The 2% Tax Levy Cap provides a significant control on school district spending, requiring a deliberate review of all costs in search of the most effective and efficient expenditure of school funds. Boards of education and school administrators are in the best position to determine program needs and spending priorities within the 2% Tax Levy Cap. Significantly, the U.S. Department of Education's National Center for Education Statistics reports that New Jersey public schools spend a smaller percentage of their budgets on school and district administration than do the vast majority of states. The NJSBA recommends that the NJDOE clearly define the components used in the administrative cost calculation and delineate between instruction-related costs and operational costs. As long as state law includes administrative spending growth limits, regulation should clearly define the component used in the calculation. Administrative expenditures considered operational, as well as those needed to carry out state requirements, should not be part of the cost limits because they are outside of the board's control.

- *N.J.A.C. 6A:23A-8.7* – Tuition Rate Adjustment by Districts Receiving Preschool Expansion or Educational Opportunity Aid in the 2007-08 School Year. The NJSBA recommends eliminating this provision. The time frame for this code provision has expired and is no longer necessary. The phase-in from the Abbott Parity Remedy, including Abbott Parity Aid, Educational Opportunity Aid and Discretionary Educational Opportunity Aid, was completed in the 2011-2012 school year.
- *N.J.A.C. 6A:23A-9.3* – Efficiency Standard for Review of Administrative and Noninstructional Expenditures and Efficient Business Practices – This section establishes “efficiency standards” related to various areas of school district operations. NJSBA recommends eliminating references to Commissioner of Education cap waivers from Subsection (a). Commissioner of Education cap waivers were eliminated by the 2010 statute creating the 2% Tax Levy Cap.
- *N.J.A.C. 6A:23A-9.3(c)* – The NJSBA recommends the NJDOE review the list of efficient administrative and non-instructional costs set forth in subparagraph (c) for relevancy and practicality. The review should include the following among other factors:
  - Use of the state median, or average, as a benchmark in several areas;
  - The standard of one custodian or janitor for every 17,500 square feet of building space;
  - Overtime pay at 10% or less of regular wages;
  - Incentives for employees to waive health coverage;
  - Placement of vacant positions budgeted at no more than step one of the salary guide;
  - Use of teacher aides not required by law, and
  - Self-sufficiency of food service operations.

In addition, regional cost factors should be considered in the review. This section was originally part of the Commissioner’s “Abbott Regulations.” If it is retained, it should be restructured to reflect current practice. This recommendation is consistent with the recommendations of the Education Transformation Task Force.

- *N.J.A.C. 6A:23A-9.3 (c) (14)* – NJSBA recommends the elimination of this provision which restricts employment of public relations personnel to half time. A full-time public relations professional may be cost-effective and beneficial to county vocational-technical schools, academies, choice school districts, special services school districts, educational services commissions and local school districts with specialized programs. Local school districts are in the best position to determine the resources needed to implement their communications/community relations responsibilities within the constraints of the 2% tax levy cap.
- *N.J.A.C. 6A:23A-9.5(b)(6)* – Commissioner to Ensure Achievement of the New Jersey Student Learning Standards; Corrective Actions. The NJSBA recommends the elimination of this requirement which lists commissioner of education review of future collective bargaining agreements as a possible corrective action: “Reviewing of the terms of future collective bargaining agreements prior to final approval by the district board of education and an assessment of the impact of such terms on the district's budget, education program and the local property tax levy.” This provision is unduly prescriptive and intrudes on local governance of public education. The collective bargaining process is a mutual determination of terms and conditions of employment between the school board’s and the union’s bargaining teams. The parties are in the best position to determine what is needed in the school district from a labor relations perspective. That determination should not be subject to the review and approval of the commissioner of education.
- *N.J.A.C. 6A:23A-10.1* – Moratorium on Spending Growth Limitation and Municipal Governing Body Authority to Determine Amount to Be Raised upon Voter Rejection of Separate Proposal – This section called for the commissioner of education to conduct a four-year study of the impact of the former 4% property tax and to make a recommendation on its continuation. The NJSBA recommends the elimination of this provision. The period of the moratorium was 2008-2009

through the 2011-2012. The statute creating the 2% Tax Levy Cap made the property tax cap permanent, rendering this provision unnecessary.

- *N.J.A.C. 6A:23A-10.2* – Adjustments to Spending Growth Limitation – This section implements commissioner spending growth limitation adjustments under the previous school funding law. The NJSBA recommends the elimination of this provision. The Commissioner spending growth limitation adjustments – capital outlay, pupil transportation, changes in enrollment, special education costs in excess of \$40,000, receiving school tuition and opening a new school facility – no longer exist.
- *N.J.A.C. 6A:23A-10.3*. Unused spending authority – This provision addresses the ability of school districts that did not budget up to their cap in one year to apply the unused (“banked”) cap in either of the next two succeeding budget years. The NJSBA recommends revising this provision so that it matches the timeframe in current statute, N.J.S.A. 18A:7F-39(c), that is, “any one of the next three succeeding budget years.” While the likelihood, given the 2% tax levy cap, of banked cap use is small, the code should be consistent with statute.
- *N.J.A.C. 6A:23A-11.1* – Adjusted Tax Levy Growth Limitation – Prescribes the calculation of adjustments to a district’s tax levy growth limitation under the previous statute, which created a 4% cap. The NJSBA recommends the elimination of references to cap adjustments for reductions in total unrestricted state aid and to “Commissioner waivers.”
- *N.J.A.C. 6A:23A-11.3* – Adjustment for a Reduction in Total Unrestricted State Aid – Prescribes method for determining a cap adjustment for state aid reduction. The NJSBA recommends the elimination of this section (*N.J.A.C. 6A:23A-11.3*). This adjustment no longer exists; it was repealed upon enactment of the 2% Tax Levy Cap in 2010.
- *N.J.A.C. 6A:23A-12.1* through 12.11 – Commissioner Waivers to Tax Levy Cap – Describe criteria for commission-granted waivers to the state’s former 4% tax levy cap. The NJSBA recommends eliminating the following sub-sections, which address various types of commissioner waivers:

- 12.1 – Waivers Subject to Commissioner Authorization
- 12.6 – Increases in Insurance Costs
- 12.1 – Failure to Meet CCCS (state standards)
- 12.7 – Increases in Transportation Costs to Service Hazardous Routes
- 12.3 – Energy Cost Increase
- 12.8 – Increases in Special Education Costs
- 12.4 – Capital Outlay Cost Increases
- 12.9 – Increases in Tuition Costs
- 12.5 – Use of Non-recurring General Fund Revenues
- 12.10 – Costs Associated with Opening a New School Facility
- 12.11 – Service Essential to Health, Safety and Welfare of Children

These commissioner waivers were repealed with the enactment of the 2% Property Tax Cap Law.

- *N.J.A.C. 6A:23A-12.13* – Voter Authorization to Exceed Tax Levy Limitation; Separate Proposal(s) – Addresses composition and submission of ballot questions asking voters to approve spending above the tax levy cap. The NJSBA recommends revising this section to reflect the fact that a simple majority of voters is necessary to approve separate ballot questions. In 2010, statute eliminated a previous requirement that an affirmative vote by 60% of participating voters is needed to approve ballot questions to exceed the tax levy cap. Currently, a simple majority is needed. This code provision should reflect current statute. The NJSBA recommends the NJDOE

review this section to address the differences between approval of separate ballot proposals in April school election districts and November school election districts and the subsequent impact on budget development and implementation. Over 90% of the state's school district conduct elections in November, an option not available in 2008 when the Accountability Regulations were implemented. The timeframe for implementing approved separate questions differs between April and November election districts.

- *N.J.A.C. 6A:23A-14* – This section addresses the establishment and use of capital reserve accounts. The NJSBA recommends amending the regulations to allow school districts to transfer funds from and between reserve accounts in order to offset fiscal emergencies, upon approval of the Executive County Superintendent. Access to reserve accounts in emergency situations should be allowed with ECS approval and not require placement of a separate question before voters. For example, during the past year, a school district incurred a budget deficit due to a significant increase in tuition charges from its receiving school district. Even though the school district had a significant amount of money in its capital reserve account and could have covered the deficit, it had to go out to the voters with a separate question to authorize the transfer.
- *N.J.A.C. 6A:23A-15* – This section establishes processes for determining the funding of charter schools. Charter schools receive funding on per pupil basis, provided through their students' districts of residence. Under state law, N.J.S.A. 18A:36A-12, funding for charter schools is provided as follows: The school district of residence shall pay directly to the charter school for each student enrolled in the charter school who resides in the district an amount equal to 90% of the sum of the budget year equalization aid per pupil and the pre-budget year general fund tax levy per pupil inflated by the CPI rate most recent to the calculation. In addition, the school district of residence shall pay directly to the charter school the security categorical aid attributable to the student and a percentage of the district's special education categorical aid equal to the percentage of the district's special education students enrolled in the charter school and, if applicable, 100% of preschool education aid. The district of residence shall also pay directly to the charter school any federal funds attributable to the student.
- *N.J.A.C. 6A:23A-15.1* – Definitions—The NJSBA recommends revising the definition of “projected enrollment” to establish a better mechanism to forecast first-year enrollment in new charter schools, particularly blended charters.
- *N.J.A.C. 6A:23A-15.3* – Enrollment Counts, Payment Process and Aid Adjustment—NJSBA recommends adding a second student count date to address the movement of students to and from the charter school. A second child count date would enable funding to follow the student throughout the academic year, rather than waiting for an end-of-year adjustment.
- *N.J.A.C. 6A:23A-15.4* – Procedures for Private School Placements by Charter Schools—The NJSBA recommends amending this section to allow the local school district to conduct a needs assessment when a charter school proposes a student placement in a private day or residential program. The school district should also be able to consult with its IEP team prior to provision of notice to the parent.

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*The New Jersey School Boards Association is a federation of the state's local boards of education and includes the majority of New Jersey's charter schools as associate members. NJSBA provides training, advocacy and support to advance public education and promote the achievement of all students through effective governance.*