

**STATE BOARD OF EDUCATION
ADMINISTRATIVE CODE
COMMENT/RESPONSE FORM**

This comment and response form contains comments accepted from the public since the April 1, 2015, State Board meeting when the draft regulations were considered at Proposal Level.

Topic: Fiscal Accountability, Efficiency and Budgeting Procedures **Meeting Date:** September 2, 2015

Code Citation: N.J.A.C. 6A:23A-22.4 **Level:** Adoption

Division: Field Services **Completed by:** Office of School Facilities and Finance

Summary of Comments and Agency Responses:

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

1. Elizabeth Athos, Esq.
Education Law Center
2. Nicole Cole, President & CEO
N.J. Charter Schools Association
3. Vincent DeRosa, Founder & Lead Person
Classical Academy Charter Schools of Clifton
4. Ali Riza Gurcanli
Citizen affiliated with Paterson Charter School for Science & Technology
5. Nihat Guvercin, CEO
North Jersey Arts & Science Charter School
6. David B. Rubin, Esq.
On Behalf of Piscataway Township Board of Education
7. Misha Simmonds
Citizen affiliated with University Heights Charter School
8. Michael A. Vrancik, Director
N.J. School Boards Association
9. Graig Weiss
Foundation Academy Charter School
10. Melvin Wyns
Citizen

1. **COMMENT:** The commenter expressed opposition to the rule at N.J.A.C. 6A:23A-22.4(a), which permits charter schools to carry debt for up to one year, and recommended that charter schools be held to the same standards for carrying debt as traditional school districts. The commenter also expressed opposition to the proposed repeal of N.J.A.C. 6A:23A-22.4(e), stating “the elimination of language in N.J.S.A. 18A:36-12 should have no bearing on the discretion that the Commissioner has to ensure the efficient expenditure of public funds.” The commenter further stated the repeal would threaten “fundamental fairness and frustrates the legislative intent of N.J.S.A. 18A:7F-60 requiring the effective and efficient expenditure of funds.” (8)

RESPONSE: The Department has not proposed an amendment to the rule regarding charter school’s ability to carry debt, N.J.A.C. 6A:23A-22.4(a). Therefore, the comment about charter school debt is outside the scope of this rulemaking.

The Department disagrees with the commenter’s other conclusions. N.J.S.A. 18A:7F-60 authorizes the Commissioner to withhold State aid to school districts and county vocational school districts, or to take other action as needed to ensure the provision of a thorough and efficient education. The statute is not relevant to a school district’s ability to reduce its payment to a charter school.

2. **COMMENT:** The commenters expressed support for the proposed repeal of N.J.A.C. 6A:23A-22.4(e) because the repeal will align the rules with State statute. (2, 4, 5, 7, 9)

RESPONSE: The Department appreciates the commenters’ support.

3. **COMMENT:** The commenters expressed support for the proposed repeal of N.J.A.C. 6A:23A-22.4(e) because charter schools need to maintain a higher surplus for facilities-related expenses. (2, 3, 4, 5, 9)

RESPONSE: The Department appreciates the commenters’ support, and recognizes that charter schools have unique facilities needs.

4. **COMMENT:** The commenter expressed support for the proposed repeal of N.J.A.C. 6A:23A-22.4(e), stating the Foundation Academy Charter School operates for an extended year. The commenter said the charter school’s early start requires it to maintain a June 30 fund balance of 14 percent of the operating budget for use in the subsequent year. (9)

RESPONSE: The Department appreciates the commenter’s support.

5. **COMMENT:** The commenter expressed concern for the proposed repeal of N.J.A.C. 6A:23A-22.4(e), stating the present administration appears to favor charter schools with the proposed amendment. The commenter stated that the Governor’s proposed FY 2015-16 State Budget would cause districts’ charter school payments to deviate from the amounts suggested by existing statute, and so dismisses the argument that “tuition must always be aligned to the statute.” He further states “a remedy to maintain the important discretionary authority and this rule could be available by modifying the proposed FY 2015-16 budget language. (10)

RESPONSE: The suggestions regarding the language in the Fiscal Year 2015-16 State budget are outside the scope of this rulemaking. The Department proposes to repeal N.J.A.C. 6A:23A-22.4(e) to align the chapter with its authorizing statute. Since the

relevant language was omitted when the charter school law was amended in 2000, the rule currently goes beyond statutory authority.

- 6. COMMENT:** The commenter expressed several reasons for opposition to the repeal of N.J.A.C. 6A:23A-22.4(e). The commenter stated charter school law (N.J.S.A. 18A:36A1 through 18) does not constrain the Commissioner’s authority to transfer “excess surplus” funds accumulated by charter schools. The commenter also stated the Commissioner has an obligation to ensure all school districts are providing a thorough and efficient education, and suggested the regulation of surplus is an essential part of the Commissioner’s duties. To regulate surplus, the commenter recommended the Department propose rules that will systematically limit charter surplus on a Statewide program basis. **(1)**

RESPONSE: The Department disagrees the rule should remain. Since the authorizing language in the statute no longer exists, the Department disagrees with the commenter’s recommendation to propose rules to limit all charter schools’ “excess surplus.”

- 7. COMMENT:** The commenter objected to the proposed repeal of N.J.A.C. 6A:23A-22.4(e) stating the rule is in conflict with the statutory provision governing the mandatory per pupil charter school rate. The commenter also stated the Commissioner should retain the discretionary authority to return unused surplus amounts to the school district of residence. The interpretation of this statute is the subject of pending litigation at the New Jersey Superior Court, Appellate Division, and the commenter requested that adoption of the proposed repeal be stayed until the Appellate Division has an opportunity to issue a decision. **(6)**

RESPONSE: Due to the ongoing litigation, the Department is not able to respond to the comments at this time.



State of New Jersey
DEPARTMENT OF EDUCATION
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Adoption Level
September 2, 2015

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

DAVID C. HESPE
Commissioner

TO: Members, State Board of Education

FROM: David C. Hespe, Commissioner

SUBJECT: N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency and Budgeting Procedures

AUTHORITY: N.J.S.A. 18A:36A-12

REASON
FOR ACTION: Amendments

SUNSET DATE: November 25, 2016

Summary

The Department of Education (Department) proposes to amend N.J.A.C. 6A:23A, Fiscal Accountability, Efficiency and Budgeting Procedures, to bring Subchapter 22, Financial Operations of Charter Schools, into compliance with State law. N.J.A.C. 6A:23A-22 provides for the financial operations of charter schools, including fiscal accountability, accounting, and recordkeeping.

The proposed amendments to N.J.A.C. 6A:23A-22.4, Financial requirements, are necessary to align the rule with changes made to N.J.S.A. 18A:36A-12. P.L. 2000, c. 142 repealed the part of the Charter School Act that provided the Commissioner of Education (Commissioner) discretion to reduce a school district's charter school payment below the statutory per pupil rate. According to current statute, school districts must pay a charter school an amount equal to 90 percent of the sum of the budget year equalization aid per pupil and the prebudget year general fund tax levy per pupil inflated by the consumer price index (CPI). Prior to the amendments made to the Charter School Act in 2000, the law provided the Commissioner the authority to require a school district to pay more or less than 90 percent of the per pupil amount. Since the section authorizing the Commissioner's discretion was removed, the corresponding rule provision is proposed for deletion.

The following summarizes the proposed amendments:

Subchapter 22. Financial Operations of Charter Schools

N.J.A.C. 6A:23A-22.4 Financial requirements

This section sets forth financial requirements for charter schools in the areas of debt, property acquisition, charter school aid, and monitoring.

The Department proposes to delete N.J.A.C. 6A:23A-22.4(e), which allows a district board of education after completion of a school year to petition the Commissioner for a lower rate for the per pupil amount paid to a charter school for a specific grade level if the charter school spends significantly less than budgeted and has accumulated a sizable surplus. N.J.A.C. 6A:23A-22.4(e)1 allows the Commissioner to reduce the per pupil rate based on a determination of excessive surplus, as determined pursuant to N.J.S.A. 18A:7F-7. N.J.A.C. 6A:23A-22.4(e)2 allows the charter school to submit to the Commissioner comments regarding the school district of residence's petition for a lower rate. While the Charter School Act originally included language giving the Commissioner discretion to reduce the per pupil rate paid to charter schools under the stipulated circumstances, P.L. 2000, c. 142 abolished the Commissioner's ability to adjust the per pupil amount. Deleting the rule at N.J.A.C. 6A:23A-22.4(e) will align the section with current statute.

The Department also proposes to recodify N.J.A.C. 6A:23A-22.4(f) as N.J.A.C. 6A:23A-22.4(e) to account for the proposed deletion of current N.J.A.C. 6A:23A-22.4(e).

As the Department has provided a 60-day comment period on this notice of proposal, the notice is exempt from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments are based on P.L. 2000, c.142, which eliminated the Commissioner's discretion in reducing school districts' payments to charter schools in certain circumstances. Since the authorizing law has already been repealed, the Department expects the proposed amendments to have no social impact. The proposed amendments only will provide clarification for school districts and charter schools regarding a school district's ability to petition the Commissioner for lower charter school payments.

Economic Impact

The Department does not expect the proposed amendments will have an economic impact on school districts because the law allowing reduced payments has not been in effect since 2000. Moreover, the Commissioner never reduced a school district's payments to a charter school pursuant to N.J.A.C. 6A:23A-22.4(e) even while the authorizing law was in effect.

Federal Standards Statement

There are no Federal standards or requirements applicable to the rules proposed for amendment; therefore, a Federal standards analysis is not required.

Jobs Impact Statement

The proposed amendments will result in neither the generation nor loss of jobs.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on charter schools, which could be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments only will clarify that school districts may not petition the Commissioner to reduce their payments to charter schools.

Housing Affordability Impact Analysis

The proposed amendments will have no impact on the average cost of housing in the State. The proposed amendments pertain to the fiscal operations of school districts and charter schools.

Smart Growth Development Impact Analysis

The proposed amendments will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments pertain to the fiscal operations of school districts and charter schools.

Full text of the proposal follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

**CHAPTER 23A,
FISCAL ACCOUNTABILITY, EFFICIENCY AND BUDGETING PROCEDURES**

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SUBCHAPTER 22. FINANCIAL OPERATIONS OF CHARTER SCHOOLS

6A:23A-22.4 Financial requirements

- (a) A charter school board of trustees may incur debt for a period no greater than 12 months except:
1. During the first year that the charter school is approved when the debt is incurred by the charter school board of trustees for a period no longer than January 15 of the preceding school year to June 30 of the first school year of the charter; and
 2. For all other years that the charter school is approved when the debt incurred by the charter school board of trustees for a period of 12 months or greater is:
 - i. Fully secured by the value of the real property or other asset, so that the total value of all such debt does not exceed the total appraised value of the property or asset by which the debt is secured; and
 - ii. Non-recourse to the charter school.
- (b) A charter school board of trustees may acquire real property by a lease or a lease with an option to purchase for use as a school facility providing that the charter school board of trustees shall ensure:
1. The term of the lease does not exceed the length of the charter;
 2. The lease contains a provision terminating the obligation to pay rent upon the denial, revocation, non-renewal or surrender of the charter; and
 3. The lease does not contain a provision accelerating the obligation to pay rent in the event of default.
- (c) A district board of education shall only transmit State and local public funds to a charter school after the final granting of the charter by the Commissioner has occurred. If funds are withheld pending the final granting of the charter, the district board of education shall

pay all withheld funds to the charter school with the first scheduled payment after the effective date of the charter.

- (d) A charter school shall be subject to monitoring by the Commissioner to ensure that the percentage of school funds spent in the classroom is at least comparable to the average percentage of school funds spent in the classroom in all other public schools in the State.

The calculation for this percentage in both the annual budget and the Comprehensive Annual Financial Report is based on National Center for Educational Statistics as published by the U.S. Department of Education.

- [(e) After completion of the school year, the district board of education may petition the Commissioner for a lower rate for the charter school's per pupil amount for the specific grade level if the charter school spends significantly less than budgeted and has accumulated a sizable surplus.

1. The Commissioner may reduce the rate based on a determination of excessive surplus. The criteria for excess surplus is determined by the Commissioner pursuant to N.J.S.A. 18A:7F-7.

2. A charter school may submit comments to the Commissioner regarding the petition for a lower rate for the charter school's budget amount per pupil for the specific grade level from the district of residence of the charter school or non-resident district(s).]

- [(f) (e) If, at any time, the Commissioner denies, revokes or does not renew a school's charter, or a charter school board of trustees surrenders its charter or becomes insolvent, all assets of the charter school board of trustees after satisfaction of all outstanding claims by creditors, are subject to equitable distribution by the Commissioner among the participating district of residence and non-resident district(s). A charter school board of trustees shall include a provision in its bylaws concerning distribution of assets upon denial, revocation, non-renewal or surrender of its charter or insolvency of the charter

school that is consistent with this rule.