



## **NJDOE News**

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### **DOE Releases Draft Accountability Regulations**

New Jersey Education Commissioner Lucille E. Davy today released the department's draft regulations concerning school district fiscal accountability, efficient spending practices and budgeting procedures at a news conference at DOE in Trenton today.

"New Jersey schools are some of the best in the nation, and our taxpayers are generous in their support of providing high-quality educational opportunities for all children," Commissioner Davy said.

"Under a number of recent laws approved by the Legislature, it is the responsibility of both the DOE and the districts to focus on the appropriate use of those public resources and greater accountability. We all agree that there needs to be more transparency in the process. Governor Corzine is committed to that, and these new regulations provide guidance on how we are going to do that work," she said.

The draft regulations clarify the various responsibilities given to DOE and the districts under the School Funding Reform Act (approved earlier this year), the school district-related provisions of the CORE legislation (the Uniform Shared Services and Consolidation Act, approved in April of 2006 after the special legislative session on property tax reform), the School District Fiscal Accountability Act (approved in 2006) and the state Office of Management and Budget (OMB) travel circular, which applies to all state government agencies and is applied to local school districts under CORE.

Commissioner Davy released the draft regulations at a roundtable meeting including Executive County Superintendents Carole K. Morris of Monmouth County and Dr. Lester W. Richens of Burlington County and District Superintendents Raymond Broach of Ewing, Joseph M. Ferraina of Long Branch and Dr. Morton Sherman of Tenafly, all of whom also spoke about the public expectations of increased accountability by school officials and increased transparency in the operation of school districts.

The Commissioner explained that the regulations are being released in one comprehensive document "so that all of these various elements can be seen in context."

She noted, however, that because the new regulations emanated from different statutory authorities, some of the new rules will have to be promulgated under the Administrative Procedures Act (APA), some will have to be presented to the State Board of Education approval and some can be put in place through emergency regulatory powers granted to the Commissioner.

"I expect that we will promulgate those that we can do under our emergency powers within a week to 10 days," the Commissioner said. "In addition, we will seek authority through language in the budget bill to make sure that all of the proposed regulations are in place in time for the start of the 2008-09 school year in September."

To access the draft regulations, click here: <http://www.nj.gov/education/code/proposed/title6a/regs.htm>.

A summary of the draft regulations follows:

#### **Summary of Draft Accountability Regulations**

**4/30/08**

##### **Subchapter 1 - Purpose, Scope and Definitions**

This subchapter outlines the purpose and scope of the regulations and includes the definition section.

##### **Subchapter 2 - Executive County Superintendent of Schools**

This subchapter provides an overview of the general powers and duties of the executive county superintendent,

including the procedures for promoting consolidation and sharing of services. These procedures include the establishment of a countywide task force to provide advice and consultation to the Executive County Superintendent and the framework/standards for which the Executive County Superintendent shall study and submit plans for the consolidation of districts' administrative services and the creation of comprehensive consolidated school districts. For example, the draft regulations require an analysis of administrative staffing and compensation of the proposed constituent districts and recommendations and guidance for the proposed comprehensive consolidated or regional district.

The subchapter also includes the framework for the required study of pupil transportation services to promote coordination/regionalization of such services, the framework for promoting the sharing of special education services, and the standards by which the Executive County Superintendent can request a forensic audit to be conducted if he determines that the accounting practices in a district necessitate such an audit. The forensic audit standards include receipt of a specific complaint or allegations of waste or when a board member or employee is indicted or pleads guilty to criminal charges related to the conduct of school operations.

### Subchapter 3 – School District Budget Review by Executive County Superintendent

This subchapter outlines the Executive County Superintendent budget review and approval authority to ensure that the budget includes sufficient funds for the provision of the CCCS and includes the procedures/standards for reductions in excessive administration and non-instructional expenditures (and the district appeal process for such reductions). The procedures include the Executive County Superintendent detailed examination of district spending and practices during the prebudget year for elimination of inefficiencies in the subsequent budget submission. The standards for this analysis include reductions based on review of spending compared to indicators in the comparative spending guide (e.g. administrative cost per pupil equal to or less than the state median, support services cost per pupil equal to or less than the state median), and reductions based on not meeting specific efficiency standards such as a transportation efficiency rating under 120 percent and overtime for any given function greater than 10% of regular wages for that function. Additional standards include budgeting vacant positions at step one of the salary guide, including only aides mandated by law and operating a food service operation without a deficit. The subchapter also requires districts to solicit competitive proposals with fee quotes and annual maximum limits prior to award of contracts for professional services and requires at a minimum, for a district board of education to pre-approve all field trips, establish dollar thresholds for all student awards and to establish a not-to-exceed budget for all student activities in a non-discriminatory manner.

### Subchapter 4—Administrator and Board Member Accountability

This subchapter sets forth provisions designed to ensure greater accountability of school district administrators and district boards of education regarding the hiring and termination of high level employees of the district. The Executive County Superintendent must review and approve all employment contracts for superintendents, assistant superintendents, deputy superintendents and SBAs in order to ensure that the contract complies with all applicable laws, including statutes regarding permissible accrual of vacation and sick days. The Executive County Superintendent will also review the contracts to ensure that the proposed salary, benefits and emoluments are reasonable compared with similarly situated administrators, that the contract does not provide for reimbursement of legally or contractually required employee costs, that it does not include benefits that duplicate those otherwise provided by law, and that it does not contain provisions for excessive or illegal payments as a condition of separation from service.

The subchapter further provides that a district board of education must submit to the Commissioner for approval an early termination agreement for its superintendent that includes the payment of compensation as a condition of separation. The section delineates the types of payments for early termination that are permitted, limiting compensation to an amount not to exceed the value remaining of the express provisions of the existing employment contract. Early termination agreements are only permitted where the separation is involuntary and in the best interests of the school district and they are prohibited where separation occurs as a result of indictment or conviction of a felony, revocation of certification, gross mismanagement or ethical violations.

Finally, this subchapter also reiterates statutory and regulatory requirements regarding the public notice required for alteration of contract terms of certain employees, the required review of the certification of the superintendent and SBA by the State Board of Examiners under certain circumstances, and the requirement that the district board of education inform the Executive County Superintendent of the termination of the SBA in order to protect the integrity of the school business office.

### Subchapter 5 - School District Fiscal Accountability

This subchapter contains several provisions that will enable the Commissioner to more closely monitor the fiscal practices of school districts. The Commissioner may appoint an external entity to perform a compliance audit of a school district's general fund spending under certain circumstances, and may use the findings of the report as evidence for appointment of a State monitor in the district. Year-end financial procedures for the Executive County Superintendent and State monitor, as applicable, are included. These procedures include examination of

the school district's debt obligations to determine whether refinancing is appropriate and reviewing account payables and encumbrances that are part of the reserve for encumbrances as of June 30 and are in excess of \$5,000 and taking appropriate corrective action. This subchapter also requires districts to take corrective action upon discovery of an actual or projected fund deficit or upon receipt of repeat audit findings in the annual audit, and provides that the Commissioner shall require periodic expenditure and internal control audits of school districts that receive a large percentage of State aid to support the local budget. Finally, the subchapter requires that a district that has been subject to an audit or investigation of the Department's Office of Fiscal Accountability and Compliance must discuss the findings of the audit or investigation at a public meeting of the district board of education and adopt a resolution outlining the corrective action the district will take in response to the findings.

#### Subchapter 6 – Prohibition Against Excessive or Unreasonable Expenditures

This subchapter summarizes the department's authority provided under the SFRA to withhold or recover state aid upon identification of excessive and/or inefficient expenditures and outlines the procedures (Order to Show Cause) for a school district to be heard as to why the state aid should not be withheld. Nothing in these procedures preclude the Commissioner from immediately withholding state aid if determined the district is in violation of any statute, regulation or rule.

This subchapter includes a requirement to establish a public relations and professional services board policy that outlines the district strategies to minimize the cost of these services. The policy must include such items as, setting an annual maximum dollar limit on such services, requiring the public relations duties to be incorporated into the duties of the superintendent, business administrator or other staff position (not provided by a dedicated public relations staff position or contracted provider), and requiring professional services contracts to be issued in a deliberative manner (e.g. request for proposals) and limiting professional services contracts to non-recurring or specialized work. Districts are specifically prohibited from printing and distributing publications that include the name and/or picture of any member of the district board within 90 days of any election, in which any board member is seeking any elective office or any election relating to district operations.

This subchapter also authorizes the commissioner to withhold state aid if the district is in violation of public bidding laws or did not achieve their approved benchmarks in the SEMI program for any given budget year.

#### Subchapter 7 – Commissioner Authority to Achieve T&E

This subchapter includes regulations issued under the prior funding law updated to be consistent with the SFRA. The section summarizes the Commissioner's authority and procedures to direct reallocations and programmatic adjustments in a district budget to ensure implementation of the required thoroughness and efficiency standards. It lists possible corrective action to be taken, as deemed appropriate (e.g. restructuring of curriculum or programs consistent with the thoroughness standards, reassignment of staff) and enhanced budget procedures, if deemed appropriate (school based budgeting), if one or more schools within a district fail to achieve the core curriculum content standards. The subchapter also includes the detailed process and procedures following voter defeat of a proposed budget.

#### Subchapter 8 – School District Conditions for the Receipt of State Aid

This subchapter includes specific efficiency and accountability standards and requirements that every school district must implement as a condition for the receipt of state aid. These requirements include refinancing all outstanding debt in which a three percent net present value savings is achievable and maximizing the district participation in SEMI (defined as obtaining a 90 percent return rate of parental consent forms for all SEMI eligible students where a cost benefit can be achieved in such participation). All districts must develop a board policy concerning the administration of the SEMI program which must include the specific program requirements under the SEMI program in the regulations.

These requirements also include a board policy on nepotism, prohibition on pay to play, specific internal control procedures and systems, and travel restrictions pursuant to the OMB circular. The nepotism policy must include several provisions, including the prohibition of a district to employ any relative of a board member or superintendent (existing employees are grandfathered but cannot be promoted unless specifically approved by the Executive County Superintendent for good cause) and prohibition on supervising or exercising authority over personnel actions of a relative. The prohibition on pay to play requires districts to maintain honest and ethical relations with vendors and prohibits such actions as a board voting on a contract over \$17,500 if such contracting entity made a reportable contribution to a member on the board during the preceding year.

The specific internal control procedures and systems should be established with other internal controls required in law/regulation and by professional standards deemed necessary. These procedures include segregation of specific functions, development of standard operating procedures for business functions, maintenance of a position control roster that is integrated into the district's payroll system, and maintenance of a financial and human resource management system in districts with budgets in excess of \$25 million or with more than 300 employees (by 2009-10). Internal control requirements also include establishment of an automated work order

system for facilities maintenance and repair in any district with three or more school district buildings, adoption of a board policy for the management and control of school district vehicles, and establishment of a board policy and financial systems and procedures to limit payment of invoices that exceed approved purchase orders.

The travel requirements detail the procedures and limitations on board and employee travel consistent with the OMB Circular as required under the CORE statutory reforms. These include establishment of a board policy consistent with the circular and ensures all travel is educationally necessary and fiscally prudent (e.g. directly related to and within the scope of the employees' responsibilities).

#### Subchapter 9 – School Budgeting Procedures

This subchapter includes regulations issued under the prior funding law updated to be consistent with the SFRA. This includes budget submission requirements, administrative cost limits, capital outlay budgets, designation of fund balances and appropriation of debt service fund balance. A significant update under SFRA include the requirement for districts to post on the school district's internet site (if one exists) a budget summary in a "user-friendly" format and include additional information on tax rates, unusual revenues and expenditures and a list of shared service agreements the district is participating. Districts must also submit and post as part of the user-friendly budget specific information on administrator employment contracts and any employee with an annual salary that exceeds \$75,000 who is not a member of a collective bargaining unit. The department is required to post the user friendly budget information on its internet site following the budget election and municipal review of defeated budgets. Another SFRA update includes changes to the estimated tuition rate calculation to phase out the deduction from the tuition rates calculation of on-roll allocations of state aid.

#### Subchapter 10 – Spending Growth Limitation

This subchapter references the moratorium on use of spending growth limitation adjustments and municipal review of defeated separate proposals until the 2013-14 school year. The subchapter summarizes the application of spending growth limitation adjustments that will be effective beginning in the 2013-14 school year. For the 2008-09 school year through the 2011-12 school year, the tax levy growth limitation and cap waiver process detailed in subchapters 11 and 12 are applicable.

#### Subchapter 11 – Tax Levy Growth Limitation

This subchapter details the authority and calculation of the tax levy cap on school district budgets applicable through the 2013-14 school year. The law allows districts to grow tax levy by 4% each year plus automatic adjustments for enrollment increases, health care increases up to the SHBP increase, and to offset any general fund state aid reduction (not applicable in the 2008-09 school year). The subchapter details the calculation and documentation to submit to the Executive County Superintendent in support of the automatic adjustments. It also includes in the calculation the required reduction in a district's allowable tax levy increase under the SFRA for districts spending above adequacy that receive an increase in state aid above 2% or the CPI, whichever is greater. The levy can be further increased by any tax levy cap waiver approved by the Commissioner pursuant to the procedures and requirements outlined in subchapter 12.

#### Subchapter 12 – Commissioner Waivers of Tax Levy Growth Limitation

This subchapter details the procedures to submit a tax levy cap waiver to the Commissioner for extraordinary costs including (but not limited to), energy cost increases, insurance cost increases, special education cost increases over 40,000 per pupil and use of non-recurring revenue in the prebudget year. The applicable calculation and required evidence/documentation to support specific waiver requests are detailed. For example, a district requesting a waiver for an increase of insurance costs must submit a three year trend analysis of such costs, written verification/estimate of the rate increase for each category of coverage, list of insurance policies/coverages and documentation that the district examined at least once in the last three years all available group insurance policies.

The subchapter also details the procedures for the department's review of districts' entire budget for reallocations up to the waiver request. Such reallocations will be calculated based on district failure to meet the efficiency standards and implement efficient business practices in accordance with the standards in subchapter 3 and other standards for programs and services not required to achieve the CCCS detailed in this subchapter (e.g. annual average class sizes for regular education are greater than 15 pupils, and the provision of courtesy busing, adult education programs and community programs not specifically approved by the voters in a separate question).

Lastly, this subchapter details the requirements and procedures for submission of a separate proposal to exceed the tax levy limitation.

#### Subchapter 13 – Budget Transfers, Underestimated Surplus and Deficits

This subchapter includes regulations issued under the prior funding law updated to be consistent with the SFRA. It includes the statutory restrictions on surplus and line item transfers during the year and new provisions to restrict

transfers from line-item accounts that include waiver amounts approved by the commissioner and to restrict transfers into line-item accounts the Executive County Superintendent reduced pursuant to provisions under subchapter 4. The subchapter also includes procedures that a board must take if it projects a budget deficit.

#### Subchapter 14 - Reserve Accounts

This subchapter includes the procedures for district deposits into and withdrawals from capital and maintenance reserves, emergency reserves and other allowable reserve accounts. It updates existing regulations for reserves to include the expanded authority in the CORE reform bills for district use of such reserves.