

School Pool for Excess Liability Limits

SPELL

Bylaws

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SPELL
Bylaws**

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ARTICLE I

Name

The name of this joint self-insurance fund shall be the **School Pool for Excess Liability Limits Joint Insurance Fund**, hereinafter called the "SPELL". The SPELL lists its principal office annually in its risk management program. The SPELL will commence operations as a **“joint self-insurance fund”** on July 1, 2001, formed by three statutorily authorized **“Groups”** who shall be referred to as **“owner groups”**. (N.J.S.18A:18B-1.a. & N.J.S.18A:18B-3).

The three owner groups are listed on Addendum A of these Bylaws.

ARTICLE II

Purposes

(N.J.A.C. 11:15-4.6(a)1.)

The purposes of the SPELL are:

1. To allow two or more owner groups and all other owner groups joining the SPELL to make a more efficient use of their powers and limited resources by cooperating on a basis that will be of mutual long-term economic advantage. (N.J.A.C. 11:15-4.3(a) and N.J.S.18A:18B1-10 et seq.); and
2. To provide a procedure for the development, administration, and provision of risk management programs, a joint self-insurance fund or funds, joint insurance purchases and related services for owner groups, owner group members and their employees for the following. (N.J.S.18A:18B-2 Insurance Authorized) & (N.J.A.C. 11:15-4.3(c)):
 - a. Any loss or damage to its own, owner group’s and owner group member’s property, real or personal, motor vehicles, equipment or apparatus;
 - b. Any loss or damage from liability resulting from its own, owner group’s and owner group member’s use or operation of motor vehicles, equipment or apparatus owned or controlled by it, an owner group and/or owner group member;
 - c. Any loss or damage from liability for its own, owner group’s, and owner group member’s acts or omissions of officers, employees or servants arising out of and in the course of the performance of their duties, including but not limited to, any liability established by the New Jersey Tort Claims Act N.J.S.A. 59:1-1 et seq., or any federal or other law;
 - d. Loss or damage from liability as established by Chapter 15 of Title 34 of the Revised Statutes, Labor and Workers' Compensation (R.S. 34:15-1 et seq.);
 - e. Expenses of defending any claim against its own, owner group’s and/or owner group member’s board, district, officer, employee or servant arising out of and in the course of the performance of their duties, whether or not liability exists on the claim, except that no defense will be provided to a person or persons whose actions were criminal, or to the defense of an administrative matter.

- f. Loss for liability associated with sick leave payment for service connected disability as provided by N.J.S.18A:30-2.1;
- g. Any loss or damage from liability resulting from loss or theft of money or securities;
- h. Blanket bond coverage for certain school board officers, employees and volunteer organizations serving it, owner group's and owner group member's for faithful performance and discharge of their duties;
- i. Bodily injury and property damage claims arising from environmental impairment liability and legal representation therefor to the extent that such coverage, as approved by the Commissioner of Banking and Insurance, are provided by the group purchase of insurance and no risk is retained it or owner groups.
- j. Student and volunteer accident insurance to the extent approved by the Commissioner of Banking and Insurance.

ARTICLE III

Definitions

(N.J.A.C. 11:15-4.2)

"Actuary" means a person who is a Fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an Associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Administrator" means a person, partnership, corporation or other legal entity engaged by the SPELL board of trustees, as defined herein, to act as executive director, to carry out the policies established by the SPELL trustees and to otherwise administer and provide day-to-day management of the SPELL. The administrator may also be the lead agency employee of the SPELL, an owner group, or an independent contractor.

"Allocated claims expense" means attorney's fees, expert witness fees (i.e. engineering, physicians, etc.), medical reports, professional photographers' fees, police reports and other similar expenses. The exact definition of "allocated claims expense" or similar term for any line of insurance coverage shall be the definition in the excess insurance policy purchased by the SPELL and/or the definition provided in any SPELL coverage document and/or Excess Liability SPELL coverage document, in which SPELL participates, which is reinsured by a qualified reinsurer.

"Automobile and equipment liability" means liability resulting from the use of or operation of motor vehicles, equipment or apparatus owned by or controlled by the SPELL, owner group, and owner group members or owned by or under the control of any subdivisions thereof including its departments, boards, agencies, commissions or other entities which the SPELL, owner group, and owner group members may provide coverage for under applicable State law or regulation. The exact definition of "Automobile and Equipment Liability" shall be the definition used in the excess insurance policy purchased by the SPELL and/or the definition provided in any SPELL coverage document and/or Excess Liability SPELL coverage document, in which the SPELL participates, which is reinsured by a qualified reinsurer.

"Board of trustees" means board of trustees established pursuant to the bylaws of the SPELL to govern or manage the risk management programs, joint self-insurance fund or funds and related services of the SPELL (see also "Trustees" in definitions).

"Chair" means the chair of the board of trustees as may be elected or designated by the trustees.

“Clash coverage” means the ability of the SPELL to utilize single coverage line self-insured retention for a claim involving multiple coverage parts. Wherever this ability is used, it shall be identified annually in the risk management program adopted by the Board of Trustees.

“Commercial carrier” means any corporation, association, partnership, reciprocal exchange, interinsurer, reinsurer, Lloyd’s insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes. (Same as “Insurer” in these definitions.)

“Commissioner” means the Commissioner of the Department of Banking and Insurance.

"Delegate" means the duly elected representative of a owner group to the SPELL as provided for by these Bylaws and defined in N.J.S.18A:18B-5.

“Department” means the Department of Banking and Insurance of the State Of New Jersey.

"Employer's liability" means the legal liability of SPELL, owner group, and owner group members to pay damages because of bodily injury or death by accident or disease at any time resulting therefrom sustained by an employee arising out of and in the course of his or her employment by the SPELL, owner group, and owner group members, which is not covered by workers' compensation law. The exact definition of “Employer's Liability” or similar terms shall be the definition used in the excess insurance policy purchased by the SPELL and/or the definition provided in any SPELL coverage document and/or Excess Liability SPELL coverage document, in which the SPELL participates, which is reinsured by a qualified reinsurer.

“Excess carrier” means a insurer that provides excess insurance or reinsurance to the SPELL, owner group or owner group member.

"Excess insurance" means insurance purchased from an insurance company authorized or admitted in the State of New Jersey or deemed eligible by the Commissioner of Insurance as a surplus lines insurer, covering losses in excess of an amount established between SPELL and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per accident or annual aggregate basis.

"Fiscal Year” or “Trust Fund Year" means the SPELL fiscal year July 1 through June 30.

"General liability" means any and all liability which may be insured under the laws of the State of New Jersey, excluding workers' compensation, employers' liability, motor vehicular and certain equipment liability. The exact definition of "**General liability**" or similar terms is the definition used in the excess insurance policy purchased by the SPELL and/or the definition provided in any SPELL coverage document and/or Excess Liability SPELL coverage document, in which the SPELL participates, which is reinsured by a qualified reinsurer.

“Hazardous financial condition” means that based on its present or reasonably anticipated financial conditions, a retained loss fund although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to claimants with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

"Incurred claims" means claims which occur during a SPELL year including claims reported or paid during a later period. The exact definition of "**Incurred claims**" or any similar term is the definition used in the excess insurance policy purchased by the SPELL and/or the definition provided in any SPELL coverage document and/or Excess Liability SPELL coverage document, in which the SPELL participates, which is reinsured by a qualified reinsurer.

"Indemnity and trust agreement" means a written contract signed by and duly adopted by the owner groups of the SPELL under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to such agreement arising from their participation in the SPELL.

"Insolvent fund" means the SPELL has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

"Insolvent trust fund" means a specific trust fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

"Insurer" means any corporation, association, partnership, reciprocal exchange, interinsurer, reinsurer, Lloyd's insurer or other person engaged in the business of insurance pursuant to Subtitle 3 of Title 17 of the Revised Statutes.

"Intertrust fund transfer" means an actual transfer of funds from one Claim or Loss Retention Fund Account in a fiscal year to another account within the same fiscal year.

"Interyear fund transfer" means the transfer of funds from a Claim or Loss Retention Trust Account for a fiscal year, to a Claim or Loss Retention Trust Account of similar risk or liability for a different fiscal year.

"Manual premium" means the premium computed by the Excess Insurance Carrier or Reinsurance Carrier, by line of coverage as modified by the board of trustees to reflect the experience or other applicable item of consideration for the SPELL as a whole or any individual owner group or owner groups.

"Owner group" means a statutorily filed and authorized "School board insurance group" or "group" as defined in N.J.S.18A:18B1, Definition b. "School boards insurance group" or "group" means an association formed by two or more boards of education for the development, administration, and provision of risk management programs, joint self-insurance fund or funds, and related services.

"Owner group governing body" means the board of trustees established pursuant to the bylaws of an owner group to govern or manage the risk management programs, joint self-insurance fund or funds and related services of the owner group.

"Owner group member" means the individual school district members of an owner group.

"Net current surplus" or "Surplus" means that amount of monies in a trust account established pursuant to N.J.A.C. 11:15-4.6(b)10 that is in excess of all costs, earned investment income, refunds made pursuant to N.J.A.C. 11:15-4.21, incurred losses and loss adjustment expenses and incurred but not reported reserves, including the associated loss adjustment expenses attributed to the SPELL net of any per occurrence or aggregate excess insurance or reinsurance for a particular year.

"Occurrence" means a single event. The exact definition of **"occurrence"** or any similar terms shall be the definition used in the excess insurance policy purchased by SPELL and/or the definition provided in any SPELL coverage document and/or Excess Liability SPELL coverage document, in which the SPELL participates, which is reinsured by a qualified reinsurer.

"Official or employee of the SPELL" means all individuals, officers, or trustees of the SPELL for whom the SPELL is obligated by law or contract to provide indemnification or reimbursement of legal or other expense for claims or demands as may from time to time be made or arise from the individuals', officers', or trustees' actions pertaining to the operation of the SPELL.

"Probable net cost" means the estimated ultimate cost of claims incurred during SPELL year plus the cost of allocated claims expense and other costs of operating the SPELL until all claims incurred during the SPELL year are settled. For purposes of computing the probable net cost, losses within the deductible of owner group school boards and future investment income on outstanding loss reserves held by the SPELL shall not be taken into consideration.

"Probable total cost" means the probable net cost plus the estimated ultimate cost of losses incurred within the deductible of owner group school boards.

"Producer" means any person engaged in the business of an insurance agent, insurance broker, or insurance consultant as defined in N.J.S.A.17:22A-1 et seq..

"Property damage" means any loss or damage, however caused, on property; motor vehicles, equipment, or apparatus owned by the owner group school board or owned by or under the control of any of its departments, boards or agencies. The exact definition of **"Property damage"** or similar terms shall be the definition in the excess insurance policy purchased by the SPELL and/or the definition provided in any SPELL coverage document and/or Excess Liability SPELL coverage document, in which the SPELL participates, which is reinsured by a qualified reinsurer.

"Retained official" means an individual, partnership, association or corporation, that has contracted with the SPELL to provide, on the SPELL's behalf, specific functions as defined in these bylaws and limited to an administrator, attorney, auditor, and treasurer. These functional positions are considered to be essential roles in the successful operation of the SPELL and are therefore listed separately from servicing organizations.

"Reinsurance" means the contractual assumption of risk by an insurance company of all or part of the risk obligations assumed by the SPELL.

"Risk management program " means a plan and activities carried out under the plan, by SPELL to reduce risk of loss with respect to a particular line of insurance protection or coverage provided by a fund pursuant to N.J.S.18A:18B-1 et seq., including safety engineering and other loss prevention and control techniques. Risk management program also includes the administration of one or more trust funds, including the processing and defense of claims brought against or on behalf of owner groups of the SPELL.

"Secretary" means the secretary of the board of trustees as may be designated by the trustees.

"Servicing organization" means an individual, partnership, association or corporation, other than the administrator, that has contracted with the SPELL to provide, on the SPELL's behalf, any function as designated by the trustees including, but not limited to actuarial services, claims administration, cost containment services, loss prevention/safety engineering services, compilation and maintenance of the SPELL's underwriting file, coordination and preparation of coverage documents, risk selection and pricing, excess insurance or reinsurance producer services, which include producer negotiations on behalf of the fund for excess insurance or reinsurance from an

insurer, owner group assessment and fee development, report preparation pursuant to N.J.S.A. 18A:18B-1 et seq. and this subchapter, and such other duties as designated by the SPELL.

"School pool for excess liability limits joint insurance fund (SPELL)" means a joint self-insurance fund established by two or more school board insurance groups pursuant to N.J.S.18A:18B-1, et seq., which is a fund of public monies from contributions made by affiliated owner groups for the purpose of jointly securing insurance protection excess of the affiliated owner groups' retention/s, risk management programs, and/or related services.

"Super majority" means an affirmative vote of two-thirds of the SPELL owner groups.

"Trustee" means an individual elected by the delegates to the SPELL to serve on the SPELL board of trustees and having the qualifications, powers, and duties outlined in these bylaws and in N.J.S.18A:18B1-10 et. seq., and N.J.A.C. 11:15-4.6(b)1.-8.

"Trust fund" means the specific amount of money set aside by the board of trustees to finance the retained loss corridor above local owner group retention and below reinsurance attachment (if any) for specific and aggregate coverage on an annual basis as determined by an actuary.

"Unpaid claims" or "Unpaid losses" means case reserves and reserves for Incurred But Not Reported (IBNR) claims attributed to the SPELL net of any recoverable per occurrence or aggregate excess insurance or reinsurance for a particular SPELL year.

"Workers' Compensation" means the provisions of N.J.S.A. 34:15-7 et seq.

ARTICLE IV

Owner Group Status

(N.J.A.C. 11:15-4.3)

A. Agreement to join the SPELL

1. Owner membership in the SPELL shall be open to all New Jersey school board groups pursuant to N.J.S.18A:18B1-10 et seq. The groups may apply for owner group status by resolution of their respective governing body. (N.J.S.18A:18B-3).
2. Charter owner group status in the SPELL shall be for a specific term of three (3) years, as selected by the owner group governing body in its resolution to join the SPELL. (N.J.A.C. 11:15-4.3(b)).
3. Subsequent owner group status in the SPELL shall be for a specific term of three years. (N.J.A.C. 11:15-4.3(b)).
4. Any school board group seeking to be an owner group of the SPELL shall submit an Application For Owner Group Status to the SPELL that is acceptable to the Commissioner. (N.J.A.C. 11:15-4.9(a)). The application shall include (N.J.A.C. 11:15-4.3(b)):
 - a. Executed Indemnity and Trust Agreement to the SPELL;
 - b. Resolution to join, conditioned upon final acceptance of the owner group share offer, which shall provide for execution of a written agreement specifically providing for acceptance and adoption of the SPELL bylaws (N.J.A.C. 11:15-4.3(b));
 - c. Certification that the school board group has never defaulted on a claim, and has not had any form of insurance purchased by the group canceled for non-payment of insurance premiums for a period of at least two (2) years prior to the date of application (N.J.A.C. 11:15-4.3(b));

- d. An application fee if required by the board of trustees, which will cover the cost to the SPELL associated with evaluating the applicant's attitude toward risk management and safety, physical exposures to risk and for actuarial determination of loss funds required to fund SPELL trust funds;
 - e. Declaration of the full extent of owner group status in the SPELL (N.J.A.C. 11:15-4.3(b)).
 - f. Evidence that the applicant is a statutorily authorized and filed school board insurance group as defined in N.J.S.18A:18B1-10 et. seq.
5. The board of trustees and owner group delegates may, by super majority vote at any regular meeting of the board of trustees, recommend approval of the application based on the following criteria:
- a. The applicant's claim history shows a consistent pattern of losses that allow for a high degree of actuarial confidence when pricing the applicant's SPELL owner group share.
 - b. A history of safety performance consistent with other SPELL owner groups. Performance includes applicant's attitudes toward and investment in safety efforts designed to compel a prospective likelihood of satisfactory future claim performance.
 - c. A positive safety inspection and evaluation conducted by the SPELL safety consultant should the board of trustees deem such an inspection needed.
 - d. A positive audit of the applicant's administrator/executive director by the SPELL administrator/executive director to determine the adequacy of the applicant's administrative capacity should the board of trustees deem such an audit needed.
 - e. The SPELL actuary has established and certified an appropriate loss fund requirement for all trust funds of the SPELL for the applicant.
 - f. The SPELL has the administrative capability to absorb additional owner group without undue inconvenience or strain.
 - g. A review of each and every independent annual audit of the applicant, together with the most current and complete copy of the applicant's treasurer's report.
 - h. A review of any audit conducted by the Commissioner and Department pursuant to N.J.S.18A:18B1-10 et. seq..
 - i. A review of the applicant's current risk management program and bylaws.
6. If the application is approved by a super majority affirmative vote of the SPELL delegates, the application shall be filed with the Department of Banking and Insurance within 15 days of such approval. The filing shall be accompanied by a revised budget with owner group share detail, an actuarial statement regarding the adequacy of the new owner group's share to cover anticipated losses, and any amendments to the SPELL bylaws and risk management program as may be necessary (N.J.A.C. 11:15-4.4(e)). The SPELL shall file only the specific changes to the bylaws or risk management program in effect for the current year. Where the SPELL has purchased direct insurance, or where an actuary has determined a "per capita" rate for the owner group's share to cover anticipated losses which has been previously filed with the Department, actuarial certification of the adequacy of these same rates is not required. The Commissioner may nevertheless require actuarial certification of a per capita rate for the new owner group's share to cover anticipated

losses, if in his or her opinion, the new owner group will impose an extraordinary impact on the exposure of the SPELL. In addition, the SPELL shall file the following information in the form proscribed by the Department and known as New Jersey Department of Banking and Insurance New Owner Group Statement for the SPELL, within 15 days after approval of a new owner group:

- a. The registered name and address of the new owner group;
 - b. The effective date of coverage;
 - c. The name of the new owner group's executive director, if any;
 - d. The name of the new owner group's delegates;
 - e. The lines of coverage for which the new owner group participates;
 - f. The amount of the new owner group share, if not otherwise provided; and
 - g. An affirmative statement from the SPELL that in accepting the new owner group, an application has been filed, the SPELL has adhered to its bylaws and risk management program, and the agreement to participate and indemnity and trust agreement have been filed with the SPELL. (N.J.A.C. 11:15-4.9(b)1-7).
7. No new owner group membership in the SPELL shall become effective until the application and any accompanying amendments to the SPELL bylaws, budget and risk management program are approved as required by these bylaws and, where applicable, state law or regulation. (N.J.A.C. 11:15-4.3(b)).
8. If an applicant is not approved for status as an owner group of the SPELL, the SPELL shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the applicant. The SPELL shall retain a copy of all reasons for disapproval for five years. (N.J.A.C. 11:15-4.9(c)).

B. Conditions of Owner Group Status or Standards (N.J.A.C. 11:15-4.6(a)5).

As a condition of owner group status, each owner group shall:

1. Participate in all the major lines of coverage offered by the SPELL (N.J.A.C. 11:15-4.6(c)1). It being understood that SPELL retention and individual owner group retention may vary from fiscal year to fiscal year and shall be detailed in the risk management program of the SPELL according to N.J.A.C. 11:15-4.6(f)1-11.
2. Pay all owner group shares, supplemental assessments, fees, charges or other obligations arising out of or related to the owner group's participation in the SPELL. All such payments must be made within ten [10] days of the due date fixed by the board of trustees, recognizing however, that annual owner group shares must be collected two thirds by July 15th and in full by November 15th. (N.J.A.C. 11:15-4.15(a)).
3. Actively participate in SPELL meetings, programs or activities established by the board of trustees, to ensure the successful operation of the SPELL.
4. Actively participate in SPELL sponsored safety programs as required by the board of trustees.
5. Comply with the risk management program and the policies and procedures adopted by the board of trustees for the management of the SPELL.
6. Owner group governing bodies and/or their members may, but are not required to, retain the services of an individual or firm to serve as an insurance consultant to their local governing body.

- [1] The insurance consultant shall not be a SPELL trustee.
 - [2] All fees and expenses of the insurance consultant shall be the responsibility of the individual owner group or owner group member appointing the insurance consultant.
7. The SPELL administrator shall, on receipt of written authorization from a owner group governing body and a signed confidentiality agreement from the insurance consultant, provide the insurance consultant with the same information provided to the SPELL delegates from that owner group governing body with respect to the budget and operations of the SPELL.
 8. The SPELL administrator and any insurance consultant hired by owner group governing bodies shall be experienced in risk management and insurance matters as they relate to school districts. Both the SPELL administrator and any insurance consultant hired by owner group governing bodies shall be licensed Insurance Producers in New Jersey if so required by N.J.S.18A:18B-1 et. seq., or New Jersey State Licensing Laws.

C. Owner Group Status Renewals

1. Owner groups may renew their owner group status by execution of an Agreement to Renew Owner Group Status in the SPELL. A new Indemnity and Trust Agreement must accompany the resolution. The resolution must be filed with the SPELL administrator or secretary of the board of trustees at least ninety days prior to the effective date of renewal. Failure of the owner group governing body to provide such filing shall serve as the owner group governing body's withdrawal from the SPELL effective the date of the prospective renewal.
2. The board of trustees shall act upon any renewal resolution no later than May 15th of the same year. If the board of trustees fail to act within the required time, the renewal resolution shall be deemed approved.
3. In order to deny a renewal resolution the board of trustees shall find, by super majority vote, that the renewing owner group has failed to fulfill its responsibilities as an owner group.
4. If an owner group's renewal resolution is rejected, the SPELL shall comply with the provisions of these bylaws relating to termination and/or withdrawal of SPELL owner groups.
5. Non-renewal of a SPELL owner group shall not relieve the owner group of responsibility for claims incurred during its period of owner group status. Owner group's remain liable either collectively through the SPELL retention within a line or lines of coverage by SPELL year, or individually associated with an individual owner group deductible or retention within a line or lines of coverage by SPELL year for all years that they maintained owner group status.

D. Early Termination, Withdrawal and/or Early Withdrawal of SPELL Owner Groups

1. **Early Termination:** Owner groups must remain in the SPELL for the full term of owner group status unless earlier terminated by a two-thirds vote of the delegates present at a regular meeting of the board of trustees. Early termination can result from nonpayment of owner group share or supplemental assessment, noncompliance with the SPELL bylaws, risk management plan or underwriting standards, or other reason(s) subject to prior approval by the Commissioner as causes for expulsion. However, the owner group shall not be deemed terminated until. (N.J.A.C. 11:15-4.10(a)):
 - a. After 30 days, written notice of the intention to terminate the owner group has been given by the SPELL to the owner group, which notice shall state the reasons for termination and shall be given by registered mail or certified mail, return receipt requested (N.J.A.C. 11:15-4.10(a)1);
 - b. Like notice shall have been filed with the Department, together with a certified statement that the notice provided for by 1a. above has been given (N.J.A.C. 11:15-4.10(a)2); and
 - c. 30 days have elapsed after the filing required by 1b. above has been made (N.J.A.C. 11:15-4.10(a)3)
2. **Withdrawal:** An owner group of the SPELL that does not desire to continue as a owner group after the expiration of its current owner status term, as provided in the SPELL's bylaws, must give written notice of its intent to withdraw on or before April 1st of the final year of its current membership term. Failure of the owner group governing body to provide such notice shall serve as the owner group's intention to withdraw from the FUND and not be renewed for the subsequent Fund year.
3. **Early Withdrawal:** An owner group of the SPELL that seeks to terminate its owner group status on an anniversary date which is earlier than the expiration of their owner group status term must do so by applying directly to the board of trustees. The early withdrawal application shall consist of a written notice provided at least one hundred and fifty (150) days prior to the requested date of early withdrawal. The owner group must state its reason for early withdrawal request in its written notice. Upon receipt of an owner group's request for early withdrawal, the secretary and/or executive director shall notify the chair who shall schedule a hearing by the board of trustees to be held not later than forty-five (45) days from the date the notice was filed. The SPELL owner group delegates will review the request for early withdrawal. The withdrawing owner group may leave the SPELL early with a super majority affirmative vote of the SPELL owner group delegates. The withdrawing owner group agrees to be responsible for any and all damages caused to the residual owner groups' due to its early withdrawal for each of the full term years from which it is withdrawing. The SPELL shall immediately notify the Department of any owner group that gives notice of early withdrawal from the SPELL.
4. **Bylaw Amendment:** An owner group of the SPELL that did not approve any amendment of the SPELL bylaws approved pursuant to N.J.S.18A:18B-4, and desiring to withdraw from the SPELL pursuant to N.J.S.18A:18B-4b(8)(d), shall provide ninety days written notice of its intent to withdraw within ten working days of the bylaw amendment adoption becoming effective and will be able to withdraw on the very next SPELL fiscal year anniversary date provided there are ninety or more days between the day notice was given and the day the new fiscal year begins.

If there are fewer than ninety days, then the noticing owner group may be allowed earlier termination according to Article X, E. or asked to pay a penalty for earlier departure representing unavoidable cost to the residual owner group members of the SPELL. The SPELL shall immediately notify the Department of any owner group that has given notice of withdrawal from the SPELL due to a bylaw amendment. (N.J.A.C. 11:15-4.10(b)).

5. **Residual Surplus:** An owner group that has been terminated by the SPELL or does not continue as a owner group of the SPELL, shall nevertheless share in any surplus in the appropriate trust account(s) for all SPELL years in which the owner group maintained owner group status. Any partial fiscal year owner group status shall be pro-rated to term if an early withdrawal. All full term fiscal years of ownership status shall be distributed according to that fiscal year's owner group share withdrawal (N.J.A.C. 11:15-4.10(c)).
6. **Joint and Several Liability:** An owner group that has been terminated by the SPELL, or does not continue, as an owner group of the SPELL, shall remain joint and severally liable for claims incurred by the SPELL and its owner groups during the period of its owner group status. This includes, but is not limited to, being subject to and liable for supplemental assessments. (N.J.A.C. 11:15-4.10(c)).
6. **Notification:** The SPELL shall immediately notify the Department if termination or withdrawal of an owner group causes the SPELL to fail to meet any of the requirements of N.J.S.18A:18B-1 et seq. or N.J.A.C. 11:15-1 et seq. Within fifteen (15) days of the notice, the SPELL shall advise the Department of its plan to bring the SPELL into compliance. (N.J.A.C. 11:15-4.10(d)).
7. **Residual Claim Liability:** A SPELL owner group is not relieved of claims incurred during its period of owner group status. The owner group shall be forever liable for its owner group share collectively through SPELL retention within a line or lines of coverage by SPELL year, and individually, associated with the owner group's deductible or retention within a line or lines of coverage by SPELL year. Only through payment by the SPELL or owner group of such claims shall this liability be reduced.
8. **Reapplication Period:** An owner group that has been terminated or that has withdrawn from owner group status in the SPELL may be considered for new owner group status after a period of three [3] years from the date of termination or withdrawal.

ARTICLE V

Organization

(N.J.A.C. 11:15-4.6(a)2)

A. General Description

SPELL is owner group owned, organized and managed. It is a cooperative, statewide effort by regional school board groups to provide a long-term and stable excess insurance financing mechanism. As the delegates appointed to represent their respective school board groups' interest in the SPELL are all busy professional school administrators, the SPELL provides for the hiring of risk management professionals who attend to daily operations. This section describes the roles that owner group delegates, SPELL officers and trustees, and hired professionals are responsible for in the organization.

B. Owner Group Delegates and Owner Group Alternate Delegates

1. **Owner Group Delegates.** In the manner generally prescribed by law, each owner group shall appoint two (2) Delegates. Each Delegate shall be either a Chief School Administrator, School Business Administrator, or other individual as provided in N.J.S.18A:18B-5, et. seq.
2. **Owner Group Alternate Delegates.** Each owner group may also appoint two (2) Alternate Delegates. Each Alternate Delegate shall be either a Chief School Administrator, School Business Administrator, or other individual as provided in N.J.S.18A:18B-5 et. seq.
3. **Terms of Office and Vacancy**
 - a. Terms - Delegates or alternate delegates shall be appointed for a term concurrent with the term of owner group status of the appointing owner group. The delegate or alternate delegate shall serve at the pleasure of the owner group appointing the delegate or alternate delegate.
 - b. Vacancy - In the event of a vacancy created by reason of separation of the delegate or alternate delegate from an owner group, the owner group has the following options. It may allow the individual to serve for a period not to exceed ninety days from the effective date of separation from the involved owner group after which time it must appoint a new delegate or alternate delegate. It may choose to appoint a new delegate or alternate delegate as soon as practicable but no later than ninety days from the effective date of separation from the involved owner group.
 - c. Any residual term of a delegate or alternate delegate shall be filled by the appointing owner group in the manner generally prescribed by law, these bylaws and owner group procedure.
 - d. Delegates or alternate delegates shall serve the SPELL subject to all compensation standards as defined in N.J.S.18A:18B-6 et. seq.
4. **Responsibilities**
 - a. The delegates or alternate delegates shall, at the annual meeting, elect trustees in accordance with these bylaws.
 - b. Each delegate representing an owner group in good standing shall have one vote for each owner group he or she represents. A delegate may represent more than one owner group board at SPELL meetings and/or functions, for anything other than voting. Each owner group that has appointed an alternate delegate automatically extends voting authority to their alternate delegate who shall vote for the affected owner group, when one or more of their delegates is unable to attend a meeting. However, an alternate delegate can cast only one vote.

C. Board of Trustees

1. At the SPELL annual meeting of owner groups, the delegates or alternate delegates if applicable shall, by majority vote of those present and voting, elect the board of trustees of the SPELL from among the owner group delegates. No alternate delegates can serve as a SPELL trustee.
2. There shall be seven [7] trustees, unless the number of owner group delegates shall be less than seven, in which case the number of trustees shall be equal to the number of owner group delegates.
3. Trustees shall be elected to terms of three [3] years. However, the initial terms of office for trustees at SPELL inception shall be staggered. The trustees taking office at SPELL inception shall choose their terms by consensus motion in an effort to achieve staggered terms over time.
4. Each trustee shall, as provided by N.J.S.18A:18B-5, be a natural person 18 years of age or older who is a resident of the State of New Jersey. The board of trustees shall consist of owner group member delegates or fund commissioners who have been duly appointed as such by an owner group member. Any trustee that ceases to be an owner group member delegate or fund commissioner who was duly appointed as such by an owner group member can continue to serve for an additional 90 days or until replaced by an owner group as delegate, whichever is sooner. However, where one delegate represents more than one owner group board in the SPELL, the delegate may only be elected to a single trustee position and have voting authority for one owner group governing body.
5. Each year the chair shall appoint a nominating committee consisting of representatives from every owner group but no more than three owner groups. The nominating committee shall file a report with the board of trustees on or before June 1st of each year. The report shall consist of a recommendation for nominations to fill vacancies in the board of trustees to be elected at the annual meeting. The report of the nominating committee shall be furnished to all owner groups. Additional nominations may be received at the annual meeting.
6. Any trusteeship not filled at the annual meeting and any vacancy, however caused, occurring in the board of trustees shall be filled by the affirmative vote of the remaining trustees, even if less than a quorum of the board. A trustee elected by the board shall hold office until the next succeeding annual meeting and until a qualified successor is elected.
7. Any trusteeship to be filled by reason of an increase in the number of owner groups shall be filled by election at the next annual meeting or at a special meeting of the board of trustees or owner groups called for that purpose.
8. The board of trustees shall at the annual meeting elect, from among the trustees, the following officers, who shall hold office for a term of three [3] years or until a successor is elected and qualified and who shall have the specified duties:
 - a. **Chair:** The chair shall preside at all meetings of the board of trustees and of the owner groups and shall perform such other duties as required by law or as provided for in these bylaws.
 - b. **Vice Chair:** The vice chair shall exercise the responsibilities of the chair in the absence of the chair.

- c. **Secretary:** The secretary shall preside over the meetings of the board of trustees in the absence of the chair and vice chair, unless the responsibility is delegated to the SPELL Executive Director by the board of trustees. The secretary shall have the responsibility to maintain written minutes of the meetings and shall retain all books, records, files and other documents of the SPELL, and shall perform such other duties as provided by law or in these bylaws. When record-keeping responsibility has been delegated to the SPELL administrator, the administrator shall maintain the records at a location known to and approved by the SPELL and the secretary shall, at all reasonable time, have access to the records.
9. Each trustee shall have one vote. A trustee who was absent for all or part of a meeting where a particular item was discussed shall be eligible to vote on the matter notwithstanding his or her absence. This right is contingent upon the trustee casting a written vote after having listened to or read the recording or transcript of the meeting or portion of a meeting from which he or she was absent. The written vote shall include a certification that he or she has read the transcript or listened to the recording prior to casting a written vote.
 10. Any trustee can be removed without cause at any time by a two-thirds vote of the board of trustees. In the event of the removal of a trustee, a meeting of the delegates shall be called within 30 days to fill the vacancy for the remaining term.
 11. The board of trustees shall serve the SPELL subject to all compensation standards as defined in N.J.S.18A:18B-6 et. seq.
 12. The board of trustees is authorized and empowered to operate the SPELL in accordance with N.J.S.18A:18B1-10, et. seq.; these bylaws and N.J.A.C. 11:15-4.6 et seq., which includes, but is not limited to, the following.
 - a. Determine and/or establish owner group shares, supplemental assessments, rates, loss reserves, surplus, limit of coverage, limit of excess insurance or reinsurance, refunds and other financial and operating policies of the SPELL. (N.J.A.C. 11:15-4.6(b)1).
 - b. Invest monies held in trust under any SPELL trust fund in investments which are approved for investment by regulation of the State Investment Council for surplus monies of the State. Or, at the discretion of the board or trustees, to transfer monies held in trust under any trust fund to the Director of the Division of Investment in the Department of the Treasury. Any such transfers would be made solely for investment on behalf of the board of trustees in accordance with the standards governing the investment of other funds which are managed under the rules and regulations of the State Investment Council. Any monies transferred to the Director for investment may not thereafter be withdrawn except upon withdrawal of an owner group from the SPELL or one of its trust funds, or termination of the SPELL or one of its trust funds, or in specific amounts in payment of specific claims, administrative expenses or owner group dividends upon affidavit of the SPELL executive director or other chief executive officer of the group. (N.J.A.C. 11:15-4.6(b)2).
 - c. Purchase, acquire, hold, lease, sell and convey real and personal property, all of which property shall be exempt from taxation under N.J.S.A. 54:4-1 et seq. - (N.J.A.C. 11:15-4.6(b)3).

- d. Collect and disburse all money due to or payable by the SPELL, or authorize such collection and disbursement. (N.J.A.C. 11:15-4.6(b)4).
- e. Enter into contracts with other persons or with public bodies of this State for any professional, administrative or other services as may be necessary to carry out the purposes of the SPELL. (N.J.A.C. 11:15-4.6(b)5).
- f. Purchase coverage commercially, draft and adopt a proprietary coverage document, and serve as the master policyholder of owner groups, if desired, for any insurance, including excess insurance and reinsurance. (N.J.A.C. 11:15-4.6(b)6).
- g. Prepare, or cause to be prepared, a risk management program for the SPELL. (N.J.A.C. 11:15-4.6(b)7).
- h. Amend the bylaws and risk management program of the SPELL pursuant to N.J.S.18A:18B-4, N.J.A.C. 11:15-4.6 et seq. and Article X of these bylaws. (N.J.A.C. 11:15-4.6(b)8).
- i. Allow for all decisions of the SPELL, not otherwise restricted by these bylaws, to be made by simple majority vote of the delegates and alternate delegates attending a meeting of the SPELL board. However, every such decision to open the voting process as described must be in the form of a motion made and seconded by board of trustee members with a quorum of the board of trustees present and a simple majority of those present in agreement with the motion.
- j. Do all other things necessary and proper to carry out the purposes for which the SPELL is established. (N.J.S.A. 11:15-4.6(b)9);

D. Alternate Trustees

- 1. The delegates shall designate three (3) alternate trustees from among the delegates. The alternate trustees shall retain their status as alternate trustees until June 30 of the following year according to the same terms and conditions established for trustees.
- 2. Alternate trustees shall serve in the absence of a trustee or trustees during any meeting of the board of trustees of the SPELL in which the absence causes the number of trustees to fall below that which is required for a quorum. Alternate trustees shall exercise the full authority of a trustee during any meeting of the SPELL at which their services are required.
- 3. Alternate trustees shall be designated with a specific numerical order at the time of election as "alternate no. 1," "alternate no. 2", and "alternate no.3".
- 4. Alternate trustees may participate in discussions of the proceedings but may not vote except in the absence or disqualification of a regular trustee, or if the board has exercised its option to open voting to all delegates present as provided for in these bylaws.
- 5. A vote shall not be delayed in order that a regular trustee may vote instead of an alternate trustee.
- 6. In the event that a choice must be made as to which alternate trustee is to vote, the alternate trustee with the lowest designated number shall vote, i.e. alternate no. 1 shall vote before alternate no. 2, who shall vote before alternate no. 3.

E. Retained Officials

The board of trustees shall annually select, in conformance with Public Schools Contracts Law (N.J.A.C. 11:15-4.6(d)10), individuals or firms to serve in the following retained official positions. These individuals shall serve for a period of one [1] year, or until a successor is duly retained. It being understood that the positions of administrator and attorney are not required by law but are instead considered necessary to the successful operation of the SPELL. (N.J.A.C. 11:15-4.26(e)).

All retained officials shall be required to provide evidence of errors and omissions insurance coverage. (N.J.A.C. 11:15-4.6(d)5).

1. Administrator

- a. The administrator shall be experienced in risk management matters and shall not be a trustee or delegate of the SPELL.
- b. Except with prior notice to the board of trustees and all owner groups the administrator, its employees, officers and/or directors shall not be an employee, officer or director of or have either a direct or indirect financial interest in any other retained official or insurance producer as defined in N.J.A.C. 11:15-4.6(g), or servicing organization of the SPELL (N.J.A.C. 11:15-4.26(b)). Nor shall any other retained official, insurance producer as defined in N.J.A.C. 11:15-4.6(g), or servicing agent be an employee, officer or director of or have either a direct or indirect financial interest in the administrator without first disclosing any and all such financial interest to the board of trustees and all owner groups. (N.J.A.C. 11:15-4.26(a)).
- c. The administrator shall have the following duties and responsibilities:
 1. The administrator shall act as the executive director to carry out the policies established by the board of trustees and to otherwise administer the day-to-day management of the SPELL.
 2. The administrator shall advise the board of trustees on risk management matters and shall prepare a draft risk management program for consideration by the board of trustees.
 3. The administrator shall maintain underwriting data and assist the SPELL in the purchase of group insurance, excess insurance, or reinsurance. The SPELL administrator shall not act in the capacity of insurance producer with respect to the placement of various insurance purchases, unless expressly authorized to do so by the board of trustees in writing.
 4. The administrator shall prepare draft bid specifications for services as defined by the board of trustees.
 5. The administrator is generally responsible for monitoring the performance of all other officials and service organizations retained by the SPELL. The board of trustees must specifically identify every exception to this duty in writing.
 6. The administrator shall prepare a draft budget for review by the board of trustees.
 7. The administrator shall, on not less than a quarterly basis, provide the board of trustees and owner group delegates with a SPELL status

report including but not limited to the minutes of SPELL meetings, a summation of SPELL activity and comments on previously and newly reported claims.

8. The administrator shall serve as the agent in New Jersey to receive service of process on behalf of the SPELL.
 9. The administrator shall perform such other duties as provided by law or as determined by the board of trustees, which shall be detailed in the minutes, these bylaws or the contract between the parties. (N.J.A.C. 11:15-4.26(a)).
- d. The administrator shall be bonded in a form and amount acceptable to the Commissioner. The administrator shall also be covered by errors & omissions insurance.

2. **Attorney**

- a. The attorney shall be an individual licensed to practice law in the State of New Jersey. A law firm may be appointed, with a specific individual who is licensed to practice law in the State of New Jersey designated as the responsible attorney within the law firm.
- b. The attorney shall have the following responsibilities:
 1. The attorney shall advise the board of trustees on legal matters and the appropriateness of claim settlements recommended by any retained claim administrator, owner group claim administrator, defense firm or attorney and/or insurance company representative.
 2. Whenever there is need for the SPELL to assign defense of a claim, the attorney shall assign the defense to one of the attorneys or law firms approved by the board of trustees and shall monitor and supervise the efforts of the designated defense attorneys.
 3. Neither the attorney nor any employee of the attorney's law firm shall defend any claim that is the responsibility of the SPELL, unless specifically authorized and directed to do so by the board of trustees.
 4. The Attorney shall be responsible for maintaining a formal communication stream with each owner group's attorney. The sole purpose of this communication shall be to monitor the defense of claim activity as it is managed at the owner group level and before it penetrates the specific retention of the SPELL.
 5. The Attorney shall perform such other duties as may be determined by the board of trustees or these bylaws, which duties shall be recorded in the SPELL minutes and provided for by an amendment to the contract between the Attorney and the SPELL.

3. **Auditor**

The auditor shall be an independent Certified Public Accountant (CPA) or Registered Municipal Accountant (RMA) who shall hold a current and valid registration license as a Public School Accountant for New Jersey as described under N.J.S.18A:23-8 through 11, but shall not be a trustee of the SPELL. The auditor shall conduct the annual audit of the SPELL according to Generally Accepted Accounting Principles and shall perform such other duties as provided for by the board of trustees, these bylaws and the laws and regulations of the State of New Jersey. The auditor shall not serve as treasurer/custodian of funds for the SPELL.

4. **Treasurer/Custodian of Trust Funds:**

The treasurer shall have the following duties and responsibilities:

- a. The treasurer shall be the custodian of SPELL assets and shall maintain the various trust funds.
- b. The treasurer shall maintain all receipts, payments and financial records including a comprehensive general ledger on a daily basis.
- c. The treasurer shall prepare the SPELL Cash Management Plan and shall invest all balances in accordance with the plan and consistent with the statutes and regulations governing the investment of surplus public monies of the State and these bylaws.
- d. The treasurer shall perform such other duties as provided for by the board of trustees, these bylaws and in the laws and regulations of the State of New Jersey.
- e. The treasurer shall be bonded in a form and amount acceptable to the Commissioner, which may be procured by the SPELL through a direct insurance placement.
- f. The treasurer shall also be covered by Errors & Omissions insurance, which may be procured by the SPELL either through a direct insurance placement or secured internally through its coverage document.

5. **Vacancy of Retained Official**

- a. In the event of a vacancy in any one of the retained positions caused by other than the expiration of the contract, the board of trustees shall by majority vote fill the vacancy for a period not-to-exceed the remaining term of the official's contract period. In the event that any of the retained officials are incapacitated, the board of trustees shall by majority vote appoint an acting official in accordance with Public Schools Contract Law for a period not-to-exceed the remainder of the retained official's contract period.
- b. All retained officials shall be retained on a contractual basis, which shall be approved by the board of trustees and submitted to the Commissioner.
- c. Retained officials shall be compensated for their services in accordance with written fee guidelines submitted annually and approved by a majority of the board of trustees. The written fee schedule shall be part of the official's contract.
- d. The board of trustees shall notify the Department within 10 days of any determination to terminate or not renew any agreement with a retained

official. The notification shall include a detailed statement that sets forth the manner and method by which all obligations performed by the retained official will be provided or a statement that sets forth the reasons why the board of trustee's believe the particular service is no longer necessary. (N.J.A.C. 11:15-4.26(d)).

6. Disclosure

- a. No retained official or servicing organization of the SPELL or producer appointed pursuant to (N.J.A.C. 11:15-4.6(d)10), or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of the SPELL, or be an employee, officer or director of the administrator, unless notice of such interest has been fully disclosed to and approved by the board of trustees. Any and all such disclosures and approvals must be directly communicated to each current owner group. (N.J.A.C. 11:15-4.26(a)).
- b. No administrator of the SPELL or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a retained official who is not the administrator, or a servicing organization, or a producer appointed pursuant to N.J.A.C. 11:15-4.6(d)10, of the SPELL, unless notice of such interest has been fully disclosed to and approved by the board of trustees. Any and all such disclosures and approvals must be directly communicated to each current owner group. (N.J.A.C. 11:15-4.26(b)).
- c. Any employee, officer or director of an administrator, servicing organization, retained official, or producer appointed pursuant to N.J.A.C. 11:15-4.6(d)10 shall disclose to the board of trustees and current owner groups any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization, retained official or insurance producer. (N.J.A.C. 11:15-4.26(f)).

ARTICLE VI

Indemnification of Officers and Employees

- A. The administrator shall provide Errors & Omissions coverage in a form satisfactory to the board of trustees.
- B. The board of trustees, shall require the auditor, treasurer, attorney and defense attorneys to produce evidence of Errors & Omissions coverage, and such other coverage as they deem advisable, as a condition of appointment.
- C. Except to the extent covered by any required Errors & Omissions insurance as set forth above, the SPELL shall indemnify any past, present or future SPELL trustee, official or employee of the SPELL for any claim arising from an act or omission of the SPELL trustee, official or employee within the scope of the performance of the individuals' or organizations' duties as trustee, official or employee. The indemnification shall include reasonable cost and expenses incurred in defending the claim. Nothing contained herein shall require the SPELL to pay punitive damages or exemplary damages or damages arising from the commission of a crime by an individual or organization. The SPELL shall not be required to provide for the defense or indemnification of an individual or organization when the act or omission, which caused the injury, was the result of actual fraud, actual malice, gross negligence or willful misconduct by the individual or organization. The SPELL shall not be required to provide

for the defense or indemnification of an individual or organization when the act or omission that caused the injury is related to an action or inaction having nothing to do with the SPELL. The SPELL shall not be required to provide for the defense or indemnification of an individual or organization if the SPELL trustee, official or employee is either covered, or required to be covered by Errors & Omissions liability insurance. The determination as to whether the SPELL has an obligation to an individual or organization shall be made by the board of trustees. Nothing herein contained is intended to shield any employee or appointed official from liability for any act, omission or wrongdoing which would not customarily be covered by Errors & Omissions insurance if same had been required of the employee or appointed official.

- D.** A present, past or future trustee, official or employee of the SPELL shall not be entitled to a defense or indemnification from the SPELL unless:
1. Within fourteen (14) calendar days of the time he or she is served with the summons, complaint, process, notice or pleading, he or she delivers the original or exact copy to the SPELL attorney or secretary together with a request that the SPELL provide for his or her defense.
 2. He or she cooperates in the preparation and presentation of the defense with the attorney selected to defend the case.
 3. Except in those instances where a conflict of interest exists, as determined by an attorney selected by the SPELL to handle the matter, the past, present or future trustee, official or employee shall agree that the SPELL and its counsel shall have exclusive control over the handling of the litigation.
- E.** The foregoing right of indemnification shall not be exclusive of any other rights to which any trustee, official or employee may be entitled as a matter of law or which may be lawfully granted to him or her. The right to indemnification hereby granted by SPELL shall be in addition to and not in restriction or limitation of any other privilege or power which the SPELL may lawfully exercise with respect to the indemnification or reimbursement of a trustee, official or employee. However, in no event shall a trustee, official or employee receive compensation in excess of the full amount of a claim and reasonable costs and expense incurred in defending the claim.

ARTICLE VII

Committees

- A. Establishment:** The board of trustees may establish one or more advisory committees, as it deems appropriate for the efficient management of the SPELL.
- B. Appointment:** The chair shall appoint All committees. The chair and the administrator shall serve as ex officio members of all committees.
- C. Duties:** All committees shall be advisory in nature only and shall report to the board of trustees.
- D. Minutes:** All committees shall maintain written minutes.

ARTICLE VIII

Operation of the SPELL

A. General Operation

1. The SPELL shall be subject to and operate in compliance with the provisions of the "Schools Fiscal Affairs Law" (N.J.S.A. 18A:4-14 and N.J.A.C. 6:20-2.1 et seq.), the applicable regulations of the State Investment Council governing the investment of surplus public monies of the State, and the "Public School Contracts Law." (N.J.S.18A:18A1-59 et seq. and N.J.A.C. 11:15-4.4(a)).
2. The SPELL shall be considered a local unit for purposes of the "Public School Contracts Law" (N.J.S.18A:18A1-59 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and service. (N.J.A.C. 11:15-4.4(c)).
3. The SPELL shall be operated in accordance with accepted and sound actuarial practices, and any and all expenditure of monies shall be in the furtherance of the SPELL purpose. (N.J.A.C. 11:15-4.6(a)10 and N.J.A.C. 11-15-4.6(a)11).
4. The SPELL shall be operated with sufficient aggregate financial strength and liquidity to assure that all obligations will be promptly met. The SPELL shall prepare an annual financial statement on a form acceptable to the Commissioner showing the financial ability of the SPELL to meet its obligations.
5. The board of trustees may, upon majority vote, request the Commissioner to order an examination of any SPELL owner group which the board of trustees, in good faith believes may be in a financial condition detrimental to other SPELL owner groups or to the public. (N.J.A.C. 11:15-4.25(b)).
6. The SPELL further recognizes the Commissioner's right to order an examination of the SPELL pursuant to N.J.A.C. 11:15-4.25(a) and N.J.A.C. 11:15-4.6 (g), any person or the business of any person pursuant to N.J.A.C. 11:15-4.6 (g) 1., or any of its officers, directors, and agents pursuant to N.J.A.C. 11:15-4.6 (g) 2.. The SPELL recognizes that costs for such investigations are to be borne by the SPELL.
7. The SPELL shall annually adopt a resolution designating a public depository or depositories for its monies. Such resolution shall also designate a person to be treasurer/custodian of trust funds for the SPELL and shall authorize the custodian to invest the temporarily free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall report to the board of trustees at least quarterly on investment and interest income. (N.J.A.C. 11:15-4.4(d)).

B. Risk Management Program - (N.J.A.C. 11:15-4.6(e) & N.J.A.C. 11:15-4.6(f))

1. The board of trustees shall prepare or cause to be prepared a risk management program for the SPELL. The program shall include, but not be limited to:
 - a. The perils or liability to be insured against;
 - b. Limits of coverage, whether self-insurance, direct insurance purchased from a commercial carrier or reinsurance;
 - c. The amount of risk to be retained by the SPELL;
 - d. The amount of unpaid claims to be established;

- e. The proposed method of developing owner shares to be paid by each owner group of the SPELL;
 - f. Procedures governing loss adjustment and legal fees;
 - g. Coverage to be purchased from a commercial insurer, if any;
 - h. Reinsurance to be purchased, if any, and the amount of premium therefore;
 - i. Procedures for the closure of fund years including the maintenance of all relevant accounting records;
 - j. The assumptions and methodology used for calculation of appropriate reserves required to be established, maintained and administered in accordance with sound actuarial principles pursuant to N.J.A.C. 11:15-4.6(a)10;
 - k. List the principal office of the SPELL. (N.J.A.C. 11:15-4.6(c)1), and
 - l. Such other items required by law, regulation, or the board of trustees.
2. The risk management program and all amendments thereto must be approved by the board of trustees and the Commissioner before taking effect.
 3. Whenever the risk management program of the SPELL requires the owner groups or an owner group to retain a specified amount of risk, potential liability, or incurred loss, the participant shall provide for such liability, or incurred loss:
 - a. As a deductible to be charged to the operating expenses of the incurring owner group or owner group member: or
 - b. Through a separate item of appropriation for the loss year in an owner group annual budget. (N.J.A.C. 11:15-4.18 - Individual loss reserve funds).
 - c. Through a separate item of appropriation for the loss year in an owner group member annual budget. (N.J.A.C. 11:15-4.18 - Individual loss reserve funds).

C. Servicing Organizations

1. Disclosure
 - a. No retained official or servicing organization of a fund or producer appointed pursuant to (N.J.A.C. 11:15-4.6(d)10), or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of the SPELL, or be an employee, officer or director of the administrator, unless notice of such interest has been fully disclosed to and approved by the trustees. Any and all such disclosures and approvals must be directly communicated to each current owner group. (N.J.A.C. 11:15-4.26(a)).
 - b. No administrator of a fund, or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a retained official who is not the administrator, or a servicing organization, or a producer appointed pursuant to N.J.A.C. 11:15-4.6(d)10, of the SPELL, unless notice of such interest has been fully disclosed to and approved by the trustees. Any and all such disclosures and approvals must be directly communicated to each current owner group. (N.J.A.C. 11:15-4.26(b)).

- c. Any employee, officer or director of an administrator, servicing organization, retained official, or producer appointed pursuant to N.J.A.C. 11:15-4.6(d)10 shall disclose to the trustees and owner groups any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization, retained official or insurance producer. (N.J.A.C. 11:15-4.26(f)).
2. The SPELL may contract to have services performed including but not limited to the following:
 - Actuarial Services
 - Claim Adjusting and Administration Services
 - Safety Consulting
 - Other services as determined by the Board of Trustees
3. Each service contract providing claim adjustment and administration services shall include a clause stating: "unless the board of trustees otherwise permit, the servicing organization shall handle to their conclusion all claims and other obligations incurred during the contract period." (N.J.A.C. 11:15-4.26(c)).
4. A surety bond for the claim administrator, or any other servicing organization, retained official or producer appointed pursuant to N.J.A.C. 11:15-4.6(d)10 deemed necessary by the Commissioner in a form and amount acceptable to the Commissioner, and a surety bond for any other servicing organization, retained official or producer appointed pursuant to N.J.A.C. 11:15-4.6(d)10 deemed appropriate by the trustees in a form and amount acceptable to the trustees is required. (N.J.A.C. 11:15-4.6(d)4).
5. Evidence of errors and omissions insurance for the service organization(s), administrator and producer, if employed by the SPELL, who negotiates excess insurance or reinsurance on behalf of the SPELL N.J.A.C. 11:15-4.6 (d) 5.
6. The board of trustees shall notify the Department within 10 days of any determination to terminate or non-renew any agreement with a servicing organization. The notification shall include a detailed statement that sets forth the manner and method by which claim handling and other obligations performed by the servicing organization will be provided or a statement that sets forth the reasons why the SPELL board of trustee's believe that the particular service is no longer necessary. (N.J.A.C. 11:15-4.26(d)).

D. Financial Statements and Reports

1. The SPELL shall provide its owner groups with periodic reports concerning the activities and status of the SPELL for the reporting period. The reports shall be made at least semi-annually and may be made more frequently at the discretion of the board of trustees.
2. A sworn annual report in a form prescribed by the Commissioner shall be prepared by the SPELL, filed with the Department, and made available to each SPELL owner group. The report shall include (N.J.A.C. 11:15-4.24 (a)):
 - a. An annual audited statement of the financial condition of SPELL prepared by an independent certified public accountant, the Auditor, and performed in accordance with generally accepted accounting principles, which shall

include a statement of the organization of the SPELL indicating the persons who perform each function for the fund and the relationship and interdependency of each function, and including its balance sheet and receipts and disbursements for the preceding year, and in accordance with P.L. 1983, c.108;

- b. Reports of outstanding liabilities by line of coverage showing the number of claims, amounts paid to date and current reserves for unpaid losses, claims and unearned assessments as certified by an Actuary;
 - c. A certification by the presiding officer of the board of trustees that periodic reports were made to the SPELL owner groups in the form and manner required by N.J.A.C. 11:15-4.4(h) and N.J.A.C. 11:15-4.24(a)3;
 - d. Any material changes in information from that previously reported and submitted; (N.J.A.C. 11:15-4.24(a)4); and,
 - e. Such other information as may be requested by the Department from the SPELL. (N.J.A.C. 11:15-4.24(a)5).
3. A Treasurer's report which shall account for each fund year and line of coverage separately, and shall allocate periodic investment earnings on a proportional basis among lines of insurance and fund years as they relate to the whole. These reports will be further detailed on an annual basis to show the net position of each owner group by line of coverage, fund year and cumulatively over the years of each particular owner group's owner membership with the SPELL. (N.J.A.C. 11:15-4.14).

E. Coverage Authorized

The SPELL shall offer the following coverage to the owner groups, which may be through a group purchase of a policy or policies or on a partially self-insured basis or on a fully self-insured basis:

1. Workers' Compensation and Employers' Liability
2. Liability other than motor vehicles
3. Property Damage
4. Motor Vehicle Liability
5. School Board Legal Liability (Errors & Omissions)
6. Other coverages permitted by Law and approved by the board of trustees, pursuant to N.J.S.A. 18A:18B-1 et. seq. and N.J.A.C. 11:15-4.6 et seq.

The exact terms and conditions, retention and coverage shall be as generally defined by the risk management program and specifically defined in any or all primary, excess or reinsurance policies purchased by the SPELL or through a coverage document issued by the SPELL as provided by law. However, nothing can restrict the coverage for workers' compensation to less than that provided in N.J.S.A. 34:15-7 et seq.

ARTICLE IX

Meetings and Rules of Order

A. Meetings

1. **Annual Meeting of Owner Groups** - The annual meeting of the owner groups shall be held on such date within the month of June as shall be fixed by the board of trustees. At the annual meeting, owner group delegates shall meet to elect the board of trustees and conduct such other business as is necessary. The time and place for the meeting shall be established by the board of trustees, and the secretary or the administrator shall send written notice to the delegates of owner groups at least two (2) weeks in advance of the scheduled meeting.
2. **Special Meetings** - Special meetings of the SPELL may be called by the chair or the board of trustees or by not less than thirty percent (30%) of the owner group delegates by notifying the secretary and the administrator. The secretary or the administrator shall notify the delegates of the owner groups in writing of the date, time, place and purpose of the special meeting at least ten (10) days in advance of the meeting.
3. **Meetings of the Board of Trustees** - The board of trustees shall establish a schedule of quarterly meetings to conduct the business of the SPELL. All delegates may attend open or closed sessions of the trustees.
4. **Special Meetings of the Board of Trustees** - The chairman or three (3) trustees may call a special meeting by notifying the secretary and the administrator at least three (3) days in advance. The secretary or the administrator shall notify the trustees by telephone. If the secretary or the administrator is unable to reach a trustee or trustees forty-eight (48) hours before the meeting, the secretary or the administrator shall telephone one or more alternate trustees, in the order specified for voting by alternate trustees, as may be required to achieve a quorum.
5. **Quorum** - The quorum for a meeting of the owner groups shall be a simple majority of the delegates representing the owner group school boards. The quorum for a meeting of the board of trustees shall be a simple majority of the board of trustees.

B. Conduct of Meetings

1. All meetings of the board of trustees shall be subject to the Open Public Meetings Act.
2. Unless otherwise provided by law or by these bylaws, the current edition of "Robert's Rules of Order" shall govern the conduct of all meetings.

ARTICLE X

Amendments to the Bylaws

- A. Each delegate may propose an amendment to the bylaws by filing the proposed amendment in writing with the secretary.
- B. After receiving a proposed amendment, the secretary shall notify the chair that a hearing on the proposed amendment shall occur at the next regularly scheduled meeting of the board of trustees. The secretary shall then notify all delegates in writing of the hearing date and shall send a copy of the proposed amendment to each delegate.

- C. At the conclusion of the public hearing, the board of trustees shall submit the proposed amendment, with a recommendation in favor of or against the adoption of the proposed amendment, to the owner groups.
- D. An amendment is adopted if three-fourths of the owner groups approve the amendment. Each owner group must act within ninety (90) days of the SPELL hearing on the amendment. If after ninety (90) days the secretary has not received written notice of approval from sufficient owner groups, the secretary shall notify the board of trustees that time has expired for the adoption of the amendment.
- E. In the event that an amendment is adopted which a owner group determines to be incompatible with its continued owner membership in the SPELL, that owner group may initiate a voluntary withdrawal from the SPELL. It must give notice within ten (10) days of the effective date of the amendment, and in accordance with the procedures established in Article IV, Section D-4. If the effective date of the amendment falls within ninety [90] days of the end of the SPELL year, the board of trustees may approve a withdrawal under this section to be effective with the end of the SPELL year, notwithstanding that less than ninety [90] days notice has been given. The SPELL shall immediately notify the Department of all owner groups that have given notice of withdrawal from the SPELL. (N.J.A.C. 11:15-4.10(b)).
- F. If adopted, the amendment shall not take effect until approved by the Commissioner. In accordance with the provisions of N.J.S.18A:18B-7 and N.J.A.C. 11:15-4.10(b), if the Commissioner fails to approve or disapprove the Amendment to the bylaws within sixty (60) days following filing of the amendment to the bylaws in his office, the amendment to the bylaws shall be deemed approved.

ARTICLE XI

Budgets

A. Budget Preparation - Proposed Budget

1. The board of trustees shall annually prepare not later than March 1st the proposed budget for the subsequent SPELL fiscal year. The budget shall identify the proposed items and amounts of expenditure for operations in the aggregate and allocated by owner group. It shall also identify the anticipated amounts and sources of contributions/assessments and other income to be received during the fiscal year by participating owner group, and the status of the self-insurance or loss retention trust accounts maintained by the SPELL (N.J.A.C. 11:15-4.4(e)).
2. A copy of the proposed budget or any amendments thereto shall be made available to each owner group's governing body at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all owner groups of the SPELL the opportunity to present comments or objections. (N.J.A.C. 11:15-4.4(e)1).

B. Final Budget Adoption

1. Not later than June 30 of each year the board of trustees shall adopt by majority vote the budget for the SPELL operation for the subsequent fiscal year. (N.J.A.C. 11:15-4.4(e)2).
2. A copy of the SPELL final budget (as changed to reflect the actuary's report) shall be sent to each owner group governing body at least two (2) weeks prior to the time

scheduled for its adoption. No budget or amendment shall be adopted until a hearing has been held giving all owner groups the opportunity to present comments or objections. (N.J.A.C. 11:15-4.4(e)1).

3. A copy of the adopted budget shall be filed with the governing body of each participating owner group and the Commissioner within 30 days of its adoption. The filing shall include a certification by an actuary that the budget is actuarially sound with respect to funding for the claim or loss retention trust accounts. (N.J.A.C. 11:15-4.4(e)3).

C. Amendments

1. An adopted budget may be amended by majority vote of the board of trustees after giving each participating owner group's governing body two (2) weeks advance written notice and conducting a hearing on the proposed amendment. (N.J.A.C. 11:15-4.4(e)4).
2. A copy of the adopted budget and any amendment shall be filed within thirty (30) days of its adoption with the board of trustees of each participating owner group and the Commissioner. (N.J.A.C. 11:15-4.4(e)5).
3. A copy of any amendment to the SPELL budget shall be filed with the Commissioner within 30 days of its adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or latest filed amended budget. (N.J.A.C. 11:15-4.4(e)6.).

ARTICLE XII

Annual Contribution/Assessment or Owner Group Share and Supplemental Assessments

A. Annual Contribution/Assessment or Owner Group Share of the Spell Budget

1. The annual contribution/assessment of each participating owner group shall herein after be referred to as "owner group share" of the SPELL budget.
2. By February 15 of each year, the actuary shall compute the probable net cost for the upcoming SPELL year by line of coverage.
3. The board of trustees shall establish the proportionate owner group share of the SPELL budget. Owner group shares shall be determined after consideration of the probable net costs for the upcoming year for each line of coverage as computed by the actuary together with the administrative and operating budget of the SPELL. The owner group shares shall consist of an amount allocated for the administrative account, contingency trust fund account(s) (if any), and amounts needed to establish and/or replenish specific claim or loss retention trust fund accounts for each type of coverage provided by the SPELL. Owner group shares shall reflect amounts only for lines of coverage in which the owner group participates. (N.J.A.C. 11:15-4.15(b)).
4. The total amount of each owner group's share shall be certified by majority vote of the board of trustees by May 31st of each year to the governing body of each owner group. (N.J.A.C. 11:15-4.15(c)).
5. Two thirds of the owner group's share shall be paid to the SPELL by July 15th of the involved fiscal year. Each owner group shall pay the final one third of their share no later than November 15th of the involved fiscal year. (N.J.A.C. 11:15-4.15(a)).

6. In the event the final adopted budget necessitates any increase in the annual owner group share, the owner group's governing body shall be billed for the additional owner group share, which shall be paid within thirty [30] days.
7. Each owner group's share shall be deposited into the appropriate accounts including the administrative account, and the claim or loss retention trust fund account.
8. If a school board becomes a member of an owner group of the SPELL after the start of the SPELL year, the owner group's share shall be adjusted in proportion to that part of the year that has elapsed. The additional owner group share generated by owner group member growth will be billed to the owner group and accounted for by the SPELL according to items 6 and 7 above.
9. Unless otherwise approved by the Commissioner, the annual share of each SPELL owner group providing for the self-insurance of workers' compensation and employers' liability coverage shall be based upon the Experience Rating Plan provided for in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual on file with the Commissioner. The Commissioner may withdraw his or her approval of any contribution/assessment if he or she finds that such contribution/assessment is unreasonable or inadequate for the owner group of the SPELL to which it applies. In taking any action under this section, the Commissioner may require that the board of trustees, administrator, retained official, any servicing organization or agent of the SPELL provide such information as he or she deems necessary. (N.J.A.C. 11:15-4.15(d)).

B. Supplemental Assessments

1. The board of trustees shall levy supplemental assessments upon owner groups wherever necessary for the safe and efficient management of the SPELL or when ordered to do so by the Commissioner. The purpose for which shall be to supplement a SPELL claim or loss retention or administrative account to assure payment of SPELL obligations, including payment of workers' compensation benefits defined in the workers' compensation law. (N.J.A.C. 11:15-4.16(a)).
 - a. All supplemental assessments shall be charged to the owner group by applicable SPELL year and shall be apportioned by each owner group's proportional share of loss funds as they relate to the total loss funds. (N.J.A.C. 11:15-4.16(a)1).
 - b. All owner groups shall be given thirty (30) days advance written notice of the SPELL's intention to charge an additional assessment, and the SPELL shall conduct a hearing before adopting the supplemental assessment.
 - c. Owner groups shall have thirty (30) days to pay SPELL from the date any supplemental assessment is adopted.
 - d. Owner groups shall provide such supplemental assessments in accordance with the provisions of N.J.S.18A:22-1 et seq., any other applicable law, and N.J.A.C. 11:15-4.16 - (N.J.A.C. 11:15-4.16(c)).
2. The SPELL shall submit to the Commissioner a report of the causes of the SPELL's insufficiency, if any, the supplemental assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances. (N.J.A.C. 11:15-4.15(b)).

C. Failure or Refusal to Provide Required Owner Group Share or Supplemental Assessment

Should any owner group fail or refuse to pay its owner group share or supplemental assessment, or should the SPELL fail to assess funds required to meet its obligations, the

chair of the board of trustees, if any, or in the event of his or her failure to do so, the custodian of the SPELL's assets, shall notify the Commissioner in writing. Upon such notification, the Commissioner shall order the SPELL or owner group to take such remedial action as he or she deems necessary. Past due owner group shares and/or supplemental assessments shall bear interest at the rate established annually by the board of trustees. (N.J.A.C. 11:15-4.17).

D. Insolvency and/or Bankruptcy of SPELL Owner Group

The insolvency or bankruptcy of an owner group shall not relieve SPELL, or any other owner group of joint and several liabilities for the payment of any claims incurred by the owner group during the period of its owner membership. This shall include, but not be limited to, being subject to and liable for supplemental assessments. However, should any such insolvency occur, neither the SPELL nor any remaining owner group shall be responsible for the liabilities of the owner group as they relate to the owner group's operations or claim retention accounts. Those liabilities remain the joint and several obligations of the owner group's member school boards that formed the owner group. (N.J.A.C. 11:15-4.11).

ARTICLE XIII

Refunds of Surplus

- A.** Any monies for a SPELL year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary may be declared to be refundable by the SPELL no less than twenty-four (24) months after the end of the fiscal year. (N.J.A.C. 11:15-4.21(a)).
- B.** The SPELL may seek approval from the Commissioner to make refund payments from a claim or loss retention SPELL account remaining from any year which has been completed at least 24 months. The approval is conditioned upon the SPELL submitting a written notification to the Department, with accompanying documentation as set forth in this subsection, at least 30 days prior to the proposed refund. If the Commissioner does not disapprove, in writing, the request to make the refund within a 30-day period, the request shall be deemed approved. The Commissioner may also affirmatively approve the request prior to the expiration of the 30-day period. The written notification shall be accompanied by appropriate documentation including, but not limited to, contributions, supplemental assessments (if any), claim and expense detail, actuarial certification that the loss and loss expense reserves are adequate for the SPELL to have an overall surplus in that fiscal year, and such other information that the Commissioner may require. The initial and any subsequent refund for any year from a claim or loss retention trust account may be in any amount subject to the limitation that after the refund the remaining net current surplus in the account from which the refund is made must equal or exceed the surplus retention requirement to be calculated as follows: (N.J.A.C. 11:15-4.21(b)).
 - 1. SPELL year paid losses shall be multiplied by the appropriate paid loss factor for the line of coverage and duration of maturity set forth in the current exhibit for the purpose in N.J.A.C. 11:15-4.31; (N.J.A.C. 11:15-4.21(b)1).

2. SPELL year unpaid claim reserves, excluding reserves for incurred but not reported claims, shall be multiplied by the appropriate unpaid claim factor for the line of coverage and duration of maturity set forth in the current exhibit for the purpose in N.J.A.C. 11:15-4.31. Unpaid claims reserves, excluding incurred but not reported claims reserves, shall be established at full value and not discounted. (N.J.A.C. 11:15-4.21(b)2).
 3. The greater of the results from the calculation set forth in B.1. and 2. above shall then be reduced by the amount of outstanding losses reported, including incurred but not reported claims, as certified by an actuary. The result of this calculation, but not less than zero, shall be the surplus retention requirement for that fund year. (N.J.A.C. 11:15-4.21(b)3).
- C.** Subsequent refunds may be made at the discretion of the board of trustees following the initial refund provided that a full and final refund of net current surplus will not be allowed until all case reserves and all unpaid claims reserves are closed. (N.J.A.C. 11:15-4.21(c)).
- D.** A refund for any fiscal year shall be paid only in proportion to the owner group's participation in the SPELL for such year. Payment of a refund on a previous year shall not be contingent on the owner group's continued owner membership in the SPELL after that year. (N.J.A.C. 11:15-4.21(d)).
- E.** At the option of the owner group the refund may be retained by the SPELL and applied towards the owner group's next annual share or contribution. (N.J.A.C. 11:15-4.21(e)).
- F.** The SPELL may seek approval from the Commissioner to make interyear fund transfers from a claims or loss retention trust account from any year not sooner than 24 months after the end of that year by submitting a written notification to the Department with appropriate documentation as set forth in B. above at least 30 days prior to the proposed transfer. If the Commissioner does not disapprove, in writing, the request to make the refund within a 30-day period, the request shall be deemed approved. The Commissioner may also affirmatively approve the request prior to the expiration of the 30-day period. The interyear fund transfer may be in any amount subject to the limitation that after the transfer, the remaining net current surplus in the account from which the transfer is made must equal or exceed the surplus retention requirement determined pursuant to B. above for that account for the fiscal year. The owner group membership for each fiscal year involving interyear fund transfers must be identical between fiscal years. The Commissioner shall waive the identical owner membership requirement provided the SPELL demonstrates to the Department that it maintains a reciprocal accounting system. The system must maintain records of each owner group member's pro rata share of each claim or loss retention fund account. The system must assure that the transfer shall be made so that any potential dividend shall not be reduced for a owner group member that did not participate in the year receiving the transfer - (N.J.A.C. 11:15-4.21(f)).

ARTICLE XIV

Specific Excess, Aggregate Excess and Residual Claim Trust Funds

A. General

In order to minimize the financial risk that catastrophic claims present to owner groups, the SPELL seeks to provide protection against claims that cost more than the owner groups are able or willing to bear. This is accomplished by financing catastrophic risk through the SPELL in one of three methods. The SPELL may finance the risk on a specific occurrence basis through a combination of self-insured retention or partial self-insured retention with a commercial carrier ceding agreement or by purchasing a direct excess placement with a commercial carrier. The choice of retention limit, ceding involvement or direct excess is subject to market conditions and actuarial advice. In years when the market is willing to offer products below what the SPELL actuary believes are pure loss costs, the SPELL can choose to cede all risk to commercial carriers in behalf of its owner groups. In years where the SPELL actuary's loss cost projection is less than commercial carrier premiums the SPELL can choose to retain higher specific and aggregate retention above the owner group retention's to lower the overall cost of insurance financing. The SPELL can also choose to retain some risk above the owner group retention's and cede higher excess of loss to commercial insurance carriers. In all instances, the SPELL serves as a financial mechanism for owner groups to use as a buffer against cyclical insurance pricing swings.

Critical to this process is the SPELL actuary. The actuary performs a thorough analysis of loss patterns to determine how much money would be needed to safely finance various specific SPELL self-insured retention amounts above the owner group specific retention's for each line of coverage. Once completed, the SPELL then seeks to determine the optimal mix of self-insured retention and ceded financial risk above various specific retention/s to a commercial carrier through the purchase of specific or single occurrence/accident excess or reinsurance policies.

The actuary also performs a thorough analysis to determine the risk that the SPELL has set aside enough money to avoid the possibility of future supplemental assessments to owner groups and to owner group members. This is the risk that accumulated specific losses add up to more than was set aside in loss funds within specific retention/s. The SPELL also seeks to finance this risk through a retained aggregate excess of loss trust fund and by ceding the truly catastrophic portion of this risk to a commercial carrier through the purchase of aggregate excess or stop loss insurance.

The policies of excess insurance and/or reinsurance issued to the SPELL shall provide single accident (single occurrence) excess insurance and/or reinsurance, and aggregate excess insurance and/or reinsurance, in accordance with this Article XIV and (N.J.A.C. 11:15-4.23(b)). All such commercial insurance purchased by the SPELL shall be recorded on certificates of excess insurance and/or reinsurance that will show policy limit, specific and aggregate retention, and other information, and shall be made available to the owner groups and filed with the Commissioner. (N.J.A.C. 11:15-4.23(c)). Losses in excess of the established self-insurance retention/s, on either specific excess or aggregate excess insurance policies, shall be borne by the carrier/s according to the terms and conditions of the insurance contract/s, and/or reinsurance agreement/s. (N.J.A.C. 11:15-4.23(d)). Any proposed change in the terms or limits of excess insurance and/or reinsurance shall be submitted to the Department for approval at least 30 days prior to the effective date of the proposed change. (N.J.A.C. 11:15-4.23(e)).

B. Specific Excess

1. Consistent with N.J.A.C. 11:15-4.6(a)6, the SPELL shall secure specific excess insurance or reinsurance beyond its own retention (if any) in a form, in an amount and by an insurer, or other entity authorized to provide such coverage in the State pursuant to law and acceptable to the Commissioner. The insurance must be commercially available and not unreasonably priced, as determined by the board of trustees for each SPELL year, and as approved by the Department, for each line of coverage in which the SPELL provides coverage excess of owner group retention.
2. Consistent with N.J.A.C. 11:15-4.6(a)6, the SPELL shall secure specific excess insurance or reinsurance in a form, in an amount and by an insurer, or other entity authorized to provide such coverage in the State pursuant to law and acceptable to the Commissioner. The insurance must be commercially available and not unreasonably priced, as determined by the board of trustees for each SPELL year, and as approved by the Department. Insurance must be purchased for each line of coverage in which the SPELL provides coverage on a primary basis to owner group's member school districts on a self-insured, partially self-insured or commercially insured basis. (N.J.A.C. 11:15-4.23(a)).
3. Any approval by the Department pursuant to (1) and/or (2) above not to purchase excess insurance or reinsurance, shall be for a period not to exceed either the longer of 12 months from the date of approval or the end of the current SPELL year. If the SPELL seeks to extend the period of the approval, it shall notify the Department not later than 45 days prior to the expiration of the approval. The notification shall specify the basis upon which the board of trustees determined that excess insurance or reinsurance required pursuant to (1) and/or (2) above is not commercially available or is not reasonably priced. The notification shall include all actions taken by the SPELL to obtain required commercial, excess, or reinsurance. (N.J.A.C. 11:15-4.23(a)1).
3. If the SPELL's limit of liability as set forth in its risk management program is equal to or less than its single occurrence/accident self-insured retention as approved by the Department, then it may not purchase specific excess insurance. (N.J.A.C. 11:15-4.23(f)1).

C. Aggregate Excess or Stop Loss Insurance

The SPELL will provide for itself and each owner group, aggregate excess insurance. This insurance will provide an all lines aggregate stop loss to the SPELL and each owner group. The attachment point shall be no greater than 125% of the combined specific loss funds of the SPELL and each owner group individually. The limit shall provide a minimum actuarial confidence level of 85% that the loss funds will eliminate the risk of supplemental assessment for each owner group and the SPELL. The SPELL shall provide this insurance through one of two methods and depending upon commercial insurance market conditions. The two methods are:

1. **Method 1 – Purchase Commercial Aggregate Excess** - The SPELL shall purchase commercial aggregate excess insurance with attachment point and limit needed to meet the obligation imposed by N.J.A.C. 11:15-4.31 Aggregate Excess Criteria Schedule - Aggregate Excess Loss Contingency Fund As A Percentage Of Budgeted Losses and these bylaws.
2. **Method 2 – Establish an Aggregate Excess Loss Contingency Trust Fund** – If the commercial insurance market does not offer aggregate excess insurance at all the SPELL will self-insure the risk through a trust fund for the purpose. If the commercial insurance market offers aggregate excess at a price and with terms and

conditions that make it more cost effective to self-insure, the SPELL will self-insure the risk through a trust fund for the purpose. If the commercial insurance market offers aggregate excess at a reasonable price but at an attachment point higher than required by administrative code, the SPELL will provide a partially self-insured trust fund and purchase a commercial market policy to meet the obligation imposed by the administrative code, if feasible.

The amount of funding for a self-insured aggregate excess loss contingency trust fund will be determined based on an actuarial study. The actuarial study objective will be to determine the self-funding needed to provide each owner group and the SPELL with an 85% confidence level that the risk of supplemental assessment does not exist for owner groups or the SPELL. The actuarial study will use cumulated budgeted losses, specific per occurrence/accident retention and loss history to derive the appropriate funding level needed to achieve the objective.

This funding level will then be evaluated against the funding required in accordance with N.J.A.C. 11:15-4.31 Aggregate Excess Criteria Schedule - Aggregate Excess Loss Contingency Fund As A Percentage Of Budgeted Losses. To the extent the SPELL and owner groups have different specific per occurrence/accident retention for different lines, the calculation shall utilize the highest specific occurrence/accident retention for each owner group and the SPELL. To the extent the specific occurrence/accident retention is not specified in the administrative code, the calculation shall interpolate the appropriate percentage from the percentages indicated. Adding the net SPELL funding to the owner group funding will derive total aggregate excess funding suggested. Net SPELL funding will be derived by subtracting the owner group totals from the SPELL totals to eliminate accounting for owner group retention as if it was SPELL retention.

The regulatory model calculation will be compared to the actuarial study to determine whether or not the SPELL needs to purchase commercial aggregate excess insurance above a partially self-insured retention to meet statutory obligations. The SPELL will make every effort to secure commercial aggregate excess to meet statutory funding. However, the SPELL has the right to appeal to the Commissioner for a waiver of this obligation if the commercial market will not sell such a policy or if the price of the policy is prohibitive.

Such aggregate excess loss contingency fund may be utilized solely for the replenishment of a claim or loss retention account in excess of specific losses for the fiscal year in which it was established. The SPELL shall notify the Department within 30 days of the transfer of monies from the aggregate excess loss contingency fund to a claim or loss retention account.

Annual contributions for the second preceding SPELL year, and SPELL years prior to the second preceding SPELL year, which have not been utilized to replenish a claim or loss retention SPELL account, may be released without restriction. The SPELL may release the contingency fund as surplus or move the contingency fund to a different fiscal year through the interyear trust fund transfer procedure defined in these bylaws. The SPELL, however, shall notify the Department in writing within 30 days of any release or transfer. (N.J.A.C. 11:15-4.23(f)2). . This must be accompanied by an actuary's certification that there are no claims pending against the aggregate excess loss contingency fund.

D. Residual Claim Trust Fund

In order to minimize the financial risk and operational burden to owner groups with mature owner group fiscal years, the SPELL may establish a residual claim trust fund. The primary objective of this trust fund would be to accumulate reserves held by owner groups for mature years into a larger single trust and reduce the risk of supplemental assessment. The

secondary objective of this trust fund would be to transfer the operational burden of accounting for these mature fiscal years to the SPELL from owner groups.

The SPELL shall only be permitted to establish such a trust fund upon approval of the Commissioner based upon a separate comprehensive filing to the Department.

E. Section Definitions and Conditions

1. **“Budgeted losses”** - means the amount established in the SPELL budget and owner group budgets for losses anticipated for a particular SPELL and owner group year, as annually certified by an actuary. (N.J.A.C. 11:15-4.23(g)1).
2. **“Cumulated budgeted losses”** - means the SPELL and owner groups budgeted losses for the current year plus the four years immediately preceding. (N.J.A.C. 11:15-4.23(g)2).
3. The SPELL shall meet the obligations of this Article XIV by July 1, 2001. (N.J.A.C. 11:15-4.23(h)).
4. Nothing shall prohibit the SPELL from establishing an aggregate excess insurance cap or a loss contingency fund, as applicable, in amounts greater than that required in Section 11:15-4.23 of the New Jersey Administrative Code. (N.J.A.C. 11:15-4.23(i)).

ARTICLE XV

Trust Fund Accounts, Investments and Disbursements

A. Establishment of Trust Fund Accounts

1. By resolution of the board of trustees, the SPELL shall designate a public depository or depositories for its money from a list approved by the State of New Jersey. Such resolution shall also designate a person to be custodian of funds for the SPELL, who shall be the treasurer of the SPELL, and shall authorize the custodian to invest the temporary free balances of any claim/trust or administrative accounts periodically as authorized by law. The custodian shall report to the board of trustees at least quarterly. (N.J.A.C. 11:15-4.4(d)).
2. The SPELL shall establish a separate trust fund account from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and excess insurance premiums for each line of coverage in which the SPELL maintains a self-insured retention. The accounts shall be designated as Claims or Loss Retention Fund Accounts and shall be used to pay claims over the life of the SPELL.
3. Other than for claims, allocated claim expenses, or excess insurance premiums, no transfers or withdrawals may be made from a claim or loss retention account without the prior written approval of the Commissioner, except for intertrust fund transfers. Intertrust fund transfers, within an individual SPELL fiscal year, may be conducted by the SPELL at any time, by providing 30 days prior written notification to the Commissioner. If the Commissioner does not disapprove of the transfer, in writing, within 30 days after receiving such written notification, the request for intertrust fund transfer(s) shall be deemed approved. Any intertrust fund transfer request must be supported by appropriate assessment and claim and expense documentation, and be accompanied by a certification signed by an actuary that the amount remaining in the trust fund account after the intertrust fund transfer will be at a level which is reasonable in relation to that account’s unpaid losses, along with all documentation in support of such certification. Intertrust fund transfers may be conducted only where each owner group participates in each and every claim or loss retention SPELL account during that SPELL year. (N.J.A.C. 11:15-4.13(a)1).

4. The SPELL shall also establish an administrative account that shall be utilized for payment of the SPELL's general operating expenses, purchase of commercial insurance on behalf of the owner groups in which the SPELL has no retention, loss prevention activities, data processing services, and general legal expenses.
5. The SPELL shall maintain a general ledger and accounting system that allows all expenses incurred and paid, and investment earnings accrued and received, to be allocated by line of coverage and SPELL year. The system will also allow for the appropriate allocation of surplus or deficit share by owner group and fund year. (N.J.A.C. 11:15-4.13(a)1 and N.J.A.C. 11:15-4.14).

B. Investments

1. The free balance of any account maintained by the SPELL, whether for claim or loss retention, administrative, or contingency purposes, shall be invested to obtain the maximum interest return practicable. All investments shall be made in accordance with the SPELL's cash management plan and consistent with the statutes and regulations of the State Investment Council governing the investment of surplus public monies of the State or otherwise transferred to the Director of the Division of Investment pursuant to N.J.S.18A:18B-4b. (N.J.A.C. 11:15-4.20(a)).
2. The investment and interest income earned by investment of the assets of each claim or loss retention fund account shall be allocated to each such account by SPELL year. (N.J.A.C. 11:15-4.20(b)).
3. The investment and interest income earned by investment of the assets of the administrative account shall be allocated to that account by SPELL fiscal year.

C. Disbursements

1. Prior to any commitment or agreement requiring the expenditure of funds by the SPELL, the custodian of the SPELL's assets shall certify the availability of sufficient unencumbered funds in the account to fully pay all charges or commitments to be accepted. (N.J.A.C. 11:15-4.19).
2. All disbursements, payments of claims settlements or other expenditure of funds of the SPELL whether for administrative expenses or for claims purposes must be approved by a majority vote of the board of trustees, unless approved pursuant to 3 below. (N.J.A.C. 11:15-4.22(a)).
3. To allow the expeditious resolution of certain claims and efficient operation of the SPELL, the board of trustees may designate the SPELL's administrator, retained official or servicing organization as a "certifying and approving officer." The certifying and approving officer may be authorized by the board of trustees to approve for payment any, or specified types of, claims and expenses in an amount not to exceed the amount as approved by the Commissioner in its risk management program. The authority of the certifying and approving officer may be conditioned or restricted by the board of trustees to require prior consultation, limitation as to the types or total amount of claims, expenses or payments which may be approved, or such other procedures or restrictions as the board of trustees may deem appropriate. The authority of the certifying and approving officer may be revoked or modified at any time by the board of trustees. (N.J.A.C. 11:15-4.22(b)).
 - a. Upon approval, the certifying and approving officer shall certify the amount and particulars of such approved claims and/or expenses to the official

having custody of the SPELL's assets, who shall be the treasurer, directing that a check for payment be prepared. (N.J.A.C. 11:15-4.22(b)1).

- b. The certifying and approving officer shall prepare a report of all claims and/or expenses approved by him or her since the last such report, detailing the nature and the amount of the claim and/or expense, the payee, the reasons supporting payment and any other pertinent information. This report shall be submitted to the board of trustees at their next scheduled meeting. The board of trustees shall review and approve the actions of the certifying and approving officer. In the event a claim and/or expense approved by the certifying and approving officer is not approved by the board of trustees, they shall direct appropriate action to be taken. (N.J.A.C. 11:15-4.22(b)2).
4. All requests for payments shall be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and shall be certified by an officer or duly designated agent or employee of the SPELL having knowledge of the facts that the goods have been received by, or the services rendered to the SPELL. In the case of claims or losses to be charged against any loss fund, SPELL's claim administrator, if there be one, shall certify as to the correctness and validity of the claim. (N.J.A.C. 11:15-4.22(c)).
6. All claims shall be paid by check. The checks shall be signed by two persons designated by the board of trustees, one of which shall be the chair or treasurer of the SPELL. Payment of claims may be made in such other manner as provided in the SPELL's bylaws as approved by the Commissioner. (N.J.A.C. 11:15-4.22(d)).
7. All claims or other disbursements approved for payment by the board of trustees or certifying and approving officer shall be recorded in a claim register and general register maintained by the custodian of the SPELL's assets. (N.J.A.C. 11:15-4.22(e)).

ARTICLE XVI

Conflict Of Interest

The board of trustees shall establish a conflict of interest policy for all officials of the SPELL.

All school officials, members of the board of trustees, and members of their immediate families shall comply with N.J.S.A. 18A:12-21 et seq., (the "School Ethics Act") and any other applicable law governing the conduct of owner group members, trustees, officers or employees of school boards - (N.J.A.C. 11:15-4.27).

ARTICLE XVII

Voluntary Dissolution of the SPELL

- A.** If the board of trustees deem it in the best interest of the owner groups to dissolve the SPELL they shall, by majority vote, direct that a written plan of dissolution be prepared.
- B.** The plan of dissolution must provide for the payment of all unpaid losses of the SPELL and its owner groups, including all incurred but not reported losses, as certified by an actuary, before any assets of the SPELL or the trust fund accounts may be used for any other purpose. (N.J.A.C. 11:15-4.12(a)2). The plan of dissolution shall contain a statement of the SPELL's current financial condition computed both on a statutory basis and according to generally accepted accounting principles as attested to by an independent certified public accountant. (N.J.A.C. 11:15-4.12(a)3).
- C.** Upon completion of the plan, the chair shall call a meeting of the full SPELL owner group membership who shall review the plan and make any appropriate amendments. By majority vote, the full SPELL owner group membership may recommend that the SPELL be dissolved in accordance with the plan of dissolution. (N.J.A.C. 11:15-4.12(1)).
- D.** The plan of dissolution and other such information as may be required must be filed with and approved in writing by the Commissioner before the dissolution of the SPELL is effective. The plan of dissolution shall be filed with the Commissioner not later than 90 days prior to the proposed effective date of dissolution. (N.J.A.C. 11:15-4.12(4)).
- E.** SPELL may not voluntarily dissolve or cease to do business and distribute its assets to its owner groups, unless and until it satisfies the above requirements. (N.J.A.C. 11:15-4.12).

ARTICLE XVIII

Other Conditions

A. Owner Group Inspection and Audit

The SPELL shall be permitted but not obligated to inspect, at any reasonable time, the workplaces and operations of each owner group covered by this agreement. Neither the right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the owner group board or others to determine or warrant that the workplaces, operations, are safe or healthful, or are in compliance with any law, rule or regulation.

The SPELL shall conduct an annual payroll audit and shall be permitted to examine and audit the owner group board's books, documents and records at any reasonable time as far as they show or tend to show or verify the amount of remuneration or other premium basis.

B. Notice of Injury, Claim or Suit

When an injury occurs, or when a claim or suit is initiated against a owner group and/or owner group member, prompt written notice shall be given by the owner group, owner group member to the owner group's claim administrator who shall be responsible for notifying SPELL in accordance with procedures established by the board of trustees.

C. Assistance and Cooperation of the Owner Group Governing Body

Owner group governing bodies shall cooperate with the SPELL. They agree to follow claim-handling procedures established by the board of trustees. They agree that upon the SPELL's request, they will attend hearings and trials, assist in effecting settlements, securing evidence, providing evidence, obtaining the attendance of witnesses, and aid in the efficient

conduct of suits or proceedings. The owner group governing body shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense that would reasonably be expected to prejudice the SPELL.

D. Action against the SPELL

No action shall exist against the SPELL unless, as a condition precedent thereto, the owner group governing body shall have fully complied with all the terms of owner membership as set forth in these bylaws and the obligations set forth in the indemnity and trust agreement. Nothing contained in these bylaws or in the indemnity and trust agreement shall give any person or organization any right to join the SPELL as a codefendant in any action against the owner group governing body to determine the owner group governing body's liability.

E. Subrogation

In the event of any payment by the SPELL, the rights of recovery of the owner group governing body and any person or organization on whose behalf the payment was made shall be subrogated to the rights of the SPELL to recover the amount paid. The owner group governing body and any person or organization on whose behalf the payment was made shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights. The owner group governing body shall do nothing after loss to prejudice such rights. Order of recovery shall be according to the specific excess insurance coverage document or SPELL coverage document, whichever applies.

F. Conformance with Statute

If any portion of these bylaws shall conflict with any statute or administrative regulation applicable to SPELL established under the authority of N.J.S.18A:18B-1 et seq. and N.J.A.C 11:15-4.6 et seq., the provision of the statute or regulation shall control to the extent of the conflict.

ARTICLE XIX

Ownership and Maintenance of Records

A. General Records

All books, records, files, documents and equipment of the SPELL are the property of the SPELL and, except as provided in N.J.A.C. 11:15-4.22(e) and Article V, E.4. of these bylaws, shall be retained by the SPELL administrator or SPELL secretary, if any, at the discretion of the board of trustees. (N.J.A.C. 11:15-4.4(f)).

B. Claim and Financial Records

All claim information for a particular fund year and all financial information shall be retained for a period the longer of either 1 or 2 below: (N.J.A.C. 11:15-4.4(f)1)

1. For financial information, seven years from the date of their creation; for claim information, seven years after all claims for that year have been fully paid; or (N.J.A.C. 11:15-4.4(f)1i).
2. Until the completion and filing of the next financial condition examination of the SPELL by the Commissioner. (N.J.A.C. 11:15-4.4(f)1ii).

C. Meeting Minutes

The SPELL shall maintain minutes of its meetings and shall file such approved, ratified and adopted minutes with the Commissioner within 30 days after such minutes have been approved, ratified and adopted. (N.J.A.C. 11:15-4.4(g)).

D. Quarterly Reporting

The SPELL shall deliver reports to its owner groups covering the activities and status of the SPELL at each quarterly meeting. Such reports will contain the current financial status of the SPELL, minutes of the last meeting, the SPELL administrator's report, the treasurer's report, claim administrator's report, any other service provider's report if tendered, sub-committee reports if any, and any other information the board of trustees deems appropriate. The SPELL will file all minutes with the Commissioner as stated above and will provide any other information the Commissioner may request. (N.J.A.C. 11:15-4.4(h)).

E. Record Surrender

All officers, employees and agents of the SPELL, including the administrator, retained officials and servicing organizations of the SPELL, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment. (N.J.A.C. 11:15-4.4(i)).

ARTICLE XX

Examination of the SPELL

A. Power To Examine

1. The Commissioner may, at the time of the filing of the bylaws and risk management program and whenever thereafter he deems it expedient, but at a minimum not less frequently than once every five years, make or cause to be made, an examination of the assets and liabilities, financial condition, method of conducting business and all other affairs of the SPELL. For the purpose of the examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals or specialists as examiners, or may request the board of trustees to authorize and employ such person or persons to conduct the same or assist therein as he or she deems advisable. The reasonable expenses of the examination shall be fixed and determined by the Commissioner, and such expenses shall be paid by the SPELL to the appropriate entity or person upon presentation of a detailed account. (N.J.A.C. 11:15-4.6(g)).
2. In addition to an examination as described above, the Commissioner may conduct an examination of the SPELL as he or she deems necessary, or at any time the Commissioner has reasonable cause to believe the SPELL may be insolvent or in a financial condition detrimental to its owner groups, their member boards of education or the public. It shall be the duty of the SPELL board of trustees, owner groups, delegates and administrator to notify the Commissioner of any information indicating that any SPELL fund may be in a financial condition detrimental to the SPELL's owner groups, their member boards of education or the public. (N.J.A.C. 11:15-4.25(a)).
3. The owner groups through their delegates to the SPELL or the SPELL board of trustees may, upon majority vote, request that the Commissioner order an examination of any SPELL owner group which the trustees in good faith believe may

be in a financial condition detrimental to other owner groups, their member boards of education or to the public. (N.J.A.C. 11:15-4.25(b)).

4. Any examination made pursuant to N.J.S.18A:18B-7 and N.J.A.C. 11:15-4.25 and this article shall be conducted in accordance with the procedures set forth in N.J.A.C. 11:15-4.6(g), which are also recorded below.

B. Examination Procedures

1. For the purposes of completing an examination of the SPELL pursuant to (N.J.S.18A:18B-7) and this article, the Commissioner may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the SPELL. (N.J.A.C. 11:15-4.6(g)1).
2. The SPELL or person from whom information is sought, including its officers, directors and agents, shall provide the Commissioner or other person appointed as examiner pursuant to this article, timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the SPELL. (N.J.A.C. 11:15-4.6(g)2).
3. The administrator, retained official(s), servicing organization(s), and their officers, directors, employees and agents, or other person, shall facilitate the examination and aid in the examination so far as it is in their power to do so. The Commissioner may, in accordance with the procedures set forth in (N.J.A.C. 11:15-4.8 - "Revocation of approval"), suspend or terminate the authority of the SPELL, if the SPELL, by its administrator, retained officials, servicing organizations, or officers, directors, employees, or agents thereof, refuses to submit to an examination or to comply with any reasonable request of the examiners. (N.J.A.C. 11:15-4.6(g)3).

C. Notification, Hearing and Orders

1. Upon notice from the Commissioner of any proposed suspension, revocation of authority, cease and desist order, or other enforcement action taken by the Department of Banking and Insurance against the SPELL, its board of trustees or owner group(s), SPELL shall notify its board of trustees, owner group(s) and any person(s) to whom the proposed enforcement action applies directly. Such notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the interested party of its right to request a hearing on the proposed enforcement action. (N.J.A.C. 11:15-4.28(a)).
2. The interested party shall have 20 days from the mailing of the notice to request a hearing on the proposed enforcement action. Such a hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Failure to mail a request for a hearing within the time prescribed shall result in the suspension, revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled. (N.J.A.C. 11:15-4.28(b)).
3. After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-4.28, the Commissioner may issue an order revoking or suspending the SPELL's authority or requiring a person or the SPELL to cease and desist from engaging in an act or practice

found to be in violation of any provision of either N.J.S.18A:18B-1 et seq. or N.J.A.C. 11:15-4.6 et seq. (N.J.A.C. 11:15-4.29(a)).

4. Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-4.28, that the SPELL has violated any cease and desist order, the Commissioner may revoke his or her approval of the SPELL. (N.J.A.C. 11:15-4.29(b)).
5. Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-4.28, the Commissioner may issue an order requiring the board of trustees to dismiss an administrator, retained official or servicing organization or terminate the contract of an administrator, retained official or servicing organization because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by such administrator, retained official or servicing organization, or any of the employees, officers or directors thereof. (N.J.A.C. 11:15-4.29(c)).
6. Effective July 1, 2001, the SPELL shall include in all contracts with its administrator, retained officials, and servicing organizations a clause recognizing this article in its entirety, and requiring the administrator, retained officials and servicing organizations to be contractually bound by these provisions.

ARTICLE XXI

Disapproval of Bylaws and Risk Management Program

- A. If the Commissioner determines that the bylaws or risk management program of the SPELL or any subsequent amendments thereto do not contain all the information set forth in N.J.A.C. 11:15-4.6., are not submitted in the proper format set forth in N.J.A.C. 11:15-4.5, or otherwise do not meet the requirements of N.J.S.18A:18B-1 et seq. or N.J.A.C. 11:15-4.6 through 4.31, the Commissioner shall disapprove the bylaws or risk management program and notify the SPELL in writing, which notice shall contain the specific reasons for disapproval, and the requirements to be met before approval may be granted. If not disapproved within 60 days of receipt of the bylaws and risk management program or any amendments thereto, which contain all of the information and documentation set forth in N.J.A.C. 11:15-4.6, in the format set forth in N.J.A.C. 11:15-4.5, and which meet the requirements of N.J.S.18A:18B1-10 et. seq. and N.J.A.C. 11:15-4.6 through 4.31, the bylaws and risk management program shall be deemed approved. (N.J.A.C. 11:15-4.7).

ARTICLE XXII

Revocation of Approval of Bylaws and Risk Management Program

- A. After a notice and opportunity for a hearing, the Commissioner may suspend or terminate the authority of the SPELL, or direct or take any action deemed necessary for good cause, to enable the SPELL to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs if the SPELL. (N.J.A.C. 11:15-4.8(a)):
 1. Is found to be insolvent or has experienced deterioration in financial condition to the extent that it causes or may cause an adverse affect upon the ability of the SPELL to pay expected losses. (N.J.A.C. 11:15-4.8(a)1);
 2. Fails to timely pay any fee or assessment. (N.J.A.C. 11:15-4.8(a)2);
 3. Fails to pay any claim within 30 days after a final judgment is rendered against the SPELL or the SPELL's obligation for such claim otherwise becomes final. (N.J.A.C. 11:15-4.8(a)3);

4. Fails to comply with any of the provisions of N.J.S.18A:18B-1 et seq. and N.J.A.C. 11:15-4.6 through 4.31, or with any lawful order of the Commissioner within the time prescribed. (N.J.A.C. 11:15-4.8(a)4), or;
5. Fails to follow its approved bylaws or risk management program. (N.J.A.C. 11:15-4.8(a)5.)

B. In addition, the Commissioner may suspend or terminate the SPELL’s authority if, after notice and opportunity for a hearing, he or she finds that (N.J.A.C. 11:15-4.8(b));

1. There was a material misrepresentation in any of the information supplied to the Commissioner. (N.J.A.C. 11:15-4.8(b)1);
2. The SPELL or any of its delegates, trustees, administrator, retained officials, servicing organizations or agents has otherwise shown itself to be untrustworthy or incompetent. (N.J.A.C. 11:15-4.8(b)2), or;
3. The SPELL, its delegates, trustees, administrator, retained officials, servicing organizations or agents has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a owner group, a member of a owner group or an employee of a member of a owner group, or a person otherwise entitled thereto. (N.J.A.C. 11:15-4.8(b)3).

ARTICLE XXIII

Claims Handling - Procedures, Complaint and Dispute Resolution

A. Claims Response, Reserving and Settlement

The SPELL will rely upon the claim administrators serving owner groups to provide the bulk of claim administration services. This will be accomplished by a specific agreement between each owner group, their claim administrator and the SPELL. The agreement will define reporting relationships between the parties and specific circumstances under which the owner groups claim administrator shall report to the SPELL on claim activity. As the SPELL may operate according to its own adopted coverage document or a document secured on a group purchase basis from a commercial carrier, reporting criteria is subject to change. This reality requires that a separate agreement between the parties be made each fiscal year.

The SPELL shall hire a claim administrator each year. The role of the SPELL claim administrator can vary relative to the mix of self-insured, partially self-insured or fully ceded risk secured by the SPELL on behalf of owner groups. The specific responsibility of the SPELL claim administrator shall be defined annually in the risk management plan and contract between the SPELL and its claim administrator.

Were the philosophy of the SPELL in these areas to be encapsulated into three sentences, they would read as follows:

1. “The SPELL will thoroughly review and respond to each claim presented so as to pay only that amount (if any) which it is legally bound and obligated to pay.”
2. “Reserves shall be established on each claim presented in a manner which accurately reflect the full, known liability of the SPELL at any given point in time.”
3. “The SPELL will manage claims to ensure that they are resolved in a fair and equitable manner.

The SPELL shall review claims for coverage, deny those not falling within the purview of coverage offered, aggressively defend those in dispute, pursue to the fullest extent of the law

those presented in bad faith, and settle as expeditiously as possible those for which the SPELL is legally liable.

Case reserves, including all applicable allocated loss adjusting expenses, will be established with an eye toward identifying the full exposure of the SPELL and its commercial carriers at the earliest possible date. Reserves shall be periodically reviewed for accuracy and adjusted as needed. For claims aged eighteen months, it is expected that reserves will be 90% accurate. For claims aged thirty months or more 95% accuracy is expected.

Procedures and settlement authority for claims must be tailored to differentiate between the type of claim, applicable retention (if any) and to address the unique character of individual claims. In addition, the procedures employed must be sensitive to the dynamic learning process and practical constraints inherent to school board enterprise in order to achieve the most highly efficient claim reporting and settlement system possible. The SPELL shall annually adopt specific procedures in its risk management program. Those procedures will define the methods it will employ to integrate the best of internal individual owner group and owner group member procedures and external SPELL procedures all in a constant mission to achieve the SPELL philosophy as expressed in this Article. (N.J.A.C. 11:15 4.6 (c) 7).

B. Complaint Handling Procedures

While the SPELL intends to always provide a fair and equitable resolution of claims it also recognizes that individual owner group boards may be dissatisfied with the handling or resolution of a specific claim. It is for this reason that the SPELL sets forth the following procedure for owner group boards to address these concerns.

1. Any owner group or owner group member who is dissatisfied with the handling or settlement of a claim has the right to have the claim reviewed. The review shall take place in closed executive session at a regularly scheduled meeting of the board of trustees.
2. In order to effectuate this right the dissatisfied owner group or owner group member through an owner group member delegate shall:
 - a. Put in writing the specific reasons for their dissatisfaction noting the claimant, claim number, date of loss and narrative discussion of the issues they wish to review and discuss. If desired, their letter shall also list the specific contract retained official/s and service provider/s they wish to be present or not be present at the meeting.
 - b. The letter shall be directed to the SPELL chair and secretary. The letter shall also be directed to the SPELL executive director unless the executive director is at the focus of the dissatisfaction in which case the executive director can be excluded at the option of the dissatisfied owner group or owner group member. However, if the executive director is not to be included then the dissatisfied owner group board must so advise within the letter and it shall then be the responsibility of the SPELL secretary to maintain the records of the complaint separately from the SPELL records maintained by the executive director. This provision shall ensure the confidentiality of the matter.
 - c. Upon receipt of the letter complaint by either the chair, secretary or executive director it shall be their joint responsibility to bring the matter up at the next regularly scheduled meeting of the board of trustees in closed executive session. Recognizing that closed executive sessions are scheduled by the

executive director and that receipt of a letter complaint which excludes distribution to the executive director, it shall then be the joint responsibility of the chair and secretary to ensure that a closed session is held at the next regularly scheduled meeting of the board of trustees.

ADDENDUM A

Charter Member Owner Groups

School Pool for Excess Liability Limits

SPELL

**Atlantic & Cape May Counties
Association of School Business Officials
Joint Insurance Fund**

**Burlington County Insurance Pool
Joint Insurance Fund**

**Gloucester, Cumberland, Salem School Districts
Joint Insurance Fund**