

(e) If the granted appeal involves a question of facts, the Board shall submit the matter to the Office of Administrative Law."

As amended, R.1971 d.63, effective April 28, 1971.  
See: 3 N.J.R. 48(a), 3 N.J.R. 117(a).  
Amended by R.2002 d.352, effective November 4, 2002.  
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).  
Rewrote the section.

### 17:3-1.8 Suspension of pension checks

(a) The disbursement of pension checks shall be suspended under the following circumstances and such suspensions shall continue during the period in default:

1. If a disability retirant fails to appear for a medical examination;
2. If a disability retirant fails to timely file a report with the Fund of annual earned income;
3. If a widow, widower, parent or guardian of a minor child(ren) fails to file a certificate of eligibility which is normally mailed to such beneficiaries on an annual basis;
4. If a retirant or beneficiary becomes mentally or physically incompetent. The disbursement of pension checks in this event shall be suspended until a proper legal representative has been appointed.

As amended, R.1979 d.205, effective May 22, 1979.  
See: 11 N.J.R. 208(a), 11 N.J.R. 359(a).  
As amended, R.1980 d.103, effective March 5, 1980.  
See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).  
Amended by R.2002 d.352, effective November 4, 2002.  
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).  
Deleted gender reference in (a)2.

### 17:3-1.9 Verified discrepancy in member's age

The member's account (active or retired) shall be reconstructed and all benefit entitlements and contributions shall be determined on the basis of the member's correct date of birth.

### 17:3-1.10 Travel

Travel to and from work when it is to and from the regular place of employment is not considered duty rendered in the course of employment for the purpose of determining eligibility for accidental disability or accidental death benefits.

As amended, R.1973 d.49, effective February 14, 1973.  
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

#### Case Notes

Estate of teacher who died as result of fall in parking lot on way to work was not entitled to award of accidental death benefits. Estate of Matza v. Board of Trustees of Teachers' Pension and Annuity Fund, 96 N.J.A.R.2d (TYP) 224.

### 17:3-1.11 Proof of age

(a) All members shall establish proof of their age with the Fund. Acceptable proofs of age include birth or baptismal certificates, passports, naturalization papers, Biblical records, affidavits of older members of the immediate family or primary school records.

(b) In the event a member dies before satisfactory evidence of the member's date of birth has been filed with the Fund, appropriate evidence shall be required before any death claim is processed for settlement.

(c) In the event proof of age has not been filed with the Fund before retirement, such proof must be filed before any retirement benefits may be disbursed.

As amended, R.1980 d.103, effective March 5, 1980.  
See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).  
As amended, R.1983 d.78, effective March 21, 1983.  
See: 14 N.J.R. 1202(b), 15 N.J.R. 449(b).  
Language added regarding proof of age.  
Amended by R.2002 d.352, effective November 4, 2002.  
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).  
Rewrote (a); deleted gender reference in (b).

### 17:3-1.12 Employees; biweekly salaries

(a) Retirement and death benefits as well as service credit will be determined on the basis of biweekly pay periods for employees whose employers report salary and contributions on a biweekly basis. This biweekly schedule should conform to the biweekly reporting schedule issued by the State's Centralized Payroll Office.

(b) In the event a member is reported on a combination of monthly and biweekly pay periods, the member's last year's salary or final compensation as well as the member's service credit will be computed on a proportional basis.

R.1974 d.24, effective January 31, 1974.  
See: 5 N.J.R. 426(c), 6 N.J.R. 124(a).  
Amended by R.2002 d.352, effective November 4, 2002.  
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).  
Rewrote (a); deleted gender references in (b).

### 17:3-1.13 Nearest attained age; enrollment; retirement

(a) Members who are six months or more past their most recent birthdate at the time of enrollment or retirement will have their pension contribution rate and retirement factor based upon their age on their next birthday.

(b) A flat five percent pension rate of contribution was enacted by P.L. 1994, c.62 for all employees enrolled on or after July 1, 1994. For members enrolled prior to July 1, 1994 whose previous full rate of contributions was six percent or more, the five percent contribution rate became effective on July 1, 1995. For members enrolled prior to July 1, 1994 whose previous full rate of contributions was less than six percent, their rate of contributions became four percent on July 1, 1995 and then five percent on July 1, 1996. Effective January 1, 1998 the rate of contribution became four and one half percent. Pursuant to the provi-

sions of P.L. 2001, c.133 the contribution rate as of January 1, 2002 is three percent. This rate is subject to change based on the Treasurer's determination in accordance with N.J.S.A. 18A:66-18b.

New Rule. R.1991 d.226, effective May 6, 1991.

See: 23 N.J.R. 188(a), 23 N.J.R. 1421(b).

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

## SUBCHAPTER 2. ENROLLMENT

### 17:3-2.1 Enrollment eligibility

(a) Any person appointed by the State, local board of education, or charter school to a position listed in the definition of "teacher" found at N.J.S.A. 18A:66-2(p) or as a regular, full-time or part-time employee in a position that meets the following conditions shall be required to become a member of the Fund effective as of the date of their employment:

1. The position requires a valid certificate issued by the State Board of Education, and the person employed holds this valid certificate;
2. The position is covered by Social Security; and
3. The salary for the position is \$500.00 or more within a year.

(b) An employee in an unclassified administrative position within the State Department of Education who possesses a valid certificate issued by the State Board of Education is eligible for participation in the Fund.

(c) An employee meeting the conditions stipulated in (a) above who is paid on an hourly or per diem basis is eligible for membership in the Fund.

(d) Any person meeting the requirements of (a) above, who is appointed to a regular full-time or part-time position in an accredited evening high school or vocational school after September 1, 1989 shall be eligible for enrollment in the Fund with the following limitation. Individuals teaching at a vocational school may substitute the directly applicable "occupational license" as required by the Department of Education for the certification stipulated in (a)1 above.

1. Prior to September 1, 1989, only individuals appointed to regular full-time positions in accredited evening high schools, as determined by the State Board of Education, were eligible for enrollment in the Fund. A minimum of five periods per evening was required to qualify as a full-time employee. The accredited evening high schools were Camden, East Orange, Newark, Bayonne, Jersey City, Trenton, Woodbridge, Asbury Park, Morristown, and the Belleville Cerebral Palsy Center.

(e) N.J.S.A. 18A:66-2(p) specifically excludes substitute teachers from enrollment in the Fund. The statute also permits the Board of Trustees to determine whether any person is a teacher as defined in this article. The following positions have been determined by the Board to be ineligible for enrollment in the Fund:

1. Substitute and replacement teacher positions;
2. Permanent or long term substitute positions; and
3. Independent contractors and consultants.

As amended, R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

As amended, R.1979 d.205, effective May 22, 1979.

See: 11 N.J.R. 208(a), 11 N.J.R. 359(a).

As amended, R.1980 d.103, effective March 5, 1980.

See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

As amended, R.1983 d.484, effective November 7, 1983.

See: 15 N.J.R. 1360(b), 15 N.J.R. 1871(a).

Assistant principal added to list of position.

Amended by R.1985 d.658, effective January 6, 1986.

See: 17 N.J.R. 2238(b), 18 N.J.R. 93(c).

(b)1 deleted text "serving under a contract not conditioned by the continuance of Federal funding;"

Repeal and New Rule. R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Section was "Eligible positions".

#### Case Notes

Substitute teacher was temporary employee within meaning of statutory amendment including temporary public employees in retirement system. *Schulaner v. Board of Trustees*, 92 N.J.A.R.2d (TYP) 55.

Director of Community Adult Education and Principal of Adult High School held not eligible for pension fund membership as positions were not included in statutory definition of teacher (Board's Final Decision). *Carrea v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 5 N.J.A.R. 419 (1979), reversed per curiam Docket No. A-506-79 (App. Div.1980).

### 17:3-2.2 Documentation required

If a person is appointed to a position which does not meet the eligibility requirements for membership in the Fund as specified in N.J.A.C. 17:3-2.1, the position shall be referred to the Board of Trustees for their determination as to the person's eligibility for participation in the Fund. In order to determine such person's eligibility for enrollment, the employer shall be required to support the enrollment application with a statement setting forth the duties, qualifications, tenure rights and State Board Certification requirements of the position.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

#### Case Notes

Director of Community Adult Education and Principal of Adult High School held not eligible for pension fund membership as positions were not included in statutory definition of teacher (Board's Final Decision). *Carrea v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 5 N.J.A.R. 419 (1979), reversed per curiam Docket No. A-506-79 (App. Div.1980).

(e) In addition to the foregoing requirement an application for disability retirement must be supported by at least two reports, one by the member's personal or attending physician and the other may be either hospital records supporting the disability or a report from a second physician.

(f) Retired members, who return to public employment, shall have their previous retirement allowances cancelled and be reenrolled in the Fund pursuant to N.J.S.A. 18A:66-40 for those who retired on disability retirements or N.J.S.A. 18A:66-53.2 for those who retired on early, service, veteran or deferred retirements. A member who ceases covered employment and retires again must file a new retirement application with the Division in accordance with (a) through (e) above in order to initiate payment of the retirement allowance. The previous retirement allowance shall then be reinstated, and the new retirement allowance, based upon the member's subsequent covered employment, shall commence. The previous and subsequent retirement allowances shall then be combined and paid in one monthly benefit check. The retirement allowance shall become effective on the first of the month following receipt of the application unless a future date is requested.

Amended by R.1973 d.49, effective February 14, 1973.

See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).

Amended by R.1987 d.10, effective January 5, 1987.

See: 18 N.J.R. 1519(b), 19 N.J.R. 140(b).

Substantially amended.

Amended by R.2001 d.147, effective May 7, 2001.

See: 33 N.J.R. 637(a), 33 N.J.R. 1398(b).

Rewrote the section.

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section.

#### Case Notes

Petition for acceptance of retirement application, filed more than 30 days after retirement date, denied; after notification by Board that disability retirement application was denied and advising petitioner to file for service retirement, which she did not do for three months, petitioner held not entitled to retroactively effectuate retirement application to her actual retirement date (citing former rule). *Sobel v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 139 N.J.Super. 55, 352 A.2d 585 (App.Div.1976).

Estoppel did not entitle teacher to retroactive retirement date. *Berk v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 348.

Board of Trustees not equitably estopped from correcting erroneous retirement allowance; detrimental reliance not established. *Sgombick v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 107.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-8377 (App.Div.1985).

#### 17:3-6.2 Effective date; death prior thereto

(a) A member's retirement allowance shall not become due and payable until 30 days after the date the Board approved the application for retirement or 30 days after the date of retirement, whichever is later.

(b) An in-service insurance benefit will be payable if the member's insurance coverage was in effect immediately prior to the member's retirement date.

Recodified from N.J.A.C. 17:3-6.3 and amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Deleted (b); recodified former (c) as (b) and neutralized gender references. Former N.J.A.C. 17:3-6.2, Effective date; changes, recodified to N.J.A.C. 17:3-6.3.

#### Case Notes

31-day period for conversion of individual life policy began to run after receipt of approval rather than date of approval of retirement. *McKenna v. Prudential Ins. Co. of America*, 224 N.J.Super. 172, 539 A.2d 1266 (A.D.1988).

For purpose of statute, notice of termination of employment and notice of existence of right to convert to individual life policy were not synonymous. *McKenna v. Prudential Ins. Co. of America*, 224 N.J.Super. 172, 539 A.2d 1266 (A.D.1988).

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-8377 (App.Div.1985).

#### 17:3-6.3 Effective date; changes

(a) Except as provided by N.J.A.C. 17:3-6.7, a member shall have the right to withdraw, cancel or change an application for retirement at any time before the member's retirement allowance becomes due and payable by sending a written request signed by the member. Thereafter, the retirement shall stand as approved by the Board.

(b) Except in the event of deferred retirement, if a member requests a change of retirement date or option selection before the member's retirement allowance becomes due and payable, said change will require approval of the Board and the revised retirement allowance shall not become due and payable until 30 days have elapsed following the effective date or the date the Board met and approved the change in the member's retirement application, whichever is later.

(c) A deferred retirement shall become effective on the first of the month following the member's 60th birthday. At the election of the member, if the member's 60th birthday falls on the first of a month, the retirement shall become effective on that date, provided the member files a timely retirement application pursuant to N.J.S.A. 18A:66-36(b).

(d) In the case of deferred retirement, if an applicant desires to amend the retirement application, the amended application must be filed with the Division a minimum of one month prior to the effective date of retirement.

(e) Should the member continue to receive a salary beyond the effective date of retirement, no retirement benefits shall be paid for the period where the member received salary and no salary or service credit shall be provided for the service rendered after the effective date of retirement.

As amended, R.1973 d.49, effective February 14, 1973.  
 See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).  
 As amended, R.1974 d.24, effective January 31, 1974.  
 See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).  
 As amended, R.1975 d.140, effective May 27, 1975.  
 See: 7 N.J.R. 179(a), 7 N.J.R. 349(a).  
 As amended, R.1983 d.78, effective March 21, 1983.  
 See: 14 N.J.R. 1202(b), 15 N.J.R. 449(b).

Subsection (f), added.

Recodified from N.J.A.C. 17:3-6.2 and amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Rewrote the section. Former N.J.A.C. 17:3-6.3, Effective date; , death prior thereto, recodified to N.J.A.C. 17:3-6.2.

Amended by R.2005 d.394, effective November 21, 2005.

See: 37 N.J.R. 1928(b), 37 N.J.R. 4460(a).

In (a), substituted "Except as provided by N.J.A.C. 17:3-6.7, a" for "A"; rewrote (e).

#### Case Notes

Denial of retiree's request to convert ordinary plan to early service retirement was not arbitrary or capricious. *Steinmann v. State, Dept. of Treasury, Div. of Pensions, Teachers' Pension and Annuity Fund*, 235 N.J.Super. 356, 562 A.2d 799 (A.D.1988) reversed 116 N.J. 564, 562 A.2d 791.

Retiree may change benefits after retirement and receipt of benefits if retiree is incompetent at time of application completed. *Cicione v. Teacher's Pension and Annuity Fund*, 97 N.J.A.R.2d (TYP) 84.

Tenured teacher could not obtain difference between her salary and disability pension benefits for period between when she applied for and was granted disability retirement. *Matter of Tenure Hearing of Scherr*, 95 N.J.A.R.2d (EDU) 97.

Monthly allowance selection; decedent was competent at the time he made selection. *Robertson v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 161.

No good cause or reasonable diligence existed to allow teacher to reopen early retirement designation made 12 years earlier. *Porter v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 9.

Untimely request to change effective date of retirement denied. *Jengeleski v. Board of Trustees of the Teachers' pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 5.

Reformation of retirement application denied based upon decedent retiree's only partial completion of option change application prior to his death. *Ward v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 8 N.J.A.R. 60 (1984), affirmed per curiam Docket No. A-4795-83T7 (App.Div.1985).

#### 17:3-6.4 Outstanding loan

(a) A member who has an outstanding loan balance at the time of retirement may repay the loan balance, with interest, as follows:

1. In full before the retirement allowance becomes due and payable as provided in N.J.A.C. 17:3-6.2; or

2. By deductions from retirement benefit payments of the same monthly amount deducted from the member's compensation immediately preceding retirement until the loan balance, with interest, is repaid as authorized by P.L. 1999, c.132. If the member does not request repayment in full, repayment is by deductions in the same monthly

amount deducted from the member's compensation immediately preceding retirement.

(b) If a retirant dies before the loan balance, with interest, is repaid, the remaining balance is paid first from the group life insurance proceeds, and then from the proceeds of any other benefits payable on account of the retirant in the form of monthly payments or the balance of the Option 1 reserves or the balance of the retirant's accumulated deductions and regular interest that are due to the beneficiary or estate. If the retirant designated multiple beneficiaries to receive these benefits, each beneficiary shares in repaying the remaining balance in the same proportion in which they are entitled to the benefits.

Amended by R.1982 d.14, effective February 1, 1982.

See: 13 N.J.R. 748(b), 14 N.J.R. 161(c).

Repealed and replaced (a) and (b).

Repeal and New Rule, R.1999 d.431, effective December 20, 1999.

See: 31 N.J.R. 2709(a), 31 N.J.R. 4293(b).

Section was "Outstanding loan".

Amended by R.2002 d.352, effective November 4, 2002.

See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (a), amended the N.J.A.C. reference in 1, deleted 2 and recodified former 3 as 2; in (b), substituted "1" for "1" following "Option".

#### 17:3-6.5 Willful negligence

(a) Willful negligence is defined as:

1. Deliberate act or deliberate failure to act; or

2. Such conduct as evidences reckless indifference to safety; or

3. Intoxication, operating as the proximate cause of injury.

#### 17:3-6.6 (Reserved)

Repealed by R.2004 d.244, effective July 6, 2004.

See: 36 N.J.R. 920(a), 36 N.J.R. 3267(c).

Former N.J.A.C. 17:3-6.6, Retirement credit, recodified to N.J.A.C. 17:3-4.7.

#### 17:3-6.7 Disability determination

(a) A member for whom an application for accidental disability retirement allowance has been filed by the member, by the member's employer, or by one acting in behalf of the member, will be retired on an ordinary disability retirement allowance if the Board finds that:

1. The applicant was considered a member at the time of filing the application for a disability retirement allowance or is covered by the provisions of N.J.A.C. 17:3-6.15;

2. The member is physically or mentally incapacitated for the performance of duty; and

3. The member is not eligible for accidental disability since the incapacity is not a direct result of a traumatic event occurring during and as a result of the performance of the member's regular or assigned duties; and