

claim. If no such written statement is received within the 45-day period, the determination by the Board shall be final.

(b) The Board shall determine whether to grant an administrative hearing based upon the standards for a contested case hearing set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

(c) Administrative hearings shall be conducted by the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1.

(d) If the granted appeal involves solely a question of law, the Board may retain the matter and issue a final determination which shall include detailed findings of fact and conclusions of law based upon the documents, submissions and legal arguments of the parties. The Board's final determination may be appealed to the Superior Court, Appellate Division.

(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 retiree fails to appear for a medical examination;
2. If a disability retiree 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 retiree 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; or
5. If a retiree does not complete a policy assignment of group life insurance as requested by the Board.

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.
Amended by R.2006 d.330, effective September 18, 2006.
See: 38 N.J.R. 1555(a), 38 N.J.R. 3915(a).
In (a)4, substituted "; or" for a period at the end; and inserted (a)5.

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 (Reserved)

As amended, R.1973 d.49, effective February 14, 1973.
See: 5 N.J.R. 20(b), 5 N.J.R. 95(b).
Repealed by R.2008 d.94, effective April 21, 2008.
See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).
Section was "Travel".

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 provisions of P.L. 2001, c. 133 the contribution rate as of January 1, 2002 is three percent. Effective January 1, 2004 the rate of contribution was returned to five 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.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (b), substituted "c. 62" for "c.62" and "c. 133" for "c.133", and inserted the fourth sentence.

SUBCHAPTER 1A. DEFINITIONS

17:3-1A.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Base salary" means the annual compensation of a member, in accordance with contracts, ordinances, resolutions, or other established salary policies of the member's employer for all employees in the same position, or all employees covered by the same collective bargaining agreement, which is reported in regular, periodic installments in accordance with the payroll cycle of the employer.

"Board" means the Board of Trustees of the Teachers' Pension and Annuity Fund, vested with the general responsibility for the proper operation of the Fund pursuant to N.J.S.A. 18A:66-56.

"Division" means the Division of Pensions and Benefits, Department of Treasury, in the State of New Jersey.

"Extra compensation" means individual salary adjustments, which are granted primarily in anticipation of a member's retirement; additional remuneration for performing temporary duties beyond the regular work day or work year or additional remuneration for performing duties that are not integral to the effective functioning of the regular school curriculum.

"Fund" or "TPAF" means the Teachers' Pension and Annuity Fund, created pursuant to N.J.S.A. 18A:66-56.

"PERS" means the Public Employees' Retirement System, created pursuant to N.J.S.A. 43:15A-17.

"Work year" means either a 10-month contracted employee who works from September through June of each year and is compensated for each month or a 12-month contracted employee who works from July through June and is compensated for each month or any other approved 10- or 12-month approved contract period.

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 Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9, 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 Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9, 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 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.

(f) As of January 20, 2004, new part-time instructors employed at postsecondary vocational-technical schools are ineligible for enrollment in the Fund. Part time instructors at postsecondary vocational-technical schools who were members of the Fund, as of January 19, 2004, are "grandfathered" in their positions with postsecondary vocational-technical schools, as long as they remain with their current employers.

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".

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (a)1, substituted "Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9" for "Education"; in (b), substituted "Examiners, pursuant to N.J.S.A. 18A:6-34 et seq. and N.J.A.C. 6A:9," for "Education"; in (e), deleted "of Trustees" following "permits the Board"; and added (f).

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 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 of Examiners' 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.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

Inserted a comma following the first occurrence of "position", deleted "of Trustees" following "referred to the Board" and inserted "of Examiners".

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).

17:3-2.3 Multiple enrollees

A "teacher" employed in two or more positions that meet the eligibility requirements for enrollment in the Fund as stated in N.J.A.C. 17:3-2.1 must enroll in the Fund through each of the positions.

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 "Full-Time".

Case Notes

Part-time (three days per week) school social worker performing all duties of position while at work, with another part-time employee performing duties at other times, held not eligible for pension fund membership, in furtherance of the Fund's establishment to benefit "career" rather than part-time teachers. *Caplan v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 3 N.J.A.R. 129 (1981).

17:3-2.4 Emergency or provisional certificate

(a) Any teacher employed under an emergency or provisional certificate, who is appointed to a regular full-time or part-time position under contract, shall be eligible for enrollment as of the date of employment.

(b) In the event a teacher does not qualify for a regular teaching certificate before the emergency or provisional certificate expires and such teacher is continued in employment as a substitute or temporary employee, such member:

1. Will not be permitted to make contributions to the Fund while employed in a substitute or temporary status;
2. Will be permitted to retain inactive membership for a period not in excess of two years;
3. Will be permitted to purchase credit for the period of substitute service as may be provided by statute.

4. Will not be covered for either the non-contributory or contributory insurance during the period of substitute service, in which event such member may exercise group life insurance conversion rights.

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

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

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), added "or part-time" following "full-time"; in (b), deleted gender references throughout.

Amended by R.2008 d.94, effective April 21, 2008.

See: 39 N.J.R. 5058(b), 40 N.J.R. 2122(a).

In (b)1, substituted "Fund" for "fund".

17:3-2.5 Janitors

Any janitorial employee who was enrolled prior to August 1, 1966 shall be eligible to continue membership until such membership terminates.

17:3-2.6 (Reserved)

Repealed by R.2003 d.438, effective November 3, 2003.

See: 35 N.J.R. 2585(a), 35 N.J.R. 5148(a).

Section was "Ineligible positions; interim appointment to Boards of Education for those not covered by the provisions of P.L. 2001, c.355 (N.J.S.A. 18A:66-53.2b)".

17:3-2.7 Enrollment following deferred retirement

(a) The membership account under which a member elected deferred retirement, who resumes regular service prior to age 60, shall be reinstated.

(b) If the member returned to employment prior to July 1, 1995, the member shall be assigned the original rate of contribution if the member resumes service before a period of two years has elapsed since the member last made a contribution to the account.

(c) If there has been a lapse of more than two years, a commuted rate shall be assigned. Such commuted rate of contribution shall be determined by adding the lapsed period to the member's age as of the date of original enrollment.

(d) Members who return to employment after July 1, 1995 shall be assigned the flat contribution rate in effect at the time of their return to employment.

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

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

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

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

Rewrote the section.

17:3-2.8 Enrollment date

(a) New employees in the classified service shall be considered as beginning their service on the date of their regular appointments.

1. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose regular appointment date

falls between the first through the 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose regular appointment date falls between the 17th and the end of the month.

2. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period for an employee whose appointment date falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose appointment date falls on any subsequent date within that pay period.

(b) The compulsory enrollment of "teachers" was not in effect until January 1, 1956. Any employee, other than a veteran, who was employed prior to January 1, 1956 was given the option to enroll or not enroll and that employee continues to retain this option provided there has been no change in employer since January 1, 1956. If an employee is an optional enrollee, and wishes to enroll in the Fund, the employee shall be enrolled as of the first of the month following the receipt of the enrollment application for those whose employers report on a monthly basis or the first day of the next biweekly pay period for those whose employers report on a biweekly basis.

(c) An employee in the unclassified service shall be considered as beginning service on the date of the original appointment.

1. For local employers not covered by Civil Service, a regular appointment shall constitute the first day of work after the date the employee originally accepted employment in a regular budgeted position.

2. For employers who report on a monthly basis, the compulsory enrollment date shall be fixed as the first of the month for an employee whose beginning employment date falls between the first through 16th of the month and the compulsory enrollment date shall be fixed as the first of the following month for an employee whose beginning employment date falls between the 17th and the end of the month.

3. For employers who report on a biweekly basis, the compulsory enrollment date shall be fixed as the first day of the pay period for an employee whose date of hire falls on the first through seventh day of the biweekly pay period. The compulsory enrollment date shall be fixed as the first day of the following biweekly pay period for an employee whose date of hire falls on any subsequent date within that pay period.

(d) An employee cannot receive credit in the retirement system for the initial pay period or month of employment if that employment began after the seventh day of the pay period or after the 16th day of the month.