

CHAPTER 3

TEACHERS' PENSION AND ANNUITY FUND

Authority

N.J.S.A. 18A:66-56.

Source and Effective Date

R.2002 d.352, effective October 10, 2002. See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Chapter Expiration Date

Chapter 3, Teachers' Pension and Annuity Fund, expires on October 10, 2007.

Chapter Historical Note

Chapter 3, Teachers' Pension and Annuity Fund, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, was readopted as R.1983 d.175, effective May 16, 1983. See: 15 N.J.R. 526(b), 15 N.J.R. 930(c).

Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, expired on May 16, 1988.

Chapter 3, Teachers' Pension and Annuity Fund, was adopted as new rules by R.1988 d.381, effective August 15, 1988. See: 20 N.J.R. 1181(b), 20 N.J.R. 2072(b).

Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, expired on August 15, 1993.

Chapter 3, Teachers' Pension and Annuity Fund, was adopted as new rules by R.1993 d.658, effective December 20, 1993. See: 25 N.J.R. 4461(a), 25 N.J.R. 5942(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Teachers' Pension and Annuity Fund, was readopted as R.1998 d.578, effective November 13, 1998. See: 30 N.J.R. 3376(a), 30 N.J.R. 4254(a).

Chapter 3, Teachers' Pension and Annuity Fund, was readopted as R.2002 d.352, effective October 10, 2002. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Battle for state contracts: What process is due in a challenge to a state contract award? Patrick D. Kennedy & Maeve E. Cannon, 180 N.J.Law. 16 (Mag.) (Oct./Nov. 1996).

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**SUBCHAPTER 1. ADMINISTRATION**

**17:3-1.1 Board meetings**

(a) The Board of Trustees shall meet on the first Thursday of each month or at such time as may be deemed necessary by the Board.

(b) The chairperson may call for special meetings when necessary.

(c) The current rules within Roberts' Rules of Order, Second Edition, as well as future amendments thereto, are adopted and incorporated herein by reference as the source to be used by the Board of Trustees of the Teachers' Pension and Annuity Fund in the conduct of its monthly meetings.

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.1982 d.344, effective October 18, 1982.  
 See: 14 N.J.R. 201(a), 14 N.J.R. 1164(c).  
 Change of meeting from second to first Thursday of the month.  
 Amended by R.1994 d.161, effective April 4, 1994.  
 See: 25 N.J.R. 5762(b), 26 N.J.R. 1537(d).  
 Amended by R.2002 d.352, effective November 4, 2002.  
 See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

In (b), substituted "chairperson" for "chairman"; in (c), deleted "effective as of April 4, 1994,".

**17:3-1.2 Fiscal year**

The transaction of business and control of funds shall be conducted on a July 1 to June 30 fiscal year.

Amended by R.2000 d.442, effective November 6, 2000.

See: 32 N.J.R. 2985(a), 32 N.J.R. 3996(b).  
 Rewrote the section.

**17:3-1.3 Officers and committees**

(a) The members of the Board shall elect a chairperson for the forthcoming year at its regular meeting in July.

(b) The chairperson of the Board shall preside at all meetings or in the absence of the chairperson, such presiding officer as the Board shall determine.

(c) The chairperson and the Secretary of the Board shall have the power to act for the Board in all matters which may be referred to them by the Board.

(d) There shall be three standing committees of three members each:

1. Finance Committee;
2. Retirement Committee; and
3. Procedures and Policies Committee.

(e) The Committee shall be appointed at the July Board meeting by the chairperson elect for the forthcoming fiscal year.

(f) The State Treasurer and the person designated to represent the Fund on the State Investment Council shall serve as members of the Finance Committee.

(g) The Finance Committee shall review all investment transactions and financial reports referred to it by the Secretary for presentation to the Board at its regular monthly meeting.

(h) The Retirement Committee shall consider all cases referred to it by the Secretary and submit its recommendations to the Board at its next meeting.

(i) The Procedures and Policies Committee shall consider all cases referred to it by the Secretary and submit its recommendations to the Board at its next meeting.

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).  
 Substituted "chairperson" for "chairman" and "July" for "June" throughout.

**17:3-1.4 Election of member-trustee**

(a) The Board shall hold an annual convention of delegates of the membership of the Fund each year for the purpose of:

1. Electing a member-trustee to the Board of Trustees;
2. Presenting its annual report; and

(c) Extra compensation shall not be considered creditable for benefits and all employee contributions made thereon shall be returned without interest.

(d) With respect to all claims for benefits, the Division of Pensions and Benefits shall investigate increases in compensation reported for credit which exceed the reasonably anticipated annual compensation increases for members of the Fund based upon either the increase in the Consumer Price Index for the time period of the increases and the table of assumed salary increases recommended by the actuary and adopted by the Board or based on the averages of the regular increases in the employees' compensation preceding the periods in which the extra compensation was received. Those cases where a violation of the statute or rules is suspected shall be referred to the Board.

(e) In connection with an investigation of an increase in compensation, the Board may:

1. Require that a notarized statement under oath be obtained from the member's employer that the reported compensation was not granted primarily in anticipation of retirement, and conforms with the statutes and rules governing the Teachers' Pension and Annuity Fund;

2. Require an employer to provide any record or information it deems necessary for the investigation, including, but not limited to, collective bargaining agreements, employment contracts, ordinances, resolutions, minutes of public meetings (closed or open), job descriptions, salary histories, promotional lists or notices or any other record or information related to the increase in compensation; and

3. Refer any suspected submission of false information in violation of N.J.S.A. 18A:66-64, these rules, or other laws of the State of New Jersey to the Attorney General for review and initiation of criminal proceedings, if warranted.

(f) Failure to satisfactorily respond to a request by the Board for documents or information related to an increase in compensation may result in the denial of credit for the increase in compensation.

(g) A determination by the Board that a member's compensation for pension purposes includes extra compensation may result in:

1. A denial of credit for the extra compensation;
2. An audit of the retirees and the active employees of the employer to identify any additional cases of such extra compensation;
3. A return of contributions to the active members and retirees on the extra compensation without interest;
4. A recalculation of the retirement benefits of retirees to eliminate benefits based upon the extra compensation; and

5. Repayment to the system by the retiree of any benefits received based upon the extra compensation.

(h) A member shall receive service credit for that base salary received during the period of suspension in which the member is awaiting a determination by the Commissioner of Education as provided under N.J.S.A. 18A:6-14.

(i) To be creditable, compensation for teaching sixth period shall be reported in regular, periodic installments in accordance with the payroll cycle of the employer.

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.1981 d.30, effective January 27, 1981.

See: 12 N.J.R. 675(d), 13 N.J.R. 162(a).

(f) added.

Repeal and New Rule, R.2001 d.412, effective November 19, 2001.

See: 33 N.J.R. 2609(b), 33 N.J.R. 3907(c).

Section was "Creditable salary".

#### Law Review and Journal Commentaries

Pensions—Teachers. Steven P. Bann, 133 N.J.L.J. No. 11, 54 (1993).

#### Case Notes

High school teachers acting as department chairpersons were not temporary employees so compensation received was creditable. *Siri v. Board of Trustees of Teachers' Pension and Annuity Fund*, 262 N.J.Super. 147, 620 A.2d 440 (A.D.1993).

Additional half-day of work performed by high school psychologist was not temporary so the extra salary was creditable for pension purposes. *Siri v. Board of Trustees of Teachers' Pension and Annuity Fund*, 262 N.J.Super. 147, 620 A.2d 440 (A.D.1993).

Merit increase not a bonus for pension calculation purposes. *Farrah v. Teachers' Pension and Annuity Fund*, 93 N.J.A.R.2d (TYP) 69.

Petition for pension credit for payment received for services rendered as high school department chairman denied based upon finding that payment did not take the form of salary and was classified as extra compensation in petitioner's employment contract (also citing former N.J.A.C. 17:3-29). *Bishop v. Bd. of Trustees, Teachers' Pension and Annuity Fund*, 4 N.J.A.R. 179 (1980).

#### 17:3-4.2 Leave with pay

(a) If a member is granted a leave of absence during the course of a school year with sufficient salary to cover a full normal contribution, including any arrears or loan payments, the privilege of the member to obtain credit on the basis of such salary shall not extend beyond six months from the date of the leave.

(b) If the leave with pay extends beyond six months, the member will receive credit and will be required to make contributions only if the member is receiving 50 percent or more of the regular base or contractual salary.

Amended by R.1974 d.24, effective January 31, 1974.

See: 5 N.J.R. 426(d), 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).

Inserted paragraph identifiers; in (a), substituted "on the basis of such salary" for "for such leave" and added "from the date of the leave" following "six months"; in (b), neutralized gender references.

**17:3-4.3 School year members; 10 and 12 months**

(a) Members whose salaries for a school year are considered as a full year's compensation shall be given service credit in the proportion that the time employed bears to the duration of the school year, but not more than one year's salary credit shall be given during any consecutive 12 months.

(b) Members whose contracts require them to work 10 months of the year and who are employed and are compensated for employment for the full normal school year by the board of education are entitled to receive 12 months of service credit. Members will not receive service credit for months during the normal school year when they are not actively employed and did not receive salary.

(c) A 12-month member is presumed to work each month of the fiscal year.

(d) If a member terminates a position that requires less than 12 months to constitute one full year of service at the end of the normal academic school year and accepts a 12 month position with the same employer or another employer that participates in the Teachers' Pension and Annuity Fund and begins employment on or before the date that was established by the previous year's contract position, such member will receive service credit within the Teachers' Pension and Annuity Fund for the period between the end of the previous contract and the employment date of the new 12-month position.

Amended by R.1989 d.359, effective July 17, 1989.  
See: 21 N.J.R. 980(a), 21 N.J.R. 2055(a).

Employees working less than a 12 month school year receive credit for a full year in Teacher's Pension and Annuity Fund.  
Amended by R.1994 d.163, effective April 4, 1994.  
See: 26 N.J.R. 108(b), 26 N.J.R. 1538(a).  
Amended by R.1995 d.89, effective February 21, 1995.  
See: 26 N.J.R. 3606(a), 27 N.J.R. 754(c).  
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**

Professor employed on semester-by-semester basis did not qualify for extension of retirement system membership. *LaMastro v. Public Employees' Retirement System*, 93 N.J.A.R.2d (TYP) 215.

**17:3-4.4 Loan tolerance**

Interest will be calculated on a periodic basis on the unpaid loan balance. If scheduled payments are not paid timely, interest will be accrued and added to the remaining outstanding loan balance. If, at the end of the loan schedule, there is a balance of less than \$10.00, it will be written off. If the balance is equal to or greater than \$10.00, the member will be assessed.

New Rule, R.1987 d.130, effective March 16, 1987.  
See: 19 N.J.R. 52(b), 19 N.J.R. 457(a).

Old rule "loan evaluation" repealed.

**17:3-4.5 Approved leave**

When benefits are payable involving approved leaves of absence or when a purchase of credit is to be processed involving a creditable leave, a certified copy of the employer's resolution granting such approved leave must be available in file or must be confirmed before processing can be completed.

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

**17:3-4.6 Minimum adjustment**

In order to facilitate the reconciliation of a member's account, no rebates or additional contributions shall be made where an adjustment involves an amount of \$2.00 or less during a calendar quarter.

Amended by R.2002 d.352, effective November 4, 2002.  
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Substituted "\$2.00 or less during a calendar quarter" for "\$3.00 or less".

**17:3-4.7 (Reserved)**

Repealed by R.2002 d.352, effective November 4, 2002.  
See: 34 N.J.R. 1997(a), 34 N.J.R. 3782(c).

Section was "Excess contributions".

**17:3-4.8 Military leave prior to August 1, 1974**

(a) Military leave, prior to August 1, 1974, contributions remitted by an employer on behalf of an employee, who does not return to the payroll for the minimum 90-day period required by N.J.S.A. 18A:66-34, shall be retained by the Fund. Such contributions shall be transferred from the Annuity Savings Fund to the Contingent Reserve Fund. Military leave contributions remitted by an employer shall be based on the employee's salary at the time the member entered military service.

(b) Payroll as referred to in (a) above, shall be interpreted to mean any public school payroll in New Jersey, not necessarily the payroll of the employer where the member was employed when the member entered military service.

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), inserted " , prior to August 1, 1974" following "Military leave" and neutralized gender references throughout.

**Case Notes**

Approval of W.W.II veteran status in retirement system was proper. *Usarzewicz v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 69.

**17:3-4.9 Eligibility for loan**

Only active contributing members of the Fund may exercise the privilege of obtaining a loan. The member's total outstanding loan balance shall not exceed the lesser of 50 percent of the accumulated deductions posted to the member's account or \$50,000.

(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-4795-83T7 (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-4795-83T7 (App.Div.1985).

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

(a) 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 after approval of the retirement by the Board of Trustees, 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 approved, 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.

#### 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 "T" 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 Retirement credit

(a) A member shall receive credit toward retirement for any month or biweekly pay period in which a full normal deduction is received by the Fund.

(b) A member who appeals the suspension or termination of the member's employment and is awarded back pay for all or a portion of that employment for the period of such suspension or termination shall receive retirement credit for the period covered by the award, regardless of the amount of the back pay awarded, provided a full normal pension contribution is received from the member or deducted from the value of the award. The amount of the pension contribution will be determined by the provisions of the award. If the member receives full back pay, including normal salary increases, then the contribution will be computed on the base salaries that the employee would have earned for the reinstated suspended or terminated period. When the settlement is less than the full back pay, the pension contribution will be based upon the salary that the member was receiving for pension purposes prior to the suspension or termination of employment. In the event that the amount of back payment is insufficient to deduct the value of the normal pension contributions due, such contribution shall be paid by the member.

(c) It is the responsibility of the certifying officer to provide a letter attesting to the base salary or salaries to be used to compute pension contributions and to provide a copy of the resolution or legal document that details the terms of the settlement.

Amended by R.1974 d.24, effective January 31, 1974.

See: 5 N.J.R. 426(d), 6 N.J.R. 124(a).

Amended by R.1981 d.140, effective June 4, 1981.

See: 13 N.J.R. 159(c), 13 N.J.R. 376(a).

(b) added.

Amended by R.1991 d.100, effective March 4, 1991.

See: 22 N.J.R. 3321(b), 23 N.J.R. 712(b).

In (b), amended method of computing back pay awards. Added (c).

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

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

In (b), neutralized gender references.

#### Case Notes

Former teacher entitled to interest on monies improperly withheld from retirement account, but not reimbursement for overpayment of state income tax. *Nangle v. Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 14.

#### 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
4. The member meets the service requirement for ordinary disability.

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).

In (a), rewrote 1 and substituted "ordinary" for "ordinance" in 4; neutralized gender references throughout.

#### Case Notes

Injuries sustained by industrial arts teacher when he attempted to break up fight between students were caused by traumatic event, entitling teacher to accidental disability retirement benefits. *Kopack v. Board of Trustees, Teachers' Pension and Annuity Fund*, 96 N.J.A.R.2d (TYP) 243.

Teacher injured while travelling to school at normal time was not entitled to accidental disability pension. *Loftus v. Teachers' Pension and Annuity Fund*, 95 N.J.A.R.2d (TYP) 14.

Accidental disability retirement benefits; slip and fall injury was not shown to be traumatic event. *Catarcio v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 99.

Ordinary disability retirement benefits were properly denied when employee failed to meet service requirement; out-of-state service. *Bewley v. Teachers' Pension and Annuity Fund*, 94 N.J.A.R.2d (TYP) 61.

Student's composition directed at teacher did not warrant accidental disability retirement in absence of actual threat. *Kablesh v. Board of Trustees*, 93 N.J.A.R.2d (TYP) 229.

Elementary school teacher with severe back pain entitled to ordinary disability benefits. *Dilascio v. Board of Trustees of the Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 105.

Third grade teacher injured while restraining violent student permanently and totally disabled by traumatic event qualifying her for accidental disability retirement benefits. *McCulloch v. Board of Trustees, Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 66.

Physical assault of teacher constituted a traumatic event within meaning of accidental disability retirement statute. *Malawka v. Teachers' Pension and Annuity Fund*, 92 N.J.A.R.2d (TYP) 21.

#### 17:3-6.8 Option selection

If an applicant for an accidental disability retirement benefit is rejected for an accidental disability benefit but is approved by the Board for retirement, in accordance with N.J.A.C. 17:3-6.7, the applicant will be permitted, within 30 days following Board approval of the retirement, to amend the option selection which the applicant made on the original accidental disability retirement application.

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

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

Neutralized gender references throughout.

#### 17:3-6.9 Employer and employee notices

If an applicant for accidental disability retirement is found to be physically or mentally incapacitated for the performance of duty but is rejected for accidental disability retirement because the Board finds that the disability was not a direct result of a traumatic event occurring during and as a result of the performance of the applicant's regular or assigned duties, and if the applicant does not meet the minimum statutory requirements for any other type of retirement allowance, the Fund will notify both the member and the member's employer that the member was found to be physically or mentally incapacitated for the continued performance of duty, as was previously certified to the Fund.

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

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

Deleted the paragraph identifier in (a) and neutralized gender references throughout; deleted (b).

#### 17:3-6.10 Involuntary disability application

(a) If an application for an accidental disability retirement benefit or for an ordinary disability retirement benefit is filed by an employer for one of its employees, the member will be promptly notified by letter that:

1. The member's employer has properly initiated a disability application signed by the Certifying Officer or other designated officer of the employer, on the member's behalf; and

2. The member's employer has submitted a written statement as to the grounds for the employer's request for the member's involuntary disability retirement and all pertinent medical documentation;

3. The member has a period of 30 days to contest the involuntary retirement before the Board acts on the employer's application;

4. The member will be required to appear for an examination before a physician designated to conduct such an examination for the Fund;

5. In the event the Board finds that the member is totally and permanently incapacitated for the performance of duty, the member shall be granted the maximum retirement option, if the member does not file a completed "Application for Disability Retirement" setting forth the retirement option the member desires, before the retirement goes into effect; and

6. In the event the Board finds that the member is not totally and permanently incapacitated for the performance of duty, the employer's application shall be disallowed and the employer shall be informed that the member should be returned to duty.

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.

### 17:3-6.11 Early retirement; reduction

(a) Retirement with 25 or more years of credited service before the first of the month in which a member attains age 60 shall be classified as "early" retirement unless the member retires on a veteran's retirement allowance.

(b) The statutory reduction of one quarter of one percent applies to each month prior to the month in which the member attains age 55 and for the month in which the member attains age 55 if the member's 55th birthday occurs after the 15th day of the month.

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.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).

Rewrote the section.

#### Case Notes

Good cause was shown by school teacher who converted his ordinary disability retirement plan to early service retirement. *Steinmann v. State, Dept. of Treasury, Div. of Pensions, Teachers' Pension and Annuity Fund*, 116 N.J. 564, 562 A.2d 791 (1989).

### 17:3-6.12 Service retirement; eligibility

A member becomes eligible for "Service" retirement on the first of the month following the member's 60th birthday. At the election of a 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:66-43(a) and requests that date.

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.

### 17:3-6.13 Disability retirant; annual medical examinations

(a) All disability retirants may be required to undergo a medical examination each year for a maximum period of five years by a physician designated by the Fund as of the anniversary date of their retirement, unless such examination requirement has been waived by the Board.

(b) Failure on the part of a retirant to submit to the required medical examination shall result in the automatic suspension of the retirant's retirement allowance until the retirant submits to a medical examination.

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.1980 d.103, effective March 5, 1980.

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

Amended by R.1998 d.324, effective July 6, 1998.

See: 30 N.J.R. 1027(a), 30 N.J.R. 2515(a).

In (a), deleted "under the normal retirement age," following "retirants" and substituted "at least five years or for good cause thereafter" for "a maximum period of five years" in the first sentence, and added a second sentence.

Amended by R.2000 d.236, effective June 5, 2000.

See: 32 N.J.R. 997(a), 32 N.J.R. 2110(a).

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).

In (a), deleted "under the normal retirement age of 60" following "retirants"; in (b), neutralized the gender references.

### 17:3-6.14 Disability retirant; annual report (employment, earnings, test and adjustment)

(a) Upon written request from the Division, all disability retirants shall be required to file a report with the Fund which shall include copies of the retirant's IRS 1040 forms and W-2 forms as well as any other proofs of employment requested of a specific retirant indicating the type of employment they are engaged in, if any, and the gross earned income realized therefrom as of December 31 of the prior year.

1. Such report shall be filed with the Fund before the following April 30.

2. Failure on the part of the retirant to file a completed report with the Fund before April 30 shall result in the presentation of the retirant's case to the TPAF Board of Trustees who may impose penalties or suspend the retirant's entire retirement allowance for the period the report is in default.