

CHAPTER 3

TEACHERS' PENSION AND ANNUITY FUND

Authority

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

Source and Effective Date

R.1998 d.578, effective November 13, 1998.
See: 30 N.J.R. 3376(a), 30 N.J.R. 4254(a).

Executive Order No. 66(1978) Expiration Date

Chapter 3, Teachers' Pension and Annuity Fund, expires on November 13, 2003.

Chapter Historical Note

Chapter 3, Teachers' Pension and Annuity Fund, was filed 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 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 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: Source and Effective Date.

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 chairman may call for special meetings when necessary.

(c) The current rules within Roberts' Rules of Order, effective as of April 4, 1994, 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).

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, with the exception of the actuarial valuation, which shall be prepared on the basis of the membership payroll and status of all accounts as of March 31 of each year.

17:3-1.3 Officers and committees

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

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

(c) The chairman 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 June Board meeting by the chairman 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).

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
3. Conducting a general discussion period on any questions concerning the report or matters pertaining to the Fund.

(b) Such annual convention shall be held each year at 10:30 A.M., on a Saturday in November designated by the trustees, at a location to be announced by the Board.

(c) The chairman of the convention will be a member of the Board of Trustees elected by the Board.

(d) The secretary of the Board shall act as the secretary of the convention.

(e) The delegates to the convention must be active members of the Fund.

(f) The delegates shall be elected at a meeting of the membership in each county to be called by the county superintendent no later than the 27th day of May.

1. Notice of the time and place of the county meeting shall be issued by the county superintendent at least 10 days before the date of the meeting.

2. The meeting shall organize by the election of a chairman and secretary.

17:3-1.12 State employees; biweekly salaries

(a) Retirement and death benefits as well as service credit will be determined on the basis of biweekly pay periods for State employees paid by centralized payroll.

(b) In the event a member is reported on a combination of monthly and biweekly pay periods, his last year's salary or final compensation as well as his 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).

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

(a) An individual, who is six months or more past his or her most recent birthdate at the time of his or her enrollment will have his or her pension contribution rate and retirement factor based upon the age on his or her next birthday.

(b) Retired members will have their retirement benefits, as well as their survivors' benefits, calculated upon the basis of the factors applicable to their age on their next birthday.

New Rule, R.1991 d.226, effective May 6, 1991.
See: 23 N.J.R. 188(a), 23 N.J.R. 1421(b).

SUBCHAPTER 2. ENROLLMENT

17:3-2.1 Eligible positions

(a) With the exception of the public institutions and the Department of Higher Education, any person who is appointed by the State or local board of education in the State, as a regular full-time employee to one of the following teaching or professional staff positions shall be required to become a member of the Fund effective as of the date of their employment:

1. Regular teacher;
2. Special teacher;
3. Helping teacher;
4. Teacher-clerk;
5. State Commissioner;
6. Principal;
7. Vice-principal;
8. Assistant principal;
9. Guidance director;
10. School social worker;
11. School physical therapist;
12. Supervisor;
13. Supervising principal;
14. Assistant Commissioner of Education;
15. Director;

16. Superintendent;
17. City Superintendent;
18. Assistant city superintendent;
19. Teacher-counselor;
20. School nurse;
21. School psychologist;
22. County superintendent;
23. School administrator;
24. Subject supervisor;
25. Librarian;
26. Music teacher;
27. Recreation director;
28. Coordinator;
29. Coordinator for distributive education;
30. Guidance and placement counselor;
31. Vocational supervisor;
32. Assistant superintendent in charge of business;
33. General supervisor of instruction;
34. General secondary supervisor;
35. General elementary supervisor;
36. Assistant subject supervisor;
37. School occupational therapist;
38. Speech therapist;
39. Vocational administrator;
40. Vocational trade and industrial coordinator;
41. Vocational trade and industrial teacher;
42. Director, administrator or supervisor of guidance and student personal services;
43. School business administrator;
44. Learning disability specialist.

(b) Any person coming under the definition of "teacher", who is appointed to a regular full-time position in the following schools, shall be eligible for enrollment:

1. The Accredited Evening High Schools at Camden, East Orange, Newark, Bayonne, Jersey City, Trenton, Woodbridge, Asbury Park and Morristown. A minimum of five periods per evening is required to qualify as a full-time employee.
2. Belleville Cerebral Palsy Center.

(c) If a person, who is employed under the Federal Elementary and Secondary Education Act of 1965, meets all

three of the following prerequisites, he shall be eligible for enrollment in the fund:

1. He is a regular full-time employee of the board of education;
2. He is appointed to a position which comes within the classification of "teacher;"
3. He has a valid certificate of the State Board of Education for the position that he holds under the Federal Act.

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;"

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 title which does not specifically appear in section 2.1 (Eligible positions) of this chapter, in order to determine such person's eligibility for enrollment, his 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.

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 Full-time

(a) A "teacher" employed under a regular annual contract and performing all the duties required of the position, although he may only work part of the day every day or only two or three days every week shall be considered a full-time employee subject to enrollment in the Fund.

(b) The same provision shall also apply with respect to a "teacher" employed by two or more boards of education where the combined employment constitutes full-time employment. Such a "teacher" must enroll in each of his positions.

(c) The compulsory enrollment of "teachers" coming under this rule was not effected until January 1, 1956. Any employee, other than a veteran, who was employed under these circumstances prior to January 1, 1956 was given the option to enroll or not enroll and he shall continue to retain this option provided there has been no change in his employment since January 1, 1956.

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 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 his 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 his 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).

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)

As amended, R.1971 d.63, effective April 28, 1971.

See: 3 N.J.R. 48(a), 3 N.J.R. 117(a).

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).

17:3-6.3 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) A member, who has applied for a retirement allowance, who dies before his retirement allowance becomes due and payable shall not be covered by insurance as a retired member.

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

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).

17:3-6.4 Outstanding loan

(a) Members who have a loan outstanding at the time of their retirement, will be permitted to repay the outstanding value of their loan, with interest, before their retirement allowance becomes due and payable. The allowance becomes due and payable 30 days after the date the Board approves their application for retirement or 30 days after the date of retirement, whichever is later.

(b) In the event a retirant should die before the outstanding value of the loan, with interest, is recovered, the group life insurance proceeds will first be used to repay the loan. If the retirant has designated multiple beneficiaries to receive such benefits, each beneficiary will share equally in repaying the loan from benefits payable to them.

1. Any remaining balance shall be paid from the proceeds of any other benefits payable on the account of the retirant in the form of monthly payments or the balance of the Option I reserves that are due to the beneficiary or estate. If the retirant has designated multiple beneficiaries to receive such benefits, each beneficiary will share equally in repaying the loan from the benefits payable to them.

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).

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 his or her employment and is awarded back pay for all or a portion of his or her 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).

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 his 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 member was under the normal retirement age at the time of filing application for a disability retirement allowance; and
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 his regular or assigned duties; and
4. The member meets the service requirement for ordinance disability.

As amended, R.1980 d.103, effective March 5, 1980.
See: 12 N.J.R. 55(b), 12 N.J.R. 224(e).

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 for the Board for retirement, in accordance with N.J.A.C. 17:3-6.7, he will be permitted, within 30 days following Board approval of his retirement, to amend the option selection which he made on the original accidental disability retirement application.

17:3-6.9 Employer and employee notices

(a) 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 his 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 his 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 by both the employee and his employer.

(b) Both the employer and the employee will also be advised that a copy of such notice will be placed in the member's file and will be given full consideration in any future claim for disability retirement benefits.

17:3-6.10 Employer application; employee notice

(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 his employees, the member will be promptly notified by letter that:

1. His employer has initiated a disability application, on the member's behalf; and
2. His employer has certified that the member is permanently and totally disabled for the continued performance of duty; and, if appropriate;
3. His employer has certified that the member should be retired as a direct result of a traumatic event occurring during and as a result of the performance of his regular or assigned duties;
4. He has a period of 30 days to contest his involuntary retirement before the Board acts on his employer's application;
5. He will be required to appear for an examination before a physician designated to conduct such an examination for the Fund; and

6. In the event the Board finds that he is totally and permanently incapacitated for the performance of duty, he shall be granted the maximum retirement allowance (without option) payable under the statute, if he (the member) does not file a completed "Application for Disability Retirement Allowance" setting forth the type of allowance he desires, before his retirement goes into effect; and

7. In the event the Board finds that he 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.

17:3-6.11 Early retirement benefit

(a) The statutory reduction of $\frac{1}{4}$ of one per cent 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 his 55th birthday occurs on or after the 15th day of the month.

(b) Retirement on the first of the month in which a member attains age 55 shall be classed as "early" retirement, although a reduction is not applied if his 55th birthday occurs before the middle of such 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).

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 his 60th birthday.

17:3-6.13 Disability retirant; annual medical examinations

(a) All disability retirants may be required to undergo a medical examination each year for at least five years or for good cause thereafter 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. Good cause means the receipt by the Board of creditable information that a member who is receiving a disability retirement allowance is no longer disabled.

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