

**ASSEMBLY, No. 4406**

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**STATE OF NEW JERSEY**

**218th LEGISLATURE**

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INTRODUCED SEPTEMBER 13, 2018

**Sponsored by:**

**Assemblywoman PAMELA R. LAMPITT**

**District 6 (Burlington and Camden)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Assemblymen Peters, Howarth, Assemblywomen DiMaso and Pintor  
Marin**

**SYNOPSIS**

Mandates certain training for DOE arbitrators.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/1/2019)**

1 AN ACT concerning the training of arbitrators and amending  
2 P.L.2012, c.26.

3  
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6  
7 1. Section 22 of P.L.2012, c.26 (C.18A:6-17.1) is amended to  
8 read as follows:

9 22. a. The Commissioner of Education shall maintain a panel of  
10 50 permanent arbitrators to hear matters pursuant to N.J.S.18A:6-  
11 16. Of the 50 arbitrators, 16 arbitrators shall be designated by the  
12 New Jersey Education Association, six arbitrators shall be  
13 designated by the American Federation of Teachers, 18 arbitrators  
14 shall be designated by the New Jersey School Boards Association,  
15 and 10 arbitrators shall be designated by the New Jersey Principals  
16 and Supervisors Association. The commissioner shall inform the  
17 appropriate designating entity when a vacancy exists. If the  
18 appropriate entity does not designate an arbitrator within 30 days,  
19 the commissioner shall designate an arbitrator to fill that vacancy.

20 All arbitrators designated pursuant to this section shall serve on  
21 the American Arbitration Association panel of labor arbitrators and  
22 shall be members of the National Academy of Arbitrators. The  
23 arbitrators shall have knowledge and experience in the school  
24 employment sector. Arbitrators on the permanent panel shall be  
25 assigned by the commissioner randomly to hear cases.

26 All arbitrators designated pursuant to this section after the  
27 effective date of P.L. , c. (pending before the Legislature as this  
28 bill), shall receive training on conduct unbecoming an employee  
29 including, but not limited to, issues related to allegations of sexual  
30 assault and child abuse, for the purpose of assisting the arbitrator in  
31 determining matters in which conduct unbecoming an employee is  
32 the basis of the tenure charges made against the employee. Any  
33 arbitrator on the permanent panel as of the effective date of P.L. ,  
34 c. (pending before the Legislature as this bill), shall receive the  
35 training within 18 months of the effective date of that act.

36 The training shall be conducted by a State agency or private  
37 entity with expertise in the subject area selected by the  
38 commissioner, and any training on sexual misconduct or child abuse  
39 shall be conducted in consultation with a sexual assault or child  
40 abuse prevention organization. The training program utilized by the  
41 State agency or private entity shall be approved by the  
42 commissioner and shall be developed in consultation with interested  
43 stakeholders in the school law and education communities  
44 including, but not limited to, the New Jersey School Boards  
45 Association, the New Jersey Principals and Supervisors

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 Association, the New Jersey Education Association, the American  
2 Federation of Teachers, and the New Jersey Association of School  
3 Administrators. The training program shall include, but shall not be  
4 limited to:

5 (1) A review of tenure charge cases concerning conduct  
6 unbecoming by a school employee, including cases decided both  
7 before and after the enactment of P.L.2012, c.26 (C.18A:6-117 et  
8 al.); and

9 (2) A review of the factors to be considered by arbitrators in  
10 deciding tenure charge cases concerning conduct unbecoming by a  
11 school employee including, but not limited to, the nature of the  
12 alleged offense and the impact, or potential impact, of the  
13 employee's conduct on the health and safety of students within the  
14 context of the school environment.

15 b. The following provisions shall apply to a hearing conducted  
16 by an arbitrator pursuant to N.J.S.18A:6-16, except as otherwise  
17 provided pursuant to P.L.2012, c.26 (C.18A:6-117 et al.):

18 (1) The hearing shall be held before the arbitrator within 45  
19 days of the assignment of the arbitrator to the case;

20 (2) The arbitrator shall receive no less than \$1250 per day, or  
21 such amount as established at the discretion of the Commissioner of  
22 Education, who shall consider the average per diem rate of  
23 arbitrators eligible to serve on the panel who reside in New Jersey,  
24 New York, and Pennsylvania. The costs and expenses of the  
25 arbitrator shall be borne by the State of New Jersey;

26 (3) Upon referral of the case for arbitration, the employing  
27 board of education shall provide all evidence including, but not  
28 limited to, documents, electronic evidence, statements of witnesses,  
29 and a list of witnesses with a complete summary of their testimony,  
30 to the employee or the employee's representative. The employing  
31 board of education shall be precluded from presenting any  
32 additional evidence at the hearing, except for purposes of  
33 impeachment of witnesses. At least 10 days prior to the hearing,  
34 the employee shall provide all evidence upon which he will rely  
35 including, but not limited to, documents, electronic evidence,  
36 statements of witnesses, and a list of witnesses with a complete  
37 summary of their testimony, to the employing board of education or  
38 its representative. The employee shall be precluded from  
39 presenting any additional evidence at the hearing except for  
40 purposes of impeachment of witnesses.

41 Discovery shall not include depositions, and interrogatories shall  
42 be limited to 25 without subparts.

43 c. The arbitrator shall determine the case under the American  
44 Arbitration Association labor arbitration rules. In the event of a  
45 conflict between the American Arbitration Association labor  
46 arbitration rules and the procedures established pursuant to this  
47 section, the procedures established pursuant to this section shall  
48 govern.

1 d. Notwithstanding the provisions of N.J.S.18A:6-25 or any  
2 other section of law to the contrary, the arbitrator shall render a  
3 written decision within 45 days of the start of the hearing.

4 e. The arbitrator's determination shall be final and binding and  
5 may not be appealable to the commissioner or the State Board of  
6 Education. The determination shall be subject to judicial review  
7 and enforcement as provided pursuant to N.J.S.2A:24-7 through  
8 N.J.S.2A:24-10.

9 f. Timelines set forth herein shall be strictly followed; the  
10 arbitrator or any involved party shall inform the commissioner of  
11 any timeline that is not adhered to.

12 g. An arbitrator may not extend the timeline of holding a  
13 hearing beyond 45 days of the assignment of the arbitrator to the  
14 case without approval from the commissioner. An arbitrator may  
15 not extend the timeline for rendering a written decision within 45  
16 days of the start of the hearing without approval from the  
17 commissioner. Extension requests shall occur before the 41 day of  
18 the respective timelines set forth herein. The commissioner shall  
19 approve or disapprove extension requests within five days of  
20 receipt.

21 h. The commissioner may remove any arbitrator from an  
22 arbitration case or an arbitration panel if an arbitrator does not  
23 adhere to the timelines set forth herein without approval from the  
24 commissioner. If the commissioner removes an arbitrator from an  
25 arbitration case, the commissioner shall refer the case to a new  
26 arbitrator within five days. The newly-assigned arbitrator shall  
27 convene a new hearing and then render a written decision within 45  
28 days of being referred the case.

29 (cf: P.L.2015, c.109, s.1)

30  
31 2. This act shall take effect immediately.  
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#### 34 STATEMENT

35  
36 Currently, the Commissioner of Education maintains a panel of  
37 50 permanent arbitrators to hear tenure charge matters. The law  
38 currently requires that arbitrators designated to serve on the panel  
39 have knowledge and experience in the school employment sector.  
40 This bill would require additional training for arbitrators on conduct  
41 unbecoming an employee including, but not limited to, issues  
42 related to allegations of sexual assault and child abuse. The  
43 training would be for the purpose of assisting arbitrators in  
44 determining matters in which conduct unbecoming an employee is  
45 the basis of the tenure charges made against the employee. An  
46 arbitrator on the permanent panel as of the effective date of the bill  
47 will receive the training within 18 months of that effective date.

1       The training will be conducted by a State agency or private entity  
2       selected by the Commissioner of Education. The training program  
3       utilized by the agency or entity will be approved by the  
4       commissioner and will be developed in consultation with interested  
5       stakeholders including, but not limited to: the New Jersey School  
6       Boards Association, the New Jersey Principals and Supervisors  
7       Association, the New Jersey Education Association, the American  
8       Federation of Teachers, and the New Jersey Association of School  
9       Administrators. The training program will include: a review of  
10      tenure charge case determinations concerning conduct unbecoming,  
11      including those decided both before and after the enactment of the  
12      TEACHNJ Act, pursuant to which arbitrators were given the  
13      authority to hear tenure charge cases; and a review of the factors to  
14      be used in making determinations in tenure charge cases concerning  
15      conduct unbecoming including, but not limited to, the nature of the  
16      alleged offense and the impact, or potential impact, of the  
17      employee's conduct on the health and safety of students within the  
18      context of the school environment.