

[First Reprint]

SENATE, No. 2712

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED JUNE 14, 2018

Sponsored by:

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Senator FRED H. MADDEN, JR.

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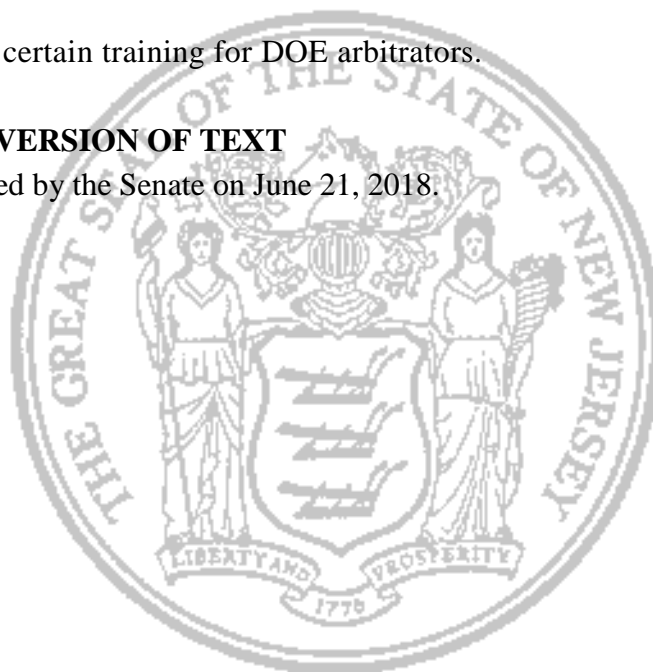
**Assemblymen Peters, Howarth, Assemblywomen DiMaso and Pintor
Marin**

SYNOPSIS

Mandates certain training for DOE arbitrators.

CURRENT VERSION OF TEXT

As amended by the Senate on June 21, 2018.



(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 ¹conduct unbecoming an employee
29 including, but not limited to, issues related to allegations of¹ sexual
30 assault and child abuse ¹; ¹for the purpose of assisting the arbitrator
31 in determining matters in which ¹[this]¹ conduct ¹unbecoming an
32 employee¹ is the basis of the tenure charges made against the
33 employee. ¹[The training shall be conducted by a State agency or
34 private entity with expertise in the subject area, selected by the
35 commissioner.]¹ Any arbitrator on the permanent panel as of the
36 effective date of P.L. , c. (pending before the Legislature as this
37 bill), shall receive the training within 18 months of the effective
38 date of that act.

39 ¹The training shall be conducted by a State agency or private
40 entity with expertise in the subject area selected by the
41 commissioner, and any training on sexual misconduct or child abuse
42 shall be conducted in consultation with a sexual assault or child
43 abuse prevention organization. The training program utilized by the
44 State agency or private entity shall be approved by the

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted June 21, 2018.

1 commissioner and shall be developed in consultation with interested
2 stakeholders in the school law and education communities
3 including, but not limited to, the New Jersey School Boards
4 Association, the New Jersey Principals and Supervisors
5 Association, the New Jersey Education Association, the American
6 Federation of Teachers, and the New Jersey Association of School
7 Administrators. The training program shall include, but shall not be
8 limited to:

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

13 (2) A review of the factors to be considered by arbitrators in
14 deciding tenure charge cases concerning conduct unbecoming by a
15 school employee 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.¹

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

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

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

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

45 Discovery shall not include depositions, and interrogatories shall
46 be limited to 25 without subparts.

47 c. The arbitrator shall determine the case under the American
48 Arbitration Association labor arbitration rules. In the event of a

1 conflict between the American Arbitration Association labor
2 arbitration rules and the procedures established pursuant to this
3 section, the procedures established pursuant to this section shall
4 govern.

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

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

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

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

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

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

34

35 2. This act shall take effect immediately.