

## CHAPTER 16

**AN ACT** concerning the Board of Education Employees' Pension Fund of Essex County and amending N.J.S.18A:66-97 and N.J.S.18A:66-110.

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

1. N.J.S.18A:66-97 is amended to read as follows:

Board of trustees, membership, terms, vacancies.

18A:66-97. a. Until the effective date of P.L.2005, c.328, any pension fund created or to be created as provided in this article shall be under the control and management of the board of seven trustees, no more than three of whom shall be employees of the same board of education. The two trustees of the board added pursuant to this act, P.L.2001, c.454, shall be retirees of the pension fund elected by the retirees of the pension fund, and each such member shall serve for a term of two years. The first board selected as provided in section 18A:66-96 shall serve until the month of January following the incorporation of such association. At such time four members of the association shall be elected as trustees, in place of the four first selected, by a majority vote of the members of the association as follows: one for the term of one year, one for the term of two years, one for the term of three years, and one for the term of four years, who shall serve for the respective terms for which they are each chosen. Thereafter in the month of January of each year a member shall be chosen for a full term of four years to serve in place of the trustee whose term shall have expired.

b. After the effective date of P.L.2005, c.328, any pension fund created as provided in this article shall be under the control and management of the board of seven trustees, at least one of whom shall be an active member until the last active member of the fund retires and one of whom shall be a retiree. The remaining trustees may be either active members or retirees as the number of each may be determined by the bylaws of the board of trustees prior to an election. Commencing with the first January following the enactment of this act, P.L.2005, c.328, and continuing each January thereafter, two individuals shall be elected as trustees in the place of two sitting trustees by a majority vote, for a term of three years. Active member trustees shall be elected by a majority vote of the active members of the association, and retiree trustees shall be elected by a majority vote of the retirees of the pension fund. The transition in trustee terms and the number of trustees elected shall be accomplished as determined by the board.

In any election for a trustee in which there is only one candidate for a position, a vote of retirees or active members shall not be held and the candidate shall be designated a trustee by a majority vote of the sitting board of trustees.

Any vacancy occurring among the board of trustees or in the office of chairperson, vice-chairperson, secretary, treasurer, or other officers of such corporation shall be filled in the manner provided in bylaws, and in the absence of such provision shall be filled by the board of trustees.

c. Any pension fund created as provided in this article shall be (1) a governmental plan under section 414(d) of the federal Internal Revenue Code; (2) a qualified pension plan under section 401(a) of the Internal Revenue Code; and (3) shall hold assets in a tax exempt trust under section 501 of the Internal Revenue Code.

d. In accordance with the provisions of section 401(a)(2) of the federal Internal Revenue Code, and subject to such exceptions as may be permitted for governmental plans under section 401(a)(2) of the federal Internal Revenue Code, at no time prior to the satisfaction of

all liabilities with respect to members and their beneficiaries under any pension fund created as provided in this article shall any part of the corpus or income of the pension fund, within the taxable year or thereafter, be used for or diverted to purposes other than for the exclusive benefit of the members or their beneficiaries.

e. Notwithstanding any law, rule or regulation to the contrary, the contributions to and benefits payable under any pension fund created as provided in this article shall not exceed the limitations provided under section 415 of the federal Internal Revenue Code and the regulations issued by the United States Department of the Treasury under that code section, as applicable to a governmental plan as defined in section 414(d) of the federal Internal Revenue Code, and as indexed in accordance with section 415(d) of the federal Internal Revenue Code.

Any applicable limitation as adjusted under section 415(d) of the federal Internal Revenue code shall apply automatically to contributions to and benefits payable under any pension fund created as provided in this article as of January 1 following such adjustment. This automatic annual adjustment shall apply to members who have had a severance from employment. If this pension fund must be aggregated with another plan to determine the effect of section 415 of the federal Internal Revenue Code on a member's benefits or contributions, and such benefits or contributions must be reduced to comply with that code section, then such reduction shall be made pro rata between the plans in proportion to the member's creditable service in each plan.

f. Notwithstanding any law, rule or regulation to the contrary, for members of any pension fund created as provided in this article, the amount of compensation which may be used for member contributions and benefits shall not exceed the compensation limitation of section 401 (a) (17) of the federal Internal Revenue Code of 1986, (26 U.S.C. s.401 (a) (17)), as amended pursuant to section 13212 of the Omnibus Budget Reconciliation Act of 1993, Pub.L.103-66, 107 Stat. 312 or as hereafter amended or supplemented, to the extent applicable to governmental plans.

g. Notwithstanding any law, rule or regulation to the contrary, the form and timing of all distributions from any pension fund created as provided in this article to a member, or to the beneficiary of a member if the member dies before the member's entire interest has been distributed, shall conform to the required distribution provisions of section 401(a)(9) of the federal Internal Revenue Code and the regulations issued by the United States Department of the Treasury under that code section only to the extent applicable to a governmental plan as defined in section 414(d) of the federal Internal Revenue Code, including the incidental death benefit requirements of section 401(a)(9)(G) of the federal Internal Revenue Code. In addition, in no event shall payments under any such pension fund commence to be paid to a member later than the member's required beginning date, without regard to whether the member has filed application therefor. For this purpose, a member's required beginning date is the April 1 of the calendar year following the later of (1) the calendar year in which the member attains age 70½ or (2) the calendar year in which the member retires. The actuarial adjustment described in section 401(a)(9)(C)(iii) of the federal Internal Revenue Code shall not apply.

h. In accordance with the provisions of section 401(a)(31) of the federal Internal Revenue Code, any pension fund created as provided in this article shall permit direct transfer of a distribution from the fund that is an eligible rollover distribution to an eligible retirement plan.

i. Any pension fund created as provided in this article shall operate in compliance with the federal "Uniformed Services Employment and Reemployment Rights Act of 1994,"

Pub.L.103-353 (38 U.S.C. s.4301 et seq.) and section 414(u) of the federal Internal Revenue Code. In addition, in accordance with section 401(a)(37) of the federal Internal Revenue code, if a member dies on or after January 1, 2007 while performing qualified military service, as defined in section 414(u)(5) of the federal Internal Revenue Code, such member's designated beneficiaries shall be entitled to any additional benefits, other than benefit accruals relating to the period of qualified military service, that would have been provided under any pension fund created as provided in this article if the member had resumed and then terminated employment on account of death.

2. N.J.S.18A:66-110 is amended to read as follows:

Manner of payment of pensions; options.

18A:66-110. Pensions shall be paid from the fund in the manner following:

- a. A member of the pension fund who was a member on or before June 26, 1962 and who has or shall hereafter have credit in the pension fund for 30 years or more as an employee of a board of education in a county wherein the fund has been established and maintained shall, upon application to the board of trustees of the pension fund, be retired by such board of trustees and shall thereupon receive annually from the fund, for and during the remainder of his or her life, by way of pension, an amount equal to one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years for which he or she has credit in the pension fund, the amount to be determined by resolution of the board.

- b. Upon the retirement of a member who has reached the age of 60 years, the person so retired shall be entitled to receive during his or her life, by way of pension, one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years for which he or she has credit in the pension fund, the amount to be determined by resolution of the board. Upon the receipt of proper proof of death of a member who has retired on a service retirement allowance, there shall be paid to such person, if living, as he shall have nominated by written designation duly executed and filed with the board of trustees, otherwise to the executor or administrator of the member's estate an amount equal to one-half of the highest annual compensation received by the member in any year of creditable service.

- c. A member of the fund who has credit therein for 10 years, who shall become incapacitated, either mentally or physically, and who cannot perform the regular duties of employment, or who is found unfit for the performance of his or her duties, upon the application of his employer or upon his own application or the application of someone acting in his behalf, shall be retired by the board of trustees of the pension fund and thereupon shall receive annually from the fund a retirement allowance as described in subsection b. of this section if he has reached or passed age 60 and if he is under age 60, an amount equal to nine-tenths of one-forty-fifth of the average annual compensation received in any three years of creditable service providing the largest possible benefit multiplied by the number of years of creditable service; provided, however, that in no event shall the pension be based upon less than 17 years nor more than 30 years of service unless the member would have had less than 17 years of service at age 60, in which event he shall be given credit for the years to age 60; however, a member who has not attained age 70 who shall become incapacitated, either mentally or physically, as a direct result of a traumatic event occurring in the performance of his or her duties of such employee, shall, upon the application of his employer or upon his own application or the application of someone acting in his behalf, be retired by the board of

trustees of the pension fund, and, thereupon, if a report of the accident, in a form acceptable to the board of trustees of the pension fund, is filed with the said board of trustees within 60 days next following the accident and the application for retirement is filed with the said board of trustees within two years of the date of the accident, shall receive annually from the fund an amount equal to two-thirds of the annual salary being received by such employee on the date of the accident. The board of trustees may waive strict compliance with the time limits within which a report of the accident and an application for retirement must be filed with the board if it is satisfied: (1) that a report of the accident from which the disability is claimed to have resulted was filed with the employing board of education with reasonable promptitude and in no event later than 60 days after the accident, and (2) the applicant shall show that his failure to file a report with the board of trustees or to file his application for retirement within the time limited by law was due to mistake, inadvertence, ignorance of fact or law, inability, or to the fraud, misrepresentation or deceit of any person, or to a delay in the manifestation of the incapacity, or to any other reasonable cause or excuse, and (3) that the application for retirement was filed in good faith and the circumstances justify its favorable consideration.

The trustees of the pension fund shall have the power to determine whether or not any employee is permanently and totally disabled, and whether or not a disability of an employee is the direct result of a traumatic event occurring at some definite time and place in the performance of his or her duties as such employee. The claimant shall have the right to present physicians, witnesses or other testimony in his or her behalf before the board of trustees. The chairperson, or any other member of the board of trustees, may administer oaths to any physician or other persons called before the trustees regarding the employee's disability. The board of trustees shall decide, by resolution, whether the applicant is entitled to the benefit of this article.

Permanent and total disability resulting from a cardiovascular, pulmonary or muscular-skeletal condition which was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability.

Once in each year, the board of trustees may, and upon the member's application shall, require any member retired for a disability, who is under the age of 60, to undergo medical examination by a physician or physicians designated by the board of trustees. The examination shall be made at the residence of the pensioner or any other place mutually agreed upon. If the physician or physicians thereupon report and certify to the board of trustees that the disabled pensioner is not permanently and totally incapacitated, either mentally or physically, for the performance of duty, and the board finds that said member is engaged in a gainful occupation, or could be engaged in a gainful occupation, and if the board concurs in the report, then the amount of the pension shall be reduced to an amount which, when added to the amount then being earned by him or her or an amount which he or she could earn if gainfully employed, shall not exceed the amount of compensation received by him or her at the time of his or her retirement, including any cost of living adjustment. If subsequent examination of such pensioner shows that his or her earnings have changed since the date of his or her last examination, then the amount of the pension shall be further altered, but the new pension shall not exceed the amount of the pension originally granted, nor shall the new pension, when added to the amount then being earned by the pensioner, exceed the salary or compensation received by him or her at the time of his or her retirement, including any cost of living adjustment.

d. At the time of retirement, any member may elect to receive his or her benefits in a retirement allowance payable throughout life, or he or she may, on retirement, elect to

convert the benefits, otherwise payable to him or her, into a retirement allowance of the equivalent actuarial value computed on the basis of such mortality tables as shall be adopted by the board of trustees, in accordance with one of the optional forms following:

Option 1. A reduced retirement allowance, payable during life, with a provision that in the case of death, before the total pension payments have equaled the actuarial value computed as aforesaid, the balance shall be paid to his or her surviving designated beneficiary, duly acknowledged and filed with the board of trustees; and if none, then to the executor or administrator of his or her estate.

Option 2. A reduced retirement allowance, payable during the retired member's life, with the provision that after his or her death it will continue during the life of and be paid to his or her designated beneficiary, if such person survives him or her.

Option 3. A reduced retirement allowance, payable during the retired member's life, with the provision that after his or her death, an allowance at one-half of the rate of his or her reduced allowance will be continued during the life of and be paid to his or her designated beneficiary, if such person survives him or her.

Option 4. A reduced retirement allowance, payable during the retired member's life, with some other benefit payable after his or her death, provided the benefit is approved by the board of trustees.

Option 5. Some other benefit, which is equivalent to the full amount, three-quarters, one-half or one-quarter of the member's retirement allowance, shall be paid upon the member's death to the beneficiary designated by the member, and if that beneficiary dies before the member, the member's retirement allowance shall increase to the maximum retirement allowance for the member's lifetime, provided that such other benefit together with the member's lesser and maximum retirement allowances shall be certified by the actuary to be of equivalent actuarial value.

Except in the case of members who have elected to receive (1) a deferred retirement allowance pursuant to N.J.S.18A:66-113 or (2) an early retirement allowance pursuant to section 4 of P.L.1971, c.382 (C.18A:66-113.1) after separation from service pursuant to N.J.S.18A:66-113, if a member dies within 30 days after the date of retirement or the date of board approval, whichever is later, the member's retirement allowance shall not become effective and the member shall be considered an active member at the time of death. However, if the member dies after the date the application for retirement was filed with the system, the retirement will become effective if:

(1) The deceased member had designated a beneficiary under an optional settlement provided by this section; and

(2) The surviving beneficiary requests in writing that the board make such a selection. Upon formal action by the board approving that request, the request shall be irrevocable.

The board may select an Option 3 settlement on behalf of the beneficiary of a member who applied for and was eligible for retirement but who died prior to the effective date of the retirement allowance if all of the above conditions, with the exception of (1), are met.

The board of trustees shall, from time to time and as often as they deem it necessary, employ an actuary, who shall recommend, and the board shall keep in convenient form, such data as shall be necessary for actuarial valuations of the various funds created by this article. At least once in every five-year period, or more frequently as determined by the board of trustees, the actuary shall make an actuarial investigation into the mortality, service and salary experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the various funds thereof, and upon the basis of such investigation the board of trustees shall:

(a) Adopt for the retirement system such mortality, service and other tables as shall be deemed necessary.

(b) Certify the rate of contribution which shall be made by each board of education to the pension fund as provided by this article.

Payments made pursuant to this subsection, as well as the pension fund documents associated therewith, shall comply with section 401(a)(25) of the federal Internal Revenue Code.

3. This act shall take effect on the 90th day after the date of enactment.

Approved January 25, 2013.