SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1455

STATE OF NEW JERSEY

215th LEGISLATURE

ADOPTED JUNE 18, 2012

Sponsored by:
Senator M. TERESA RUIZ
District 29 (Essex)
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District 40 (Bergen, Essex, Morris and Passaic)

Co-Sponsored by:
Senator Allen

SYNOPSIS

"Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act."

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Budget and Appropriations Committee.

(Sponsorship Updated As Of: 6/22/2012)

AN ACT concerning school employees, revising various parts of the statutory law, and supplementing chapters 6 and 28 of Title 18A of the New Jersey Statutes.

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

1. (New section) This act shall be known and may be cited as the "Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act."

2. (New section) The Legislature finds and declares that:

a. The goal of this legislation is to raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators, inform the provision of aligned professional development, and inform personnel decisions;

b. The New Jersey Supreme Court has found that a multitude of factors play a vital role in the quality of a child's education, including effectiveness in teaching methods and evaluations. Changing the current evaluation system to focus on improved student outcomes, including objective measures of student growth, is critical to improving teacher effectiveness, raising student achievement, and meeting the objectives of the federal "No Child Left Behind Act of 2001"; and

c. Existing resources from federal, State, and local sources should be used in ways consistent with this law.

3. (New section) As used in sections 13 through 18, 20 through 22, and 25 of P.L. , c. (C.) (pending before the Legislature as this bill):

"Business day" means any day other than Saturday, Sunday, or a nationally or State recognized holiday.

"Corrective action plan" means a written plan developed by a teaching staff member serving in a supervisory capacity in collaboration with the teaching staff member to address deficiencies as outlined in an evaluation. The corrective action plan shall include timelines for corrective action, responsibilities of the individual teaching staff member and the school district for implementing the plan, and specific support that the district shall provide.

"Individual professional development plan" means a written statement of goals developed by a teaching staff member serving in a supervisory capacity in collaboration with a teaching staff member, that: aligns with professional standards for teachers set forth in N.J.A.C.6A:9-3.3 and the New Jersey Professional

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 <u>thus</u> is new matter.

Development Standards; derives from the annual evaluation process; identifies professional goals that address specific individual, district or school needs, or both; and grounds professional development activities in objectives related to improving teaching, learning, and student achievement. The individual professional development plan shall include timelines for implementation, responsibilities of the employee and the school district for implementing the plan, and specific support and periodic feedback that the district shall provide.

"Ineffective" or "partially effective" means the employee receives an annual summative evaluation rating of "ineffective" or "partially effective" based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

"Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners and includes a school nurse and a school athletic trainer.

4. N.J.S.18A:6-9 is amended to read as follows:

18A:6-9. The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the state board or of the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.

<u>Notwithstanding the provisions of this section to the contrary, an arbitrator shall hear and make a final determination on a controversy and dispute arising under subarticle B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes (C.18A:6-10 et seq.).</u>

(cf: P.L.1995, c.278, s.24)

5. N.J.S.18A:6-11 is amended to read as follows:

18A:6-11. Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath

with respect thereto. After consideration of the charge, statement of position and statements of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant to N.J.S. 18A:6-16, together with a certificate of such determination. **[**Provided, however, that if the charge is inefficiency, prior to making its determination as to certification, the board shall provide the employee with written notice of the alleged inefficiency, specifying the nature thereto, and allow at least 90 days in which to correct and overcome the inefficiency.**]** The consideration and actions of the board as to any charge shall not take place at a public meeting.
(cf: P.L.1975, c. 304, s. 1)

6. N.J.S.18A:6-13 is amended to read as follows:

18A:6-13. If the board does not make such a determination within 45 business days after receipt of the written charge **[**, or within 45 days after the expiration of the time for correction of the inefficiency, if the charge is of inefficiency**]**, the charge shall be deemed to be dismissed and no further proceeding or action shall be taken thereon.
(cf: N.J.S.18A:6-13)

7. N.J.S.18A:6-14 is amended to read as follows:

18A:6-14. Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made , with or without pay, but, if the determination of the charge by the **[**Commissioner of Education**]** arbitrator is not made within **[**120 calendar**]** 105 business days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said **[**120**]** 105 business days) of such person shall be paid beginning on the one hundred **[**twenty-first**]** sixth business day until such determination is made. Should the charge be dismissed at any stage of the process, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed at any stage of the process and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums

received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension.
(cf: P.L.1971, c.435, s.2)

8. N.J.S.18A:6-16 is amended to read as follows:

18A:6-16. Upon receipt of such a charge and certification, or of a charge lawfully made to the commissioner, the commissioner or the person appointed to act in the commissioner's behalf in the proceedings shall examine the charges and certification. The individual against whom the charges are certified shall have 15 business days to submit a written response to the charges to the commissioner. Upon a showing of good cause, the commissioner may grant an extension of time. The commissioner shall render a determination on the sufficiency of charges **[**and shall refer the case to the Office of Administrative Law, if appropriate,**]** as set forth below within **[**15**]** 10 business days immediately following the period provided for a written response to the charges.

If, following receipt of the written response to the charges, the commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall **[**within 10 days of making that determination**]** refer the case to **[**the Office of Administrative Law**]** an arbitrator pursuant to section 23 of P.L. , c. (C.) (pending before the Legislature as this bill) for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.
(cf: P.L.1998, c.42, s.2)

9. N.J.S.18A:28-5 is amended to read as follows:

18A:28-5. a. The services of all teaching staff members employed prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in

any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

[(a)**]** (1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or

[(b)**]** (2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

[(c)**]** (3) The equivalent of more than three academic years within a period of any four consecutive academic years.

b. The services of all teaching staff members employed on or after the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) in the position of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all school nurses, including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect, and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

(1) Four consecutive calendar years; or

(2) Four consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(3) The equivalent of more than four academic years within a period of any five consecutive academic years.

In order to achieve tenure pursuant to this subsection, a teacher shall also complete a district mentorship program during the initial year of employment and receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment after the initial year of employment in which the teacher completes the district mentorship program. In order to achieve tenure pursuant to this subsection, a principal, assistant

principal, and vice-principal shall also receive a rating of effective or highly effective in two annual summative evaluations within the first three years of employment with the first effective rating being received on or after the completion of the second year of employment.

For purposes of this subsection, "effective" or "highly effective" means the employee has received an annual summative evaluation rating of "effective" or "highly effective" based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

c. For purposes of this chapter, tenure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position. Tenure so accrued shall not extend to any other administrative or supervisory position and nothing herein shall limit or restrict tenure rights which were or may be acquired pursuant to N.J.S.18A:28-6 in a position in which the individual actually served.

(cf: P.L.1999, c.87, s.3)

10. N.J.S.18A:28-6 is amended to read as follows:

18A:28-6. a. Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter on or after July 1, 1962, shall not obtain tenure in the new position until after:

[(a)**]** (1) the expiration of a period of employment of two consecutive calendar years in the new position unless a shorter period is fixed by the employing board for such purpose; or

[(b)**]** (2) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or

[(c)**]** (3) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;

provided that the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position held by such teaching staff member, and in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

b. Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter on or after the effective date of P.L. , c. (C.) (pending the Legislature as this bill), shall not obtain tenure in the new position until after:

(1) the expiration of a period of employment of two consecutive calendar years in the new position; or

(2) employment for two academic years in the new position together with employment in the new position at the beginning of the next succeeding academic year; or

(3) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years;

provided that the period of employment in such new position shall be included in determining the tenure and seniority rights in the former position held by such teaching staff member, and in the event the employment in such new position is terminated before tenure is obtained therein, if he then has tenure in the district or under said board of education, such teaching staff member shall be returned to his former position at the salary which he would have received had the transfer or promotion not occurred together with any increase to which he would have been entitled during the period of such transfer or promotion.

In order to receive tenure pursuant to this subsection, a teacher, principal, assistant principal, and vice-principal shall be evaluated as effective or highly effective in two annual summative evaluations within the first three years of employment in the new position.

For purposes of this subsection, "effective" or "highly effective" means the employee has received an annual summative evaluation rating of "effective" or "highly effective" based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

(cf: N.J.S.18A:28-6)

11. (New section) A tenured teaching staff member who has been rated effective or highly effective on his most recent annual summative evaluation, and who accepts employment in the same position in an underperforming school shall be under tenure in that position in the new district during good behavior and efficiency and shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after the employee receives a rating of effective or highly effective

in at least one of the annual summative evaluations within the first two years of employment in the new school.

For purposes of this subsection, "effective" or "highly effective" means the employee has received an annual summative evaluation rating of "effective" or "highly effective" based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

As used in this section, "underperforming school" means a school which has been identified by the Department of Education as a "focus school" or a "priority school" for any year within a two year period.

12. (New section) a. If the decision of the arbitrator is in support of the tenure charges, the Commissioner of Education shall notify the State Board of Examiners, in writing, of the decision.

b. The State Board of Examiners shall only review a tenure charge case referred to an arbitrator pursuant to N.J.S.18A:6-16 if it has received notification pursuant to subsection a. of this section.

13. (New section) a. In order to ensure the effectiveness of its teachers, each school shall convene a school improvement panel. A panel shall include the principal, or his designee who is serving in a supervisory capacity, an assistant or vice-principal, and a teacher. The teacher shall be a person with a demonstrated record of success in the classroom who shall be selected in consultation with the majority representative. An individual teacher shall not serve more than three consecutive years on any one school improvement panel. In the event that an assistant or vice-principal is not available to serve on the panel, the principal shall appoint an additional member to the panel, who is serving in a supervisory capacity.

Nothing in this section shall prevent a district that has entered a shared services agreement for the functions of the school improvement panel from providing services under that shared services agreement.

b. The panel shall oversee the mentoring of teachers and conduct evaluations of teachers, including an annual summative evaluation, provided that the teacher on the school improvement panel shall not be included in the evaluation process, except in those instances in which the majority representative has agreed to the contrary. The panel shall also identify professional development opportunities for all instructional staff members that are tailored to meet the unique needs of the students and staff of the school.

c. The panel shall conduct a mid-year evaluation of any employee in the position of teacher who is evaluated as ineffective or partially effective in his most recent annual summative

evaluation, provided that the teacher on the school improvement panel shall not be included in the mid-year evaluation process, except in those instances in which the majority representative has agreed to the contrary .

d. Information related to the evaluation of a particular employee shall be maintained by the school district, shall be confidential, and shall not be accessible to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.

14. (New section) a. In order to ensure the effectiveness of the schools in the district, the superintendent of schools or his designee shall conduct evaluations of each principal employed by the school district, including an annual summative evaluation.

b. The principal, in conjunction with the superintendent or his designee, shall conduct evaluations of each assistant principal and vice-principal employed in his school, including an annual summative evaluation.

c. The superintendent or his designee and the principal, as appropriate, shall conduct a mid-year evaluation of any principal, assistant principal, or vice-principal who is evaluated as ineffective or partially effective in his most recent annual summative evaluation.

d. Information related to the evaluation of a particular employee shall be maintained by the school district, shall be confidential, and shall not be accessible to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), as amended and supplemented.

15. (New section) a. A board of education shall implement a researched-based mentoring program that pairs effective, experienced teachers with first-year teachers to provide observation and feedback, opportunities for modeling, and confidential support and guidance in accordance with the Professional Standards for Teachers and the evaluation rubric.

b. The mentoring program shall: enhance teacher knowledge of, and strategies related to, the core curriculum content standards in order to facilitate student achievement and growth; identify exemplary teaching skills and educational practices necessary to acquire and maintain excellence in teaching; and assist first-year teachers in the performance of their duties and adjustment to the challenges of teaching. To the greatest extent feasible, mentoring activities shall be developed in consultation with the school improvement panels established pursuant to section 13 of P.L. , c. (C.) (pending before the Legislature as this bill) in order to be responsive to the unique needs of different teachers in different instructional settings.

16. (New section) a. A board of education, principal, or superintendent shall provide its teaching staff members with ongoing professional development that supports student achievement and with an individual professional development plan. To the greatest extent feasible, professional development opportunities shall be developed in consultation with the school improvement panels established pursuant to section 13 of P.L. , c. (C.) (pending before the Legislature as this bill) in order to be responsive to the unique needs of different instructional staff members in different instructional settings.

b. A board of education, principal, or superintendent shall provide additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established by the board, as documented in the teaching staff member's annual summative evaluation. The additional professional development shall be designed to correct the needs identified in the annual summative evaluation.

A corrective action plan shall be developed by the teaching staff member and a teaching staff member serving in a supervisory capacity to address deficiencies outlined in the evaluation when the employee is rated ineffective or partially effective. The corrective action plan shall include timelines for corrective action and responsibilities of the teaching staff member and the school district for implementation of the plan.

c. All funds budgeted by a school district for professional development shall be used primarily to provide the professional development required pursuant to the provisions of P.L. , c. (C.) (pending before the Legislature as this bill).

17. (New section) a. A school district shall annually submit to the Commissioner of Education, for review and approval, the evaluation rubrics that the district will use to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members. The board shall ensure that an approved rubric meets the minimum standards established by the State Board of Education.

b. Notwithstanding the provisions of subsection a. of this section, a school district may choose to use the model evaluation rubric established by the commissioner pursuant to subsection f. of section 18 of P.L. , c. (C.) (pending before the Legislature as this bill) to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members. In the case in which the district fails to submit a rubric for review and approval, the model rubric shall be used by the district to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members.

18. (New section) a. The Commissioner of Education shall review and approve evaluation rubrics submitted by school districts pursuant to section 17 of P.L. , c. (C.) (pending before the Legislature as this bill). The board of education shall adopt a rubric approved by the commissioner.

b. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to set standards for the approval of evaluation rubrics for teachers, principals, assistant principals, and vice-principals. The standards at a minimum shall include:

(1) four defined annual rating categories for teachers, principals, assistant principals, and vice-principals: ineffective, partially effective, effective, and highly effective;

(2) a provision requiring that the rubric be partially based on multiple objective measures of student learning that use student growth from one year's measure to the next year's measure;

(3) a provision that allows the district, in grades in which a standardized test is not required, to determine the methods for measuring student growth;

(4) a provision that multiple measures of practice and student learning be used in rating effectiveness with specific measures and implementation processes;

(5) a provision that the rubric be based on the professional standards for that employee;

(6) a provision ensuring that performance measures used in the rubric are linked to student achievement;

(7) a requirement that the employee receive multiple observations during the school year which shall be used in evaluating the employee, at least one annual summative evaluation for the school year, and a conference with his superior or superiors following this evaluation;

(8) a provision that requires that at each observation of a teacher, either the principal, his designee who is serving in a supervisory capacity, the vice-principal, or the assistant principal shall be present;

(9) an opportunity for the employee to improve his effectiveness from routine evaluation feedback;

(10) guidelines for school districts regarding training and the demonstration of competence on the evaluation system to support its implementation;

(11) a process for ongoing monitoring and calibration of the observations to ensure that the observation protocols are being implemented correctly and consistently;

(12) a performance framework, associated evaluation tools, and observation protocols, including training and observer calibration resources;

(13) a process for a school district to obtain the approval of the commissioner to utilize other evaluation tools; and

(14) a process for ensuring that the results of the evaluation help to inform instructional development.

c. A board of education shall adopt a rubric approved by the commissioner by December 31, 2012.

d. Beginning no later than January 31, 2013, a board of education shall implement a pilot program to test and refine the evaluation rubric.

e. Beginning with the 2013-2014 school year, a board of education shall ensure implementation of the approved, adopted evaluation rubric for all educators in all elementary, middle, and high schools in the district. Results of evaluations shall be used to identify and provide professional development to teaching staff members. Results of evaluations shall be provided to the commissioner, as requested, on a regular basis.

f. The commissioner shall establish a model evaluation rubric that may be utilized by a school district to assess the effectiveness of its teaching staff members.

19. (New section) Any tenure charge transmitted to the Office of Administrative Law pursuant to N.J.S.18A:6-16 prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill) shall be determined in accordance with the provisions of subarticle B of Article 2 of chapter 6 of Title 18A of the New Jersey Statutes, N.J.S.18A:6-10 et seq., as the same read prior to the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

20. (New section) A school district's evaluation rubric approved by the commissioner pursuant to section 17 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not be subject to collective negotiations.

21. (New section) The Department of Education shall provide the funds necessary to effectuate the provisions of this act.

22. (New section) No collective bargaining agreement or other contract entered into by a school district after July 1, 2013 shall conflict with the educator evaluation system established pursuant to P.L. , c. (C.) (pending before the Legislature as this bill). A district with an existing collective bargaining agreement on July 1 2013 which conflicts in whole or in part with the educator evaluation system established pursuant to that act, shall implement in accordance with that act those provisions not in conflict with the collective bargaining agreement.

23. (New section) a. The Commissioner of Education shall maintain a panel of 25 permanent arbitrators to hear matters pursuant to N.J.S.18A:6-16. Of the 25 arbitrators, eight arbitrators shall be designated by the New Jersey Education Association, three arbitrators shall be designated by the American Federation of Teachers, nine arbitrators shall be designated by the New Jersey School Boards Association, and five arbitrators shall be designated by the New Jersey Principals and Supervisors Association. The commissioner shall inform the appropriate designating entity when a vacancy exists. If the appropriate entity does not designate an arbitrator within 30 business days, the commissioner shall designate an arbitrator to fill that vacancy.

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

b. The following provisions shall apply to a hearing conducted by an arbitrator pursuant to N.J.S.18A:6-16, except as otherwise provided pursuant to P.L. , c. (C) (pending before the Legislature as this bill):

(1) The hearing shall be held before the arbitrator within 30 business days of the assignment of the arbitrator to the case;

(2) The arbitrator shall receive no more than $1250 per day and no more than $7500 per case. The costs and expenses of the arbitrator shall be borne by the State of New Jersey;

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

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

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

arbitration rules and the procedures established pursuant to this section, the procedures established pursuant to this section shall govern.

d. Notwithstanding the provisions of N.J.S.18A:6-25 or any other section of law to the contrary, the arbitrator shall render a written decision within 30 business days of the start of the hearing.

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

24. (New section) a. In the event that the matter before the arbitrator pursuant to section 23 of this act is employee inefficiency pursuant to section 26 of this act, in rendering a decision the arbitrator shall only consider whether or not:

(1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;

(2) there is a mistake of fact in the evaluation;

(3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or

(4) the district's actions were arbitrary and capricious.

b. In the event that the employee is able to demonstrate that any of the provisions of paragraph (1) through (4) of subsection a. of this section are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.

c. The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review.

d. The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.

e. The hearing shall be held before the arbitrator within 30 business days of the assignment of the arbitrator to the case. The arbitrator shall render a written decision within 30 business days of the start of the hearing.

25. (New section) The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in accordance with an expeditious time frame, to set standards for the approval of

evaluation rubrics for all teaching staff members, other than those included under the provisions of subsection b. of section 18 of P.L. , c. (C.) (pending before the Legislature as this bill). The standards at a minimum shall include: four defined annual rating categories: ineffective, partially effective, effective, and highly effective.

26. (New section) a. Notwithstanding the provisions of N.J.S.18A:6-11 or any other section of law to the contrary, in the case of a teacher, principal, assistant principal, and vice-principal:

(1) the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency whenever the employee is rated ineffective or partially effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation;

(2) if the employee is rated partially effective in two consecutive annual summative evaluations or is rated ineffective in an annual summative evaluation and the following year is rated partially effective in the annual summative evaluation, the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency, except that the superintendent upon a written finding of exceptional circumstances may defer the filing of tenure charges until after the next annual summative evaluation. If the employee is not rated effective or highly effective on this annual summative evaluation, the superintendent shall promptly file a charge of inefficiency.

b. Within 30 business days of the filing, the board of education shall forward a written charge to the commissioner, unless the board determines that the evaluation process has not been followed.

c. Notwithstanding the provisions of N.J.S.18A:6-16 or any other section of law to the contrary, upon receipt of a charge pursuant to subsection a. of this section, the commissioner shall examine the charge. The individual against whom the charges are filed shall have 10 business days to submit a written response to the charges to the commissioner. The commissioner shall, within five business days immediately following the period provided for a written response to the charges, refer the case to an arbitrator and appoint an arbitrator to hear the case, unless he determines that the evaluation process has not been followed.

d. The only evaluations which may be used for purposes of this section are those evaluations conducted in accordance with a rubric adopted by the board and approved by the commissioner pursuant to P.L. , c. (C.) (pending before the Legislature as this bill).

27. (New section) The commissioner shall have the authority to extend the timelines in the tenure charge process upon a showing of exceptional circumstances.

28. The following section is repealed:
Section 1 of P.L.1998, c. 42 (C.52:14B-10.1).

29. This act shall take effect in the 2012-2013 school year, except that section 18 of this act shall take effect immediately. The Department of Education shall take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.