ASSEMBLY, No. 5245

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED JANUARY 7, 2021

Sponsored by:
Assemblywoman SHAVONDA E. SUMTER
District 35 (Bergen and Passaic)
Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)
Assemblyman STERLEY S. STANLEY
District 18 (Middlesex)

Co-Sponsored by:
Assemblywoman Timberlake

SYNOPSIS

Requires training for DOE arbitrators to include issues related to cultural diversity and bias.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/1/2021)

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

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

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

22. a. The Commissioner of Education shall maintain a panel of 50 permanent arbitrators to hear matters pursuant to N.J.S.18A:6-16. Of the 50 arbitrators, 16 arbitrators shall be designated by the New Jersey Education Association, six arbitrators shall be designated by the American Federation of Teachers, 18 arbitrators shall be designated by the New Jersey School Boards Association, and 10 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 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.

All arbitrators designated pursuant to this section after the effective date of P.L.2019, c.45, shall receive training on conduct unbecoming an employee including, but not limited to, issues related to allegations of sexual assault and child abuse, for the purpose of assisting the arbitrator in determining matters in which conduct unbecoming an employee is the basis of the tenure charges made against the employee. Any arbitrator on the permanent panel as of the effective date of P.L.2019, c.45, shall receive the training within 18 months of the effective date of that act.

<u>The training on conduct unbecoming an employee shall also include issues related to cultural diversity and bias. Any arbitrator on the permanent panel as of the effective date of P.L. , c. (pending before the Legislature as this bill), shall receive training on these issues within 18 months of the effective date of that act.</u>

The training shall be conducted by a State agency or private entity with expertise in the subject area selected by the commissioner, and any training on sexual misconduct or child abuse shall be conducted in consultation with a sexual assault or child abuse prevention organization. The training program utilized 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 <u>thus</u> is new matter.

State agency or private entity shall be approved by the commissioner and shall be developed in consultation with interested stakeholders in the school law and education communities including, but not limited to, the New Jersey School Boards Association, the New Jersey Principals and Supervisors Association, the New Jersey Education Association, the American Federation of Teachers, and the New Jersey Association of School Administrators. The training program shall include, but shall not be limited to:

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

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

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.2012, c.26 (C.18A:6-117 et al.):

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

(2) The arbitrator shall receive no less than $1250 per day, or such amount as established at the discretion of the Commissioner of Education, who shall consider the average per diem rate of arbitrators eligible to serve on the panel who reside in New Jersey, New York, and Pennsylvania. 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 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 45 days of the start of the hearing.

e. 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.

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

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

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

(cf: P.L.2019, c.45, s.1)

2. This act shall take effect immediately.

STATEMENT

This bill requires members of the panel of arbitrators maintained by the Commissioner of Education to receive training related to cultural diversity and bias.

Under current law, the commissioner maintains a panel of 50 permanent arbitrators to hear and decide tenure charge matters. Following the enactment of P.L.2019, c.45, each arbitrator is required to receive training on conduct unbecoming of an employee, which

training is currently required to include issues related to allegations of sexual assault and child abuse.

Under this bill, the training on conduct unbecoming of an employee would also be required to include issues related to cultural diversity and bias. The bill also provides that any arbitrator serving on the permanent panel as of the enactment of the bill would be required to complete the cultural diversity and bias training within 18 months of the date of enactment.