

N.J.A.C. 6A:7, MANAGING FOR EQUALITY AND EQUITY IN EDUCATION

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CHAPTER 7. MANAGING FOR EQUALITY AND EQUITY IN EDUCATION

SUBCHAPTER 1. GENERAL PROVISIONS

6A:7-1.1 Purpose

The purpose of this chapter is to ensure all students, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, gender identity or expression, religion, disability, or socioeconomic status, are provided equal access to educational programs and services by district boards of education. The educational programs and services include the teaching of challenging curriculum based on the New Jersey Student Learning Standards (NJSLS), differentiated instruction, formative assessments aligned to the NJSLS, qualified teachers, and high teacher expectations for student learning. The rules specify standards for district boards of education in establishing policies and procedures for the provision of educational programs and services for all students, pursuant to: Article I, Paragraph 5 of the New Jersey State Constitution; the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.); N.J.S.A. 18A:35-1 et seq., 18A:36-20, and 18A:38-5.1; Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq. and 2000e et seq.); the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e); Title IX of Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.); the Equal Pay Act of 1963 (29 U.S.C. § 206(d)); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701 et seq.); and the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.).

6A:7-1.2 Scope

The rules specify standards that apply to district boards of education providing general education services to students in preschool through grade 12, special education services to students ages three through 21, or adult education programs, and to charter schools.

6A:7-1.3 Definitions

The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

“Achievement gap” means the difference in academic performance among student groups defined, at a minimum, by race, ethnicity, social and economic status, and student status, for example, limited English proficient or students with disabilities and other significant student populations, which may include gender, national origin, affectional or sexual orientation, religion, and marital status.

“Affectional or sexual orientation” means male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity, or expression, having a history thereof, or being perceived, presumed, or identified by others as having such an orientation.

“African-American history curriculum” means instructional content, materials, and methods infused into the New Jersey Student Learning Standards (NJSLS) designed to enable students to learn and develop an understanding of the persecution, emancipation, discrimination, achievements, and contributions by people of African descent and how the experiences helped to transform America and continue to contribute toward the emergence of a global society.

"Comprehensive equity plan" means a plan designed specifically to ensure an equal educational opportunity is available to all students through the identification and correction of discriminatory and inequitable practices prohibited by State and Federal law.

"Disability" means any physical limitation, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device. "Disability" also means any mental, psychological, or developmental limitation that results from an anatomical, psychological, physiological, or neurological condition and that prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.

"Discriminatory practices" means a policy, action, or failure to act that limits or denies equal access to or benefits from the educational activities or programs of a school, or that generates or permits injustice or unfair or otherwise inequitable treatment of students or staff on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.

"Educational activities and programs" means all activities and programs conducted, sponsored or permitted by the school during the school day, after regular school hours, on weekends, or during the summer months.

"Educational equity" means a cohesive set of policies, programs, and practices that ensure high expectations, positive achievement patterns, and equal access to educational opportunity for all learners, including students and teachers.

"Employment and contract practices" means all policies and practices governing the recruitment, hiring, assignment, evaluation, retention, and promotion of a school's employees, the solicitation and awarding of contracts, and the purchasing of materials and services.

"Equal educational opportunity" means the creation of environments that enable the provision of a thorough and efficient education as defined by the NJSLS, differentiated instruction, formative assessments aligned to the NJSLS, and high expectations for teaching and learning in a public school district; and when prejudice and other forms of discrimination have been eliminated in the school district's policies, practices, and curricula as evidenced through the narrowing of the achievement gap; and when all students and staff enjoy equal access to all programs and benefits provided by or offered within the public schools of the school district.

"Equality" means sameness, uniformity, and equivalence. Equality focuses on a student's access to educational resources.

"Equity" means when all groups of students master the goals of the curriculum to approximately the same degree. Equity focuses on students' access to knowledge.

"Formative assessments" means classroom assessments aligned to the NJSLS administered on an ongoing basis to inform instruction and monitor student progress.

“Gender identity or expression” means having or being perceived as having a gender-related identity or expression whether or not stereotypically associated with a person’s assigned sex at birth.

"Holocaust and genocide curriculum" means instructional content, materials, and methods that are infused into the NJSLS and meet the Holocaust/genocide mandate. Materials and curricula are designed to enable students to understand: genocide is a consequence of prejudice, bias, intolerance, and discrimination; issues of moral dilemma and conscience have a profound effect upon a society; and all citizens share a responsibility to oppose prejudice and discrimination in all facets of their lives.

"Multicultural curriculum" means to incorporate throughout the curriculum the experiences, perspectives, and accomplishments of men and women of diverse racial and cultural backgrounds, ethnicities, and national origins that comprise the American society. It also means to develop among students a respect for self and others, an appreciation of diversity, and the acquisition of attitudes, skills, and knowledge needed to function effectively with persons of diverse cultures.

"National origin" means ethnic groups consisting of persons from countries other than the United States of America and reflects a category established by the Federal government that includes persons of the following minority groups: Alaskan Native, Asian, Haitian, Hispanic or Latino, Native American, or Pacific Islander.

"Prejudice" means feelings, opinions, attitudes, or perceptions that produce disparate educational or hiring treatment of, or have adverse educational or hiring impact upon, any person or group of

persons on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.

6A:7-1.4 Responsibilities of the district board of education

- (a) Each district board of education shall adopt and implement written educational equity policies that:
 - 1. Recognize and value the diversity of persons and groups within society and promote the acceptance of persons of diverse backgrounds regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status; and
 - 2. Promote equal educational opportunity and foster through the policies, programs, and practices of the district board of education a learning environment that is free from all forms of prejudice, discrimination, and harassment based upon race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.
- (b) The district board of education shall inform the school community of its policies in a manner including, but not limited to, the school district's customary methods of information dissemination.
- (c) Each district board of education shall develop once every three years a comprehensive equity plan that shall identify and correct all discriminatory and inequitable educational and hiring policies, patterns, programs, and practices affecting its facilities, programs, students, and staff.
 - 1. Prior to developing the comprehensive equity plan, the district board of education shall assess the school district's needs for achieving equity and equality in educational programs based on an analysis of student performance data such as

National Assessment of Educational Progress and State assessment results, preschool-through-grade-12 promotion/retention data, preschool-through-grade-12 completion rates, and re-examination and re-evaluation of classification and placement of students in special education programs if there is over representation within certain groups; staffing practices; student demographic and behavioral data; quality of program data; and stakeholder satisfaction data. The purpose of the needs assessment is to identify and eliminate discriminatory practices and other barriers to achieving equity in educational programs.

2. The comprehensive equity plan shall address:
 - i. Professional development, pursuant to N.J.A.C. 6A:7-1.6;
 - ii. Equality in school and classroom practices, pursuant to N.J.A.C. 6A:7-1.7; and
 - iii. Equality in employment and contract practices, pursuant to N.J.A.C. 6A:7-1.8.
 3. The comprehensive equity plan shall include goals, objectives, timelines, and benchmarks for measuring progress.
 4. The district board of education shall submit the comprehensive equity plan to the executive county superintendent for approval and a copy of the comprehensive equity plan to the Department.
 - i. If the comprehensive equity plan is not approved by the executive county superintendent, the district board of education shall revise the plan in accordance with the instructions of the executive county superintendent and shall submit to the executive county superintendent the revised plan within 30 days of the notification of non-approval.
- (d) Each district board of education shall submit to the Department at the end of each school year a statement of assurance regarding achieving the objectives of the comprehensive

equity plan. The chief school administrator also shall certify in the statement of assurance to the following:

1. The school district will continue to maintain compliance with N.J.A.C. 6A:7; Titles VI and VII of the Civil Rights Act of 1964; the Guidelines for the Desegregation of Public Schools in New Jersey; and the Rehabilitation Act of 1973 (29 U.S.C. § 794);
2. The school district will perform all required activities as provided for in this chapter and annually report such assurances to the district board of education;
3. The school district will continue to implement its approved comprehensive equity plan; and
4. The district board of education will provide a resolution approving the affirmative action officer for each school year of the three-year comprehensive plan.

6A:7-1.5 Affirmative action officer

- (a) Each district board of education annually shall designate a member of its staff as the affirmative action officer and form an affirmative action team, of whom the affirmative action officer is a member, to coordinate and implement the chapter's requirements. Each district board of education shall assure all stakeholders know who the affirmative action officer is and how to contact him or her.
 1. The affirmative action officer shall have a New Jersey standard certification with an administrative, instructional, or educational services endorsement, pursuant to N.J.A.C. 6A:9B, State Board of Examiners and Certification.
 2. The affirmative action officer shall:
 - i. Coordinate the required professional development training for certificated and non-certificated staff, pursuant to N.J.A.C. 6A:7-1.6;

- ii. Notify all students and employees of the school district's grievance procedures for handling discrimination complaints; and
 - iii. Ensure the school district's grievance procedures, including investigative responsibilities and reporting information, are followed.
3. The affirmative action team shall:
- i. Develop the comprehensive equity plan, pursuant to N.J.A.C. 6A:7-1.4(c);
 - ii. Oversee the implementation of the district's comprehensive equity plan, pursuant to N.J.A.C. 6A:7-1.4(c);
 - iii. Collaborate with the affirmative action officer on coordination of the required professional development training for certificated and non-certificated staff, pursuant to N.J.A.C. 6A:7-1.6;
 - iv. Monitor the implementation of the comprehensive equity plan; and
 - v. Conduct the annual school district internal monitoring to ensure continuing compliance with State and Federal statutes governing educational equity, pursuant to N.J.A.C. 6A:7-1.4(d).

6A:7-1.6 Professional development

- (a) Each district board of education shall provide on a continuing basis professional development training for all school personnel to identify and resolve problems associated with the student achievement gap and other inequities arising from prejudice on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.
- 1. The professional development training shall be provided to all certificated and non-certificated staff.

2. The district board of education shall invite parents and other community members to participate in the professional development training.
 3. The district board of education shall ensure all new certificated and non-certificated staff are provided within the first year of employment with professional development training on educational equity issues.
- (b) The Commissioner or his or her designee shall provide technical assistance to school districts for the development of policy guidelines, procedures, and in-service training for affirmative action officers to aid in the elimination of prejudice on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.

6A:7-1.7 Equality in school and classroom practices

- (a) Each district board of education shall provide all students with equal and bias-free access to all school facilities, courses, programs, activities, and services, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, by:
1. Ensuring equal and barrier-free access to all school and classroom facilities;
 2. Attaining within each school minority representation that approximates the school district's overall minority representation. Exact apportionment is not required; the ultimate goal is a reasonable plan achieving the greatest degree of racial balance that is feasible and consistent with sound educational values and procedures;
 3. Utilizing on an annual basis a State-approved English language proficiency measure for determining the special needs of English language learners and their progress in learning English, pursuant to N.J.A.C. 6A:15-1.3(b);

4. Utilizing bias-free multiple measures for determining the special needs of students with disabilities, pursuant to N.J.A.C. 6A:14-3.4;
 5. Ensuring support services, including intervention and referral services and school health services pursuant to N.J.A.C. 6A:16, are available to all students; and
 6. Ensuring a student is not discriminated against because of a medical condition. A student shall not be excluded from any education program or activity because of a long-term medical condition unless a physician certifies such exclusion is necessary.
 - i. If excluded, the student shall be provided with equivalent and timely instruction that may include home instruction, without prejudice or penalty.
- (b) Each district board of education shall ensure the school district's curriculum and instruction are aligned to the New Jersey Student Learning Standards (NJSLS). The district board of education also shall ensure its curriculum and instruction address the elimination of discrimination by narrowing the achievement gap, by providing equity in educational programs, and by providing opportunities for students to interact positively with others regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, by:
1. Ensuring there are no differential requirements for completion of course offerings or programs of study solely on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status;
 2. Ensuring courses shall not be offered separately on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status;

- i. Portions of classes that deal exclusively with human sexuality may be conducted in separate developmentally appropriate sessions for male and female students, provided the course content for such separately conducted sessions is the same;
 3. Reducing or preventing the underrepresentation of minority, female, and male students in all classes and programs, including gifted and talented, accelerated, and advanced classes;
 4. Ensuring schools demonstrate the inclusion of a multicultural curriculum in its instructional content, materials, and methods, and ensuring students understand the basic tenet of multiculturalism;
 5. Ensuring African-American history, as well as the history of other cultures, is infused into the curriculum and taught as part of U.S. history, pursuant to N.J.S.A. 18A:35-1 and the NJSLS; and
 6. Ensuring instruction on the Holocaust and other acts of genocide is included in the curriculum of all elementary and secondary schools, as developmentally appropriate, pursuant to N.J.S.A. 18A:35-28.
- (c) The district board of education shall ensure all students have access to adequate and appropriate counseling services.
 1. When informing students about possible careers or professional or vocational opportunities, the district board of education shall not restrict or limit the options presented to students on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.
 2. The district board of education shall not use tests or guidance or counseling materials that are biased or stereotyped on the basis of race, creed, color, national

origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status.

- (d) The district board of education shall ensure the school district's physical education and athletic programs are equitable and co-educational and do not discriminate on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, as follows:
1. The district board of education shall provide separate restroom, locker room, and shower facilities on the basis of gender, but such facilities provided for students of each gender shall be comparable;
 2. A school may choose to operate separate teams for the two sexes in one or more sports or single teams open competitively to members of both sexes, as long as the athletic program as a whole provides equal opportunities for students of both sexes to participate in sports at comparable levels of difficulty and competency;
and
 3. The activities comprising such athletic programs shall receive equitable treatment, including, but not limited to, staff salaries, purchase and maintenance of equipment, quality and availability of facilities, scheduling of practice and game time, length of season, and all other related areas or matters.

6A:7-1.8 Equality in employment and contract practices

- (a) Each district board of education shall ensure all persons, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, have equal and bias-free access to all categories of employment in the State's public educational system, pursuant to N.J.A.C. 6A:7-1.1.

- (b) A district board of education shall not enter into any contract with a person, agency, or organization that discriminates on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, either in employment practices or in the provision of benefits or services to students or employees, pursuant to N.J.A.C. 6A:7-1.1.
- (c) A district board of education shall not assign, transfer, promote, or retain staff, or fail to assign, transfer, promote, or retain staff, on the sole basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, pursuant to N.J.A.C. 6A:7-1.1.
- (d) The district board of education shall ensure equal pay for equal work among members of the school district's staff, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, pursuant to N.J.A.C. 6A:7-1.1.

6A:7-1.9 Accountability

- (a) The district board of education's obligation to be accountable for the chapter's requirements is not precluded or alleviated by any rule or regulation of any organization, club, athletic association, or other league or group.
- (b) Each school district shall complete a comprehensive equity plan that includes a cohesive set of policies, programs, and practices that ensure high expectations, positive achievement patterns, and equal access to education opportunity for all learners, including students and teachers.
- (c) A comprehensive equity plan shall include the following:
 - 1. An assessment of the school district's needs for achieving equity in educational programs. The assessment shall include staffing practices, quality-of-program

data, stakeholder-satisfaction data, and student assessment and behavioral data disaggregated by gender, race, ethnicity, limited English proficiency, special education, migrant, date of enrollment, student suspension, expulsion, child study team referrals, preschool-through-grade-12 promotion/retention data, preschool-through-grade-12 completion rates, and re-examination and re-evaluation of classification and placement of students in special education programs if there is overrepresentation within certain group;

2. A description of how other Federal, State, and school district policies, programs, and practices are aligned to the comprehensive equity plan;
 3. Progress targets for closing the achievement gap;
 4. Professional development targets regarding the knowledge and skills needed to provide a thorough and efficient education as defined by the New Jersey Student Learning Standards (NJSLS), differentiated instruction, and formative assessments aligned to the NJSLS and high expectations for teaching and learning; and
 5. Annual targets that address school district needs in equity in school and classroom practices and are aligned to professional development targets.
- (d) The comprehensive equity plan shall be written every three years.
- (e) The district board of education shall initiate the comprehensive equity plan within 60 days of its approval, and shall implement the plan in accordance with the timelines approved by the Department.
- (f) If the district board of education does not implement the comprehensive equity plan within 180 days of the plan's approval date, or fails to report its progress annually, sanctions deemed to be appropriate by the Commissioner or his or her designee shall be imposed. Sanctions may include action to suspend, terminate, or refuse to award continued Federal or State financial assistance, pursuant to N.J.S.A. 18A:55-2.

6A:7-1.10 Appeals

Pursuant to N.J.S.A. 18A:6-9, any individual may petition the Commissioner in writing to resolve a dispute arising under the chapter, pursuant to procedures set forth in N.J.A.C. 6A:3, Controversies and Disputes.