

CHAPTER 4

EQUALITY IN EDUCATIONAL PROGRAMS

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SUBCHAPTER 1. GENERAL PROVISIONS

Authority

Unless otherwise expressly noted, all provisions of this subchapter were adopted pursuant to authority of N.J.S.A. 18A:36-20 and were filed and became effective May 20, 1975, as R.1975 d.137. See: 7 N.J.R. 136(a), 7 N.J.R. 252(a).

6:4-1.1 Purposes and objectives

The New Jersey Constitution and implementing legislation guarantee each child in the public schools equal educational opportunity regardless of race, color, creed, religion, sex, ancestry, national origin or social or economic status. To assure these basic rights the Commissioner of Education and the State Board of Education have developed these regulations which specifically implement N.J.S.A. 18A:36-20 and the State Board of Education resolution concerning sex equality in educational programs. These regulations have also been developed in conformity with relevant Federal and State statutes concerning discriminatory conduct.

6:4-1.2 Definitions

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

“Discriminatory practices” means an action or failure to act based upon race, color, creed, religion, sex, ancestry, national origin or social or economic status.

“Educational activities and programs” means all activities and programs conducted or sponsored by the school either during the school day or after regular school hours.

“School” means every public elementary or secondary school, every regional school, every county vocational school, or any other public institution providing special or

general educational services to students from grades kindergarten through 12.

Case Notes

Educational activities and programs defined. *Playcrafters v. Teaneck Twp. Bd. of Ed.*, 177 N.J.Super. 66, 424 A.2d 1192 (App.Div.1981), affirmed 88 N.J. 74, 438 A.2d 543.

6:4-1.3 Policy development

(a) Each local school district shall develop a policy of equal educational opportunity to be adopted as a resolution by the board of education. The school district shall inform the community it serves of this resolution by publicizing it in an adequate manner, including but not limited to the district’s customary methods of information dissemination.

(b) Each local school district shall develop two affirmative action programs or plans, which shall include timetables for corrective action to overcome the effects of any previous patterns of discrimination which may exist and a systematic internal monitoring procedure to ensure continuing compliance.

1. One such program or plan shall include, but need not be limited to, action as required by Section 5 (School and classroom practices) of this Subchapter.

2. Another program or plan shall include, but need not be limited to, action as required by Section 6 (Employment/contract practices) of this Subchapter.

3. The programs or plans shall be made available for review to all interested parties.

(c) Each local school district shall designate a member of its professional staff as the affirmative action officer to coordinate and implement the district’s efforts to comply. The progress of the district in complying shall be reported by the superintendent to the board of education as it shall require.

(d) As part of its affirmative action programs or plans, each local school district shall arrange for or provide in-service training for school personnel on a continuing basis to identify and resolve problems arising from prejudice on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(e) Each board of education shall adopt and approve courses of study, instructional materials, and programs designed to eliminate discrimination and promote understanding and mutual respect between children of different races, colors, creeds, religions, sexes, ancestries, national origins or social or economic status. Community involvement in this process shall be encouraged.

(f) The local school district shall evaluate courses of study and instructional materials already in use to determine

whether they are designed to achieve the objectives set forth in subsection (e) of this Section and shall supplement them as necessary where they are not so designed. As the use of such courses and materials is discontinued in the normal course of events, the local school district shall replace them with courses and instructional materials designed to meet the objectives set forth in subsection (e) of this section.

#### Case Notes

Affirmative action plans; burden of production to articulate legitimate, nondiscriminatory reason for laying off white teacher. *U.S. v. Board of Educ. of Tp. of Piscataway*, D.N.J.1993, 832 F.Supp. 836.

Affirmative action plan preferring minority teachers in layoff decisions was invalid. *U.S. v. Board of Educ. of Tp. of Piscataway*, D.N.J.1993, 832 F.Supp. 836.

Special role of Commissioner; exclusive jurisdiction in complaints of discrimination in public school curriculum. *Atty.Gen.F.O. 1975-No. 28*.

#### 6:4-1.4 Technical assistance

The commissioner or designee shall provide technical assistance to local school district for the development of policy guidelines, procedures and in-service training for school personnel so as to aid in the elimination of prejudice on the basis of race, color, creed, religion, sex, ancestry or social or economic status.

#### Case Notes

Requirements of affirmative action plan. *In re Bd. of Ed., Trenton, Mercer Cty.*, 1979 S.L.D. 648, 1979 S.L.D. 707, affirmed 176 N.J.Super. 553, 424 A.2d 553 (App.Div.1980), affirmed 86 N.J. 327, 431 A.2d 808 (1981).

Special role of Commissioner; exclusive jurisdiction in complaints of discrimination in public school curriculum. *Atty.Gen.F.O. 1975-No. 28*.

#### 6:4-1.5 School and classroom practices

(a) No student shall be denied access to or benefit from any educational program or activity solely on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(b) There shall be no differential requirements for completion of course offerings or courses of study solely on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(c) There shall be no discrimination against students because of pregnancy, childbirth, pregnancy-related disabilities, actual or potential parenthood, or family or marital status. A student shall not be excluded from any educational program or activity because of pregnancy or related conditions unless she so requests or a physician certifies that such exclusion is necessary for her physical, mental or emotional well-being. If she is excluded for these reasons, she must be provided with adequate and timely opportunity for instruction to continue or make up her schoolwork without prejudice or penalty.

(d) Public school students shall not be segregated on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

1. A local school district shall provide for separate restroom, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(e) No course, including but not limited to physical education, health, industrial arts, business, vocational or technical courses, home economics, music and adult education shall be offered separately on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

1. Portions of classes which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls, provided that the course content for such separately conducted sessions is the same.

(f) The athletic program, including but not limited to intramural, extramural, and inter-scholastic sports, shall be available on an equal basis to all students regardless of race, color, creed, religion, sex, ancestry, national origin or social or economic status. The athletic program as a whole shall be planned to insure that there are sufficient activities so that the program does not deny the participation of large numbers of students of either sex.

1. The activities comprising such athletic program 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.

2. A school may choose to operate separate teams for the two sexes in one or more sports and/or single teams open competitively to members of both sexes, so 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.

(g) School personnel shall not use tests, procedures or other guidance and counseling materials which are differentiated or stereotyped on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

(h) When informing students about possible career, professional and/or vocational opportunities, school personnel shall in no way restrict or limit the options presented to students on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.

As amended. R.1977 d.274, eff. August 3, 1977.  
See: 9 N.J.R. 307(b), 9 N.J.R. 416(a).

## Case Notes

Regulation did not violate federal equal protection, State Constitution, law against discrimination, or statute prohibiting gender discrimination in education. *B.C. v. Cumberland Regional School District*, 220 N.J.Super. 214, 531 A.2d 1059 (App.Div.1987).

Legislative mandate. *Playcrafters v. Teaneck Twp. Bd. of Ed.*, 177 N.J.Super. 66, 424 A.2d 1192 (App.Div.1981), affirmed 88 N.J. 74, 438 A.2d 543.

Regulatory authority and purpose. *Atty.Gen.F.O. 1975-No. 28*.

Prohibition against nongraduating foreign exchange student participating in high school graduation ceremony was not arbitrary, capricious, or unreasonable, and did not unlawfully discriminate against student. *Barcalow v. Monmouth Regional High School District*, 96 N.J.A.R.2d (EDU) 193.

Grading system for food classes formulated, adopted, and applied prospectively by school board was neither arbitrary nor capricious. *K.S. v. Glassboro Board of Education*, 95 N.J.A.R.2d (EDU) 245.

Imposing suspension did not violate due process rights of student. *R.W., on Behalf of His Minor Child, R.W. v. Board of Education of Hunterdon Central Regional High School District*, 93 N.J.A.R.2d (EDU) 113.

No proof that student's failure to graduate with his class was result of discriminatory treatment or de facto two-tier system of education. *G.M., W.M. and J.M. v. Board of Education of Township of Ewing*, 93 N.J.A.R.2d (EDU) 4.

Student denied admission into high school advanced placement English program; reasonable. *K.L.L. and S.L. v. Board of Education of Township of Livingston*, 92 N.J.A.R.2d (EDU) 648.

Board had authority to exclude children seeking to transfer into first grade from private kindergarten program who were not six-years old on or before October 1. *H.A.B. as Guardian ad litem for S.T.B. v. Manalapan-Englishtown Regional School District*, 92 N.J.A.R.2d (EDU) 640.

Removal of boy who played on girls field hockey team was unlawful discrimination. *B.C. v. Cumberland Regional School District*, 10 N.J.A.R. 106 (1986), rejection of ALJ ruling by Commissioner of Education affirmed on appeal, 220 N.J.Super. 214, 531 A.2d 1059 (App.Div., A-5637-85, 9/21/87).

Driver education not mandated and may be offered outside of regular school day. *Parsippany-Troy Hills Education Assn. v. Bd. of Ed., Parsippany-Troy Hills Twp., Morris Cty.*, 7 N.J.A.R. 236 (1981), affirmed 188 N.J.Super. 161, 457 A.2d 15 (App.Div.1983), certification denied 94 N.J. 527, 468 A.2d 182 (1983).

Coaches of girls' sports are entitled to equal pay as coaches of boys' sports. *Elmwood Park Education Assn. v. Bd. of Ed., Elmwood Park Boro.*, 3 N.J.A.R. 249 (1980).

Application with respect to curriculum and religious freedom. *J.B. v. Bd. of Ed., Dumont Boro., Bergen Cty.*, 1977 S.L.D. 1134, 1978 S.L.D. 1021.

**6:4-1.6 Employment/contract practices**

(a) All persons regardless of race, color, creed, religion, sex, or national origin shall have equal access to all categories of employment in the public educational system of New Jersey.

(b) All New Jersey public school districts shall comply with all State and Federal laws related to equal employment, including but not limited to the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), Title VII of the Civil Rights Act of 1964, as amended by the Equal

Employment Opportunity Act of 1972, Executive Order 11246 as amended, Equal Pay Act of 1963 as amended, and Title IX of the Education Amendments 1972 (Higher Education Act).

(c) No school district shall enter into any contract with a person, agency, or organization if it has knowledge that such person, agency or organization discriminates on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status, either in employment practices or in the provision of benefits or services to students or employees.

## Case Notes

School board's affirmative action plan of preferring minority teachers over nonminority teachers in layoff decisions where teachers were equally qualified violated Title VII. *Taxman v. Board of Educ. of Township of Piscataway, C.A.3 (N.J.) 1996, 91 F.3d 1547*.

Racial discrimination is not a negotiable issue in collective bargaining with a public employer. *Teaneck Bd. of Ed. v. Teaneck Teachers Assn.*, 185 N.J.Super. 269, 448 A.2d 487 (App.Div.1982), affirmed 94 N.J. 9, 462 A.2d 137 (1983).

No discrimination found in failure to transfer half-time guidance counsellor to out-of-category social studies teaching position for which she had no tenure. *Perry v. Bd. of Ed., Glen Rock Boro., Bergen Cty.*, 1 N.J.A.R. 300 (1981).

**6:4-1.7 Compliance**

(a) Each school district shall submit to the Commissioner of Education or designee a copy of its resolution of equal educational opportunity (see N.J.A.C. 6:4-1.3(a)) and the name of its affirmative action officer (see N.J.A.C. 6:4-1.3(c)) within 60 days of the effective date of these regulations.

(b) Each school district shall, within 120 days of the effective date of these regulations submit its proposed program or plan of affirmative action for school and classroom practices (see N.J.A.C. 6:4-1.3(b)).

(c) Each school district shall, within 180 days of the effective date of these regulations, submit its proposed program or plan of affirmative action for employment and contract practices (see N.J.A.C. 6:4-1.3(b)).

(d) The commissioner or designee shall review the programs or plans, approve or reject said plans and shall notify the school system of his decision within 60 days of receipt of the plans.

(e) If the plan is in any way unacceptable, the commissioner shall designate a person or persons to work with the school district to develop an acceptable plan, which must be completed and approved within 60 days of the receipt of the notice that the original plan was unacceptable.

(f) The plan must be initiated within a time period not to exceed 120 days from the time of its approval and must be fully implemented in accord with an approved timetable.

(g) If within one year of the effective date of the affirmative action plan a school district is still found not to be in compliance with these regulations or its plan was not implemented, the commissioner may initiate, with the approval of the State Board of Education, action to suspend, terminate or refuse to award continued Federal or State financial assistance. The commissioner may also make referral to any appropriate judicial and/or administrative Federal, State or local agencies.

#### Case Notes

School Board not entitled to receive desegregation funds if it fails to meet criteria. In the Matter of Weehawken Township School District, 97 N.J.A.R.2d (EDU) 141.

#### 6:4-1.8 State review and evaluation

(a) At least once every three years the commissioner or designee shall review and evaluate the progress of each school district in implementing its affirmative action plan. If sufficient appropriations exist, the commissioner may utilize the services of qualified independent consultants to effectuate the review and evaluation. The commissioner shall provide each local school district with a copy of such analysis.

(b) The board of education of each local school district shall make available to the community a summary of the review and evaluation in accordance with the procedures adopted pursuant to N.J.A.C. 6:4-1.2(a).

(c) Any and all inadequacies in the program plan as revealed in the review and evaluation shall be corrected as soon as is practicable, but in no case shall correction of the plan be delayed more than 60 days from receipt of notice of inadequacy or noncompliance. If such inadequacy is not corrected in the specified time, it shall result in the procedure described in N.J.A.C. 6:4-1.7(g).

#### 6:4-1.9 Appeals

In accordance with N.J.S.A. 18A:6-9, any individual may petition the Commissioner of Education to resolve a dispute arising under these regulations pursuant to procedures set forth in N.J.A.C. 6:24-1.1 et seq.

#### 6:4-1.10 Effect of related statutes

The obligation to comply with these regulations is not obviated or alleviated by any State or local law or rule or regulation of any organization, club, athletic or other league or association which would limit the eligibility or participation of any student on the basis of race, color, creed, religion, sex, ancestry, national origin or social or economic status.