
LEGAL FRAMEWORK FOR DIVERSITY, EQUITY AND INCLUSION IN NEW JERSEY PUBLIC SCHOOLS

New Jersey School Boards Association School Law Forum
July 13, 2022

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Legal Authorities

- Federal non-discrimination law and regulations
(Title VI, Title VII, Title IX, ADA, IDEA, Section 504 of Rehab Act)
- State non-discrimination law and regulations (NJLAD)
- Title 18A and regulations mandating diversity, equity and inclusion regardless of protected characteristics

ROLE OF BOARDS OF EDUCATION AND BOARDS OF TRUSTEES

Board of Education/Board of Trustees

- No child between the ages of 4 and 20 years shall be excluded from any public school on account of his [sic] race, creed, color, national origin, ancestry, or other protected category under [C. 10:5-12], or immigration status.
- Board member who votes to exclude on any of these bases guilty of disorderly persons offense.

N.J.S.A. 18A:38-5.1 (2019)

Board of Education/Board of Trustees

Each BOE shall adopt and implement written educational equity policies that

- 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

Board of Education/Board of Trustees

- Promote equal educational opportunity -- 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. N.J.A.C. 6A:7-1.4(a) (2016)

Equal Educational Opportunity

"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. N.J.A.C. 6A:7-1.3 (2016)

“Educational Equity” and “Equity”

“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.

“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. N.J.A.C. 6A:7-1.3 (2016)

Board of Education/Board of Trustees

- Must inform the school community of its educational equity policies
- Must 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.

N.J.A.C. 6A:7-1.4(b) and (c) (2016)

Comprehensive Equity Plan

- Prior to developing the comprehensive equity plan, the BOE shall assess the school district's needs for achieving equity and equality in educational programs....The purpose of the needs assessment is to identify and eliminate discriminatory practices and other barriers to achieving equity in educational programs.

N.J.A.C. 6A:7-1.4 (c) (2016)

Comprehensive Equity Plan: Data to Consider

- Student performance data
 - National Assessment of Educational Progress (NAEP) and State assessment results
 - Preschool through grade12 promotion, retention, and completion data
 - 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
- Stakeholder satisfaction data.

Comprehensive Equity Plan

Must address and include:

- Professional development
- Equality in school and classroom practices
- Equality in employment and contract practices
- Goals, objectives, timelines and benchmarks for measuring progress.

N.J.A.C. 6A:7-1.4 (c)(2)

Affirmative Action Team develops, oversees and monitors implementation of the plan. N.J.A.C. 6A:7-1.5(a)

DEI IN INSTRUCTION AND CURRICULUM

Equality in Schools & Classroom Practices

BOE 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 (selected requirements follow):

- Ensuring equal and barrier-free access to all school and classroom facilities;
- Attaining within each school minority representation that approximates the school district's overall minority representation;
- Using state-approved English language proficiency measure to determine needs of ELL learners;
- Using bias-free measures to determine needs of students with disabilities;
- Ensuring support services available to all students;
- Ensuring a student is not discriminated against due to a medical condition; (cont'd)

Equality in Schools & Classroom Practices

- Ensuring no differential requirements for course completion, and that courses not be offered, solely on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status;
- Ensuring multicultural curriculum;
- Ensuring all students have access to adequate & appropriate counseling services;
- Ensuring school district's physical education and athletic programs are equitable and co-educational and do not discriminate on the basis of race, creed, etc.

N.J.A.C. 6A:7-1.7 (2016)

Instruction in Diversity & Inclusion

- Beginning in 2021-22 school year, school districts must incorporate instruction on “diversity and inclusion” in an “appropriate place” in K-12 curriculum which shall:
 - highlight and promote diversity, including economic diversity, equity, inclusion, tolerance, and belonging in connection with gender and sexual orientation, race and ethnicity, disabilities, and religious tolerance;
 - examine the impact that unconscious bias and economic disparities have at both an individual level and on society as a whole; and
 - encourage safe, welcoming, and inclusive environments for all students regardless of race or ethnicity, sexual and gender identities, mental and physical disabilities, and religious beliefs.
- N.J.S.A. 18A:35-4.36a(c) (2021)

Instruction in Diversity & Inclusion

- Commissioner of Education shall provide school districts with sample learning activities and resources designed to promote diversity and inclusion.

N.J.S.A. 18A:35-4.36a(c) (2021)

- NJDOE resources available at

<https://www.nj.gov/education/standards/dei/>

Instruction in History and Contributions of African Americans

BOE shall include elementary and secondary instruction that infuses “the centuries of accomplishments of African Americans in the building and development of America including... the areas of industry, military, government, and the professions; local communities; math, science, medicine and space; architecture and the arts; social institutions and culture; and other aspects of life in America. N.J.S.A 18A:35-4.43(a) (2021)

Instruction in History and Contributions of Asian Americans & Pacific Islanders

Beginning in 2022-23 school year, BOE shall include instruction on history and contributions of Asian Americans and Pacific Islanders in grades K through 12.

N.J.S.A 18A:35-4.44 (2022)

History and Contributions of People with Disabilities and LGBTQ Persons

Effective in the 2020-21 school year, BOE must include instruction on the political, economic, and social contributions of persons with disabilities and LGBT people, for middle and high school students.

N.J.S.A. 18A:35-4.35 (2019)

BOE must have policies and procedures pertaining to selection of instructional materials “inclusive of the cultural and economic diversity of society,” including contributions of people with disabilities and LGBTQ people. N.J.S.A. 18A:35-4.36 (2019)

Sexual Abuse and Assault Awareness and Prevention Education

As of the 2019-2020 school year, each school district shall

- incorporate age-appropriate sexual abuse and assault awareness and prevention in grades prek-12 as part of implementation of NJSLS in Comprehensive Health and PE. N.J.S.A. 18A:35-4.5a (2019)
- incorporate age-appropriate instruction in grades 6-12 on the “law and meaning of consent for physical contact and sexual activity” as part of implementation NJSLS in Comprehensive Health and PE. N.J.S.A. 18A:35-38 (2019); *see also* N.J.S.A. 18A:35-4.37 (findings and declarations re sexual assault)

Instruction on Mental Health

School districts shall ensure that health education programs for students in grades K-12 recognize multiple dimensions of health by including mental health and the relation of physical and mental health.

Instruction in mental health shall be adapted to the age and understanding of the students and incorporated as part of implementation of NJSLS in Comprehensive Health and PE.

N.J.S.A. 18A:35-4.39 (2019)

Transgender Students

Commissioner of Education shall develop guidelines concerning transgender students, to include:

- Definitions of relevant terms;
- Maintaining a safe and supportive learning environment free from harassment and discrimination;
- Confidentiality and privacy concerns;
- Procedures for school records
- Addressing student by preferred name and pronouns
- Same PE opportunities in accordance w/student's gender identity
- Permission to participate in gender-segregated school activities in accordance w/student's gender identity
- Use of restrooms and locker rooms,
- Ensuring school counselors knowledgeable regarding transgender student concerns
- Permitting formation of student clubs/programs regarding LGBTQ youth

N.J.S.A. 18A:36-41 (2017)

NJDOE guidance:

<https://nj.gov/education/students/safety/sandp/transgender/Guidance.pdf>

NJ Anti-Bullying Bill of Rights

BOE must have policy prohibiting harassment, intimidation and bullying motivated by “actual or perceived” characteristics of race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, mental/physical/sensory disability, or any other distinguishing characteristic.

N.J.S.A. 18A:37-13 *et seq.* (2002)

NJ State Commissions related to DEI Education

Commission on Holocaust Education, N.J.S.A. 18A:4A-2 (1991)

Italian Heritage Commission, N.J.S.A. 18A:4-43 (2001)

Amistad Commission N.J.S.A. 52:16A-87 (2002)

Transgender Equality Task Force, P.L. 2018, c.60 [see Nov. 2019 report]

Latino & Hispanic Heritage, N.J.S.A. 18A:4-48 (2019)

Interagency Task Force to Combat Youth Bias, E.O. 78 (2019) [see report at

<https://www.nj.gov/oag/dcr/downloads/2020-ybtf-report.pdf>]

Asian American and Pacific Islander Commission, N.J.S.A. 52:16A-128 (2021)

Commission on Asian Heritage, N.J.S.A. 18A:4-52 (2022)

Amistad Commission

Purpose: to educate about the African slave trade, slavery in America, the vestiges of slavery in this country and the contributions of African Americans to our society.

Allocated “in but not of” Dept. of Education (from Dept. of State) in 2021.
N.J.S.A. 52:16A-87(a) (2021)

Effective in 2022-23 school year, the Amistad Commission shall establish the “Amistad Commission Exemplary Award Program” to recognize outstanding educators and their employing school district who have shown a commitment to furthering student knowledge on the African slave trade, slavery in America, the vestiges of slavery in this country, and the contributions of African Americans to our society. N.J.S.A. 52:16A-88.1 (2021)

DEI IN STAFFING

Equality in Employment and Contract Practices

- BOE shall ensure equal and bias-free access to all categories of employment, regardless of race, etc. [protected characteristics]
- BOE cannot contract with vendors that discriminate on the basis of race, etc. [protected characteristics], in employment or in provision of services
- BOE shall not assign, transfer, promote, or retain staff, or fail to assign, transfer, promote, or retain staff, on the sole basis of race, etc. [protected characteristics]
- BOE shall ensure equal pay for equal work among its staff, regardless of race, etc. [protected characteristics]

N.J.A.C. 6A:7-1.8 (2016)

Professional Development on DEI

BOE shall provide continuing PD training for all school personnel (certificated and non-certificated) 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. N.J.A.C. 6A:7-1.6(a) (2016)

- Parents must be invited to participate
- New staff must receive training on “educational equity” in first year of employment

Affirmative Action Team

BOE shall annually designate an Affirmative Action Team, which shall:

- Develop, and oversee the implementation of, the comprehensive equity plan, pursuant to N.J.A.C. 6A:7-1.4(c)
- Collaborate with the affirmative action officer to coordinate required professional development training for certificated and non-certificated staff, pursuant to N.J.A.C. 6A:7-1.6

Affirmative Action Team, cont'd

- Monitor implementation of the Comprehensive Equity Plan; and
- Conduct annual school district internal monitoring to ensure compliance with State and Federal statutes governing educational equity, pursuant to N.J.A.C. 6A:7-1.4(d).

N.J.A.C. 6A:7-1.5(a)(3) (2016)

Affirmative Action Officer

- Designated annually by the BOE
- Must hold NJ standard certification
- Member of the Affirmative Action Team
- Coordinates required PD for certificated and non-certificated staff, pursuant to N.J.A.C. 6A:7-1.6(a)
- Notifies students and employees of district's grievance procedures for handling discrimination complaints, and ensures grievance procedures are followed

N.J.A.C. 6A:7-1.5 (a)(1) and (2) (2016)

Professional Development for Affirmative Action Officers

The Commissioner or 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. N.J.A.C. 6A:7-1.6(b) (2016)

Selected Affirmative Action Case Law

- *Taxman v. Bd. of Ed. of Twp. of Piscataway*, 91 F.3d 1547 (3d Cir. 1996) (upholding grant of summary judgment to white teacher, holding that school board's affirmative action plan of preferring racial minority teachers over non-minority teachers in layoff decisions, where teachers were equally qualified, violated Title VII and NJLAD)
- *United Steelworkers v. Weber*, 443 U.S. 193 (1979) (Title VII does not condemn all private, voluntary, race-conscious affirmative action plans)
- *Klatwitter v. City of Trenton*, 395 N.J. Super. 302 (App. Div. 2007) (race can be considered in employment decision only pursuant to established affirmative action plan)
- *Jersey City Ed. Ass'n, Inc. v. Board of Ed. of Jersey City*, 218 N.J. Super. 177 (App. Div.), *certif. denied*, 109 N.J. 506 (1987) (implementation of valid affirmative action plan held to be permissible)

Limited Certificate of Eligibility

By December 24, 2021, DOE was to establish five-year pilot program for issuance of limited certificate of eligibility with advanced standing and limited certificate of eligibility for certain teacher candidates.

Issuance of limited certificate of eligibility with advanced standing to a teacher candidate who meets all other eligibility requirements for a certificate of eligibility with advanced standing, except any one of the following:

- (1) the minimum grade point average requirement and all other alternative grade point average requirements or exceptions; or
- (2) the requirement to achieve a minimum passing score on an appropriate State test of subject matter knowledge and all other alternative requirements or exceptions to achieving a passing score on an appropriate State test of subject matter knowledge.

N.J.S.A. 18A:26-2d (2021)

Limited Certificate of Eligibility

School district, charter school or renaissance school must apply for approval to hire individuals who hold limited certificates of eligibility with advanced standing or limited certificates of eligibility, demonstrate a sufficient capability to provide support to new teachers and:

1. a shortage of bilingual education teachers; or
2. a demographic disparity between the district's or school's student population and teachers; or
3. a critical need to fill teacher vacancies or a hardship caused by teacher vacancies.

N.J.S.A. 18A:26-2f (2021)

Women and Minorities in STEM

Directs DOE to develop outreach program to encourage young women and minorities to pursue post-secondary degrees and careers in science, technology, engineering and mathematics (STEM). DOE shall:

1. provide elementary and secondary school students, especially young women and minorities, with opportunities to increase their exposure to STEM;
2. distribute various printed materials to schools, encouraging young women and minorities to pursue post-secondary degrees and careers in STEM;
3. organize and conduct mentoring sessions, in which individuals working or pursuing a post-secondary degree in the STEM field engage with elementary and secondary school students;
4. establish a mentoring program that partners STEM professionals and STEM post-secondary students with elementary and secondary school students;
5. create programs to increase the recruitment and retention of underrepresented faculty in STEM subject areas; and
6. undertake any other activities the Commissioner of Education, in consultation with the Secretary of Higher Education and the chair of the Commission on Science, Innovation and Technology, deems necessary to effectuate the purposes of the outreach program.

N.J.S.A. 18A:3B-99 and -100 (2021).



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