**CRITICAL POLICY REFERENCE MANUAL FILE CODE: 2224**

 **X Monitored**

 **X Mandated**

**Legal References X Other Reasons**

NONDISCRIMINATION/AFFIRMATIVE ACTION

**QSAC Monitored:**

DPR: Governance – 1

SOA: Governance – 1

**Mandated:**

N.J.S.A. 18A:37-15 requires policy that prohibits harassment, intimidation or bullying on school property, at a school-sponsored function or on a school bus. The board is required to adopt the policy through a process that includes representation of parents or guardians, school employees, volunteers, students, administrators, and community representatives. The policy is to be published with any codes of conduct or student handbooks. (See policy 5131 Conduct/Discipline).

N.J.A.C. 6A:7‑1.4 mandates policy on equal educational opportunity, and recognition of the value of 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, gender identity or expression, religion, disability or socioeconomic status; and fosters 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, gender identity or expression, religion, disability, or socioeconomic status.

The board is required to develop a comprehensive equity plan once every three years that shall identify and correct all discriminatory and inequitable educational and hiring policies, patterns, programs, and practices affecting its facilities, programs, students, and staff

Each district board of education shall develop once every three years a comprehensive equity plan that shall identify and correct all discriminatory and equitable educational and hiring policies, patterns, programs and practices affecting its facilities, programs, students and staff. The comprehensive equity plan shall include:

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 (formerly named the Core Curriculum Content Standards, CCCS), differentiated instruction, and formative assessments aligned to the New Jersey Student Learning Standards 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.

**Other Reasons:**

The Americans with Disabilities Act (ADA) imposes obligations on boards of education both as employers and providers of education. Many of these obligations duplicate or expand existing obligations under Section 504 and other federal law.

N.J.S.A. 2C:16-1(a)(i) makes a person guilty of the crime of bias intimidation if he commits, attempts to commit, conspires with another to commit, or threatens the immediate commission of an offense with a purpose to intimidate an individual or group of individuals because of race color, religion, gender, disability, sexual orientation, gender identity or expression, national origin or ethnicity.

1. Knowing that the conduct constituting the offense would cause an individual or group of individuals to be intimidated because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or
2. Caused any victim of the underlying offense to be intimidated and reasonably believe the offense was committed with a purpose to intimidate the victim or any person or entity in whose welfare the victim is interested because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity; or the victim or the victim's property was selected to be the target of the offense because of the victim's race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity

N.J.S.A. 10:5‑3 forbids discriminatory practices against any person or that person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers by reason of race, creed, color, national origin, ancestry, age, sex, gender identity or expression, affectional or sexual orientation, marital status, familial status, liability for service in the Armed Forces of the United States, disability or nationality.

N.J.S.A. 10:5‑3.1 requires employers to provide reasonable accommodations to pregnant women and those who suffer medical conditions related to pregnancy and childbirth, such as bathroom breaks, breaks for increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work. Accommodations that cause an undue hardship in the conduct of an employer's business are not required.

N.J.S.A. 10:5-4.1 applies all provisions of the statutes against discrimination to persons with disabilities.

N.J.S.A. 10:5-12 makes it unlawful to discriminate in employment practices against persons in the above categories and includes genetic information, individuals with atypical hereditary cellular or blood traits, or refusal to submit to a genetic test or make the results of a genetic test known, civil union status, or domestic partnership status.

N.J.S.A. 10:5‑27 reads: "With respect only to affectional or sexual orientation and gender identity or expression, nothing contained herein shall be construed to require the imposition of affirmative action, plans or quotas as specific relief from an unlawful employment practice or unlawful discrimination."

N.J.A.C. 6A:7-1.4c,d requires the board to develop a comprehensive equity plan every three years and annually submit to the Department at the end of the year a statement of assurance regarding achieving the objectives of the comprehensive equity plan.

N.J.A.C. 6A:7-1.5 requires the board to annually designate a staff member as the affirmative action officer and form an affirmative action team and assure that all stakeholders know who the affirmative action officer is and how to contact her.

N.J.A.C. 6A:7-1.6 requires the board to provide professional development on a continuing basis 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 protected classes.

N.J.A.C. 6A:7‑1.7 requires the board to provide equal and bias-free access for all students to all school facilities, courses, programs, activities and services.

N.J.A.C. 6A:7‑1.8 requires the board to ensure equal and bias free access to all categories of employment in the district.

**Recommendation:**

A major policy statement here addressing all aspects of school district‑related nondiscrimination/affirmative action for pupils and employees. The protected classes should be listed here, because not all will be pertinent in each of the more limited policies in other sections of the manual‑‑personnel, pupils and instruction (4111.1, 4211.1, 5145.4, 6121). The topics of nondiscrimination/affirmative action, the multi-year equity plan and harassment are primary administrative considerations.

**Legal References:** N.J.S.A. 2C:16-1 Bias intimidation

N.J.S.A. 2C:33-4 Harassment

 N.J.S.A. 10:5-1 et seq. Law Against Discrimination

 N.J.S.A. 18A:6‑5 Inquiry as to religion and religious tests prohibited

 N.J.S.A. 18A:6-6 No sex discrimination

 N.J.S.A. 18A:18A‑17 Facilities for handicapped persons

 N.J.S.A. 18A:26‑1 Citizenship of teachers, etc.

 N.J.S.A. 18A:26-1.1 Residence requirements prohibited

 N.J.S.A. 18A:29‑2 Equality of compensation for male and female teachers

 N.J.S.A. 18A:35-1 et seq. Curriculum and courses

 N.J.S.A. 18A:37‑14 Harassment, intimidation, and bullying defined;

 through -19 definitions

 N.J.S.A. 18A:36‑20 Discrimination; prohibition

 N.J.S.A. 18A:38-5.1 Attendance at school

N.J.S.A. 18A:46-1 et seq. Children with disabilities

 N.J.S.A. 26:8A-1 et seq. Domestic Partnership Act

 N.J.A.C. 5:23-1 et seq. Uniform construction code

 N.J.A.C. 6A:7-1.1 et seq. Managing for Equality and Equity in Education

 See particularly:

 N.J.A.C. 6A:7‑1.4,

 ‑1.5, ‑1.6, -1.7, -1.8

N.J.A.C. 6A:14-1.1. et seq. Special education regulations

 N.J.A.C. 6A:30-1.1 et seq. Evaluation of the Performance of School Districts

 United States Constitution, Amendment 5 and Amendment 14, Section 1

 New Jersey State Constitution, Article I, Paragraph 5

 Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000 et seq.)

 Executive Order 11246 as amended

 Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, 122 Stat 881.

 29 U.S.C.A. § 201 et seq. (see especially § 206) - Fair Labor Standards Act of 1963 as

 amended

 20 U.S.C.A. § 621 et seq. – Age Discrimination in Employment Act

 20 U.S.C.A. § 1681 et seq. - Title IX of the Education Amendments of 1972

 20 U.S.C.A. § 1701 et seq. – Equal Educational Opportunities Act of 1974

 20 U.S.C.A. § 6301 et seq. – Every Student Succeeds Act

 42 U.S.C.A. § 2000e et seq. - Title VII of the Civil Rights Act of 1964 as amended by the

 Equal Employment Opportunities Act of 1972

 29 U.S.C.A. § 794 et seq. - Section 504 of the Rehabilitation Act of 1973

 20 U.S.C.A. § 1401 et seq. - Individuals with Disabilities Education Act

 42 U.S.C.A. § 12101 et seq. - Americans with Disabilities Act (ADA)

 Bolling v. Sharpe, 347 U.S. 497 (1947).

Brown v. Bd. of Educ., 347 U.S. 483 (1954).

Lau v. Nichols, 414 U.S. 563 (1974).

Regents of Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986).

 School Board of Nassau County v. Arline, 480 U.S. 273 (1987).

 Vinson v. Superior Court of Alameda County, 740 P. 2d 404 (Cal. Sup. Ct. 1987).

 State v. Mortimer, 135 N.J. 517 (1994).

 Taxman v. Piscataway Bd. of Ed., 91 F. 3d 1547 (3d Cir. 1996).

 Davis v. Monroe County Board of Education, 526 U.S. 629 (1999).

 Saxe v. State College Area School Dist., 240 F. 3d 200 (3d Cir. 2001).

 Gratz v. Bollinger, 539 U.S. 244 (2003).

 Grutter v. Bollinger, 539 U.S. 306 (2003).

L.W. v. Toms River Regional Schools Board of Education, N.J., No. A-111-05 (Feb. 22, 2007), 2007 N.J. LEXIS 184. The New Jersey Supreme Court ruled that a school district may be held liable under the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49, when students harass another student because of his perceived sexual orientation. A district school will be liable for such harassment if it knew or should have known of the harassment but failed to take reasonable remedial actions. The matter was remanded to the Director of the Division on Civil Rights.

 Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1, 551 U.S. 701 (2007).

 Fisher v. University of Tex., 136 S.Ct. 2198 (2016).

 Bostock v. Clayton Cnty., \_\_\_ U.S. \_\_\_ (2020).

 Comprehensive Equity Plan, New Jersey Department of Education

**Possible**

**Cross References:** \*3320 Purchasing procedures

 \*4111 Recruitment, selection and hiring

 \*4111.1 Nondiscrimination/affirmative action

 \*4131/4131.1 Staff development; inservice education/visitations/conferences

 \*4211 Recruitment, selection and hiring

 \*4211.1 Nondiscrimination/affirmative action

 \*4231/4231.1 Staff development; inservice education/visitations/conferences

 \*5131 Conduct/discipline

 \*5145.4 Equal educational opportunity

 \*6121 Nondiscrimination/affirmative action

 \*6145 Extracurricular activities

\*Indicates policy is included in the Critical Policy Reference Manual.