

FILE CODE 2224 NONDISCRIMINATION/AFFIRMATIVE ACTION

State and federal statutes and regulations prohibit school districts from discriminatory practices in employment or educational opportunity against any person by reason of race, color, national origin, ancestry, age, sex, pregnancy, affectional or sexual orientation, gender identity or expression, marital status, domestic partnership status, familial status, liability for service in the Armed Forces of the United States, nationality, atypical hereditary cellular or blood trait of any individual, genetic information, or refusal to submit to a genetic test or make the results of a genetic test known, in employment or in educational opportunities. Further state and federal protection is extended on account of disabilities, social or economic status, pregnancy, childbirth, pregnancy-related disabilities, actual or potential parenthood, or family status.

The Board of Education will continue to support its Affirmative Action Resolution, and will implement the Board's equal educational opportunity policy, school and classroom practices plan and contract/employment practices plan in accordance with law and regulation.

The Superintendent or designee shall develop and implement a multi-year equity plan to ensure that the District provides equality in educational programs and to identify and correct, or assess and prevent, all bias, discrimination and impermissible isolation in policies, practices and facilities of the district. The District shall report to the board annually on progress toward goals established in the plan. A copy of the District's affirmative action/equity plans and self-evaluation of their achievement shall be available in the District's Affirmative Action Office.

Affirmative Action Officer and Team

The Board shall annually designate a certified member or members of the staff as the affirmative action officer and form an affirmative action team, of whom the affirmative action officer is a member. The affirmative action officer must have New Jersey certification with an administrative, instructional, or education services endorsement. The Board shall ensure that all members of the school community know who the affirmative action officer is and how to access him/her.

The Affirmative Action Officer shall:

- A. Coordinate the required professional development training for certificated and non-certificated staff;
- B. Notify all pupils and employees of grievance procedures for handling discrimination complaints; and
- C. Ensure that the district grievance procedures, including investigative responsibilities and reporting information, are followed.

The Affirmative Action Team shall:

- A. Develop the comprehensive equity plan in compliance with administrative code;
- B. Oversee the implementation of the comprehensive equity plan;
- C. Collaborate with the affirmative action office in coordinating the required professional development training;
- D. Monitor the implementation of the comprehensive equity plan; and
- E. Conduct the annual district internal monitoring to ensure continuing compliance with state and federal law and code governing educational equity.

Comprehensive Equity Plan

The District will develop a comprehensive equity plan once every three years. The comprehensive equity plan shall identify and correct all discriminatory and inequitable educational and hiring policies, patterns, programs, and practices affecting its facilities, programs, students, and staff.

Prior to developing the comprehensive equity plan, the District's needs for achieving equity and equality in educational programs shall be assessed. The purpose of the needs assessment is to identify and eliminate discriminatory practices and other barriers to achieving equity in educational programs.

- A. The needs assessment shall include an analysis of:
 1. Student performance data such as National Assessment of Educational Progress and State assessment results;
 2. Preschool-through-grade-12 promotion/retention data;
 3. Preschool-through-grade-12 completion rates; and
 4. Re-examination and re-evaluation of classification and placement of students in special education programs if there is over representation within certain groups;
 5. Staffing practices;
 6. Student demographic and behavioral data;
 7. Quality of program data; and
 8. Stakeholder satisfaction data.
- B. The comprehensive equity plan shall address:
 1. Professional development;
 2. Equality in school and classroom practices;
 3. Equality in employment and contract practices.
- C. The comprehensive equity plan shall reference the following District actions:
 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, 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.

The comprehensive equity plan shall reference goals, objectives, timelines, and benchmarks for measuring progress. The District shall submit the comprehensive equity plan to the executive county superintendent for approval and a copy of the comprehensive equity plan to the New Jersey Department of Education. The District 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.

Harassment

The District shall maintain an instructional and working environment that is free from harassment of any kind. Administrators and supervisors will make it clear to all staff, pupils and vendors that harassment is prohibited.

Sexual harassment shall be specifically addressed in the affirmative action inservice programs required by law for all staff.

Sexual harassment shall include, but not be limited to, unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- A. Submission to the conduct or communication is made a term or condition of employment or education;
- B. Submission to, or rejection of, the conduct or communication is the basis for decisions affecting employment and assignment or education;
- C. The conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or education;
- D. The conduct or communication has the effect of creating an intimidating, hostile or offensive working or educational environment.

Sexual harassment of staff or children interferes with the learning process and will not be tolerated in district schools. Harassment by board members, employees, parents, pupils, vendors and others doing business with the District is prohibited. Any student who has knowledge of or feels victimized by sexual harassment should immediately report his/her allegation to the building principal. Employees who have knowledge of or feel victimized by sexual harassment should immediately report his/her allegation to the District affirmative action officer. Employees whose behavior is found to be in violation of this policy will be subject to the investigation procedure which may result in discipline, up to and including dismissal. Other individuals whose behavior is found to be in violation of this policy will be subject to appropriate sanctions as determined and imposed by the Superintendent. Law enforcement shall be summoned when appropriate. This policy statement on sexual harassment shall be publicized to all staff members.

Staff or pupils may file a formal grievance related to harassment on any of the grounds addressed in this policy. The affirmative action officer will receive all complaints and carry out a prompt and thorough investigation, and will protect the rights of both the person making the complaint and the alleged harasser.

Findings of discrimination or harassment will result in appropriate disciplinary action.

School and Classroom Practices

In implementing affirmative action, the District shall:

- A. Identify and correct the denial of equality of educational opportunities for pupils solely on the basis of any classification protected by law;
 1. Identify and correct the denial of equality of educational opportunities for pupils solely on the basis of any classification protected by law;
 2. Continually reexamine and modify, as may be necessary, its school and classroom programs; location and use of facilities; its curriculum development program and its instructional materials; availability of programs for children; and equal access of all eligible pupils to all extracurricular programs.

- B. Continually reexamine and modify, as may be necessary, its school and classroom programs; location and use of facilities; its curriculum development program and its instructional materials; availability of programs for children; and equal access of all eligible pupils to all extracurricular programs.
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;
 4. Utilizing bias-free multiple measures for determining the special needs of students with disabilities;
 5. Ensuring support services, including intervention and referral services and school health services; 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. If excluded, the student shall be provided with equivalent and timely instruction that may include home instruction, without prejudice or penalty.

These topics are included in the District's Policy Manual:

- A. #5145.4 Equal Educational Opportunity,
- B. #6121 Nondiscrimination/Affirmative Action, and
- C. #6145 Extracurricular Activities.

Contract/Employment Practices

The Board shall ensure that appropriate administrators implement the Board's affirmative action policies by:

- A. Adhering to the administrative code in selection of vendors and suppliers; informing vendors and suppliers that their employees are bound by the district's affirmative action policies in their contacts with district staff and pupils;
- B. Continuing implementation and refinement of existing practices and affirmative action plans, making certain that all recruitment, hiring, evaluation, training, promotion, personnel-management practices and collective bargaining agreements are structured and administered in a manner that furthers equal employment opportunity principles and eliminates discrimination on any basis protected by law, holding inservice programs on affirmative action for all staff in accordance with law.

These topics are included in the District's Policy Manual:

- A. #3320 Purchasing Procedures,
- B. #3327 Relations with Vendors, and
- C. #4111.1 and #4211.1 Nondiscrimination/Affirmative Action.

Persons with Disabilities

In addition to prohibiting educational and employment decisions based on nonapplicable disabling condition, the Board shall, as much as feasible, make facilities accessible to pupils, employees and members of the community with disabilities as intended by Section 504 and as specified in the administrative code.

Report on Implementation

The Superintendent shall devise procedures, including grievance forms and procedures to implement the Board's affirmative action policies. The Superintendent shall report annually on the effectiveness of this policy and the implementing procedures.

Adopted by State District Superintendent: January 25, 2005

NJSBA Review/Update: November 2010

Readopted by State District Superintendent: October 24, 2016

Adopted by the Board of Education: February 26, 2019

Key Words

Affirmative Action, Discrimination, Americans with Disabilities Act, Access, Nondiscrimination, Sexual Harassment, Harassment, Equal Educational Opportunity, Domestic Partnership Act

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 through -19](#) Harassment, intimidation, and bullying defined; definitions

[N.J.S.A. 18A:38-5.1](#) *et seq.* Attendance at school

[N.J.S.A. 18A:36-20](#) Discrimination; prohibition

[N.J.S.A. 26:8A-1](#) *et seq.* Domestic Partnership Act

[N.J.A.C. 5:23-1.1](#) *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:30-1.1](#) et seq. Evaluation of the Performance of School Districts

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

[29 U.S.C.A. 201 § 206](#)- Equal Pay Act of 1963 as amended

[20 U.S.C.A. 1681](#) et seq.- Title IX of the Education Amendments of 1972

[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)

[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)

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 pupils harass another pupil 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.

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.

Newark Board of Education
