

## **Public Notice**

### **Education**

#### **State Board of Education**

#### **Notice of Receipt of Petition for Rulemaking**

#### **Managing for Equity in Education**

### **Definitions**

#### **Affirmative Action Officer**

#### **Professional Development**

#### **Equity in School and Classroom Practices**

### **Accountability**

#### **N.J.A.C. 6A:7-1.3, 1.5, 1.6, 1.7, and 1.8**

Petitioner: Shawn Hyland, Director of Advocacy, New Jersey Family Policy Center.

**Take notice** that on August 8, 2023, the New Jersey State Board of Education (State Board) received a petition for rulemaking from the above petitioner, requesting the State Board repeal specific amendments adopted at N.J.A.C. 6A:7 as part of the recent readoption with amendments. The petitioner also requested new amendments that allow Christian students to opt out of any curriculum forcing them to affirm beliefs contrary to their religion.

The purpose of N.J.A.C. 6A:7 is to ensure all students, regardless of housing status, socioeconomic status, immigration status, or any protected category as stated at N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality, are provided equal access to educational activities and programs by district boards of education. The educational

activities and programs 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 professional standards for teachers and school leaders. The rules specify standards for district boards of education in establishing policies and procedures for the provision of educational activities and programs for all students, pursuant to: Article I, Paragraph 5 of the New Jersey State Constitution; the New Jersey Law Against Discrimination (NJLAD) (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.); Title IX of Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.); 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.).

The petitioner requests that the State Board repeal all recent amendments at N.J.A.C. 6A:7 that eliminated gendered nouns and pronouns from the text of the State Board's regulations in places where use of those nouns and pronouns was not intended to have a substantive effect. The definition of "multicultural curriculum" at N.J.A.C. 6A:7-1.3 was amended to replace "men and women" with "persons." N.J.A.C. 6A:7-1.5(a) was amended to replace "him or her" with "the affirmative action officer." N.J.A.C. 6A:7-1.6(b) and 1.8(e) were amended to replace "his or her" with "the Commissioner's." N.J.A.C. 6A:7-1.7(b)3 was amended to replace "minority, female, and male" with "all."

The petitioner also requests that the State Board repeal the amendments to the revised term "equitable educational opportunity" at N.J.A.C. 6A:7-1.3, as well as the amendments at N.J.A.C. 6A:7-1.6(a)2 and 1.7(b)2i and 7 and (d)2.

The petitioner seeks to repeal the amendments at N.J.A.C. 6A:7, alleging, among other things, that the amendments violate principles of Equal Protection, and the First Amendment of the United States Constitution (specifically, with respect to free speech, the free exercise of religion, and the Establishment Clause). The petitioner also argues that the State Board should accommodate the religious beliefs of students by including new amendments allowing Christian students to opt out of any curriculum deemed contrary to their religion, and by repealing the amendments that the petitioner contends violate students' and parents' rights to religious freedom. Finally, the petitioner argues that some of the amendments at N.J.A.C. 6A:7 are not required pursuant to the New Jersey Law Against Discrimination and otherwise violate parental rights.

The petition also states that it includes sufficient disputed legal assertions that justify the petitioner's rulemaking petition being set for a contested hearing in the Office of Administrative Law.

Aside from identifying certain recent amendments that the petitioner proposes for repeal, the petition did not provide specific language for any of the requested amendments or indicate where they should be located within N.J.A.C. 6A:7.

The requested repeal of the adopted amendments would be as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### Subchapter 1. General Provisions

##### 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.

...

“[Equitable] **Equal** educational opportunity” means the creation of environments that enable the provision of a thorough and efficient education as defined by the NJSL, differentiated instruction, formative assessments aligned to the NJSL, and high expectations for teaching and learning in a **public** school district; [when the curriculum is designed to enable students to learn and develop an understanding of the events and major contributions by people and groups of people that have shaped and continue to shape the United States of America and the global society;] **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 [opportunity] **achievement gap**; and when all students and staff enjoy [equitable] **equal** access to all programs and benefits provided by[,] or offered within[,] **the public schools of** the school district.

...

“Multicultural curriculum” means to incorporate throughout the curriculum the experiences, perspectives, and accomplishments of [persons] **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.

...

#### 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 to coordinate and implement the chapter’s requirements. Each district board of education shall ensure all stakeholders know who the affirmative action officer is and how to contact [the affirmative action officer] **him or her**.

1. – 4. (No change.)

#### 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 and opportunity gaps and other inequities on the basis of the protected categories listed at N.J.A.C. 6A:7-1.1(a).

1. (No change.)

2. The district board of education shall [ensure that] **invite** parents and other community members [are aware of] **to participate in the** professional development training [provided to school district personnel regarding topics around equity].

3. (No change.)

(b) The Commissioner or [the Commissioner's] **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 the protected categories listed at N.J.A.C. 6A:7-1.1(a).

#### 6A:7-1.7 Equity in school and classroom practices

(a) (No change.)

(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 and opportunity gaps, by providing equity in educational activities and programs, and by providing opportunities for students to interact positively with others regardless of the protected categories listed at N.J.A.C. 6A:7-1.1(a), by:

1. (No change.)
  2. Ensuring courses shall not be offered separately on the basis of the protected categories listed at N.J.A.C. 6A:7-1.1(a);
    - i. Portions of classes that deal exclusively with human sexuality may be conducted in separate developmentally appropriate sessions [based on gender identity] **for male and female students**, provided the course content for such separately conducted sessions is the same;
  3. Increasing and promoting equitable representation of [all] **minority, female, and male** students in all classes and programs;
  4. (No change.)
  5. Ensuring the Amistad Commission Curriculum is infused into the curriculum and is taught; **and**
  6. Ensuring the Commission on Holocaust Education curriculum is included in the curriculum of all elementary and secondary schools, as developmentally appropriate, pursuant to N.J.S.A. 18A:35-28[; and].
  - [7. Ensuring that all curricular requirements pursuant to N.J.A.C. 6A:8 and the NJSLS are taught, including any curriculum developed concerning any of the protected categories listed at N.J.A.C. 6A:7-1.1(a) or curriculum developed by any commissions constituted for the development of curriculum concerning any of the protected categories listed at N.J.A.C. 6A:7-1.1(a).]
- (c) (No change.)

(d) The district board of education shall ensure the school district's physical education is in a co-educational setting that is developmentally appropriate and does not discriminate on the basis of the protected categories listed at N.J.A.C. 6A:7-1.1(a), as follows:

1. (No change.)
2. A school [district] may choose to operate separate teams [based on sex] **for the two sexes** in one or more sports or single teams open competitively to members of [all] **both** sexes, as long as the athletic program as a whole provides equal opportunities for students of [all] **both** sexes to participate in sports at comparable levels of difficulty and competency; and
3. (No change.)

#### 6A:7-1.8 Accountability

(a) – (d) (No change.)

(e) If the district board of education does not implement the comprehensive equity plan within 60 days of the executive county superintendent's certification of completion date, or fails to report its progress annually, sanctions deemed to be appropriate by the Commissioner or [the Commissioner's] **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.

In accordance with N.J.A.C. 1:30-4.2, the Department shall subsequently mail to the petitioners, and file with the Office of Administrative Law, a notice of action on the petition.