

Proposed Readoption with Amendments at N.J.A.C. 6A:7, Managing for Equality and Equity in Education

The following is the accessible version of the proposed readoption with amendments at N.J.A.C. 6A:7. The second discussion document includes three sections – [comments and responses](#), [summary](#) and [rules proposed for readoption and proposed amendments](#).

**State Board of Education
Administrative Code
Comment/Response Form**

This comment and response form contains comments from the December 7, 2022, meeting of the State Board of Education when the rulemaking was considered at First Discussion Level.

Topic: Managing for Equality and Equity in Education

Meeting Date: January 11, 2023

Code Citation: N.J.A.C. 6A:7 **Level:** Second Discussion

Division: Field Support and Services **Completed by:** Division of Field Support and Services

Summary of Comments and Agency Responses:

The following is a summary of the comments received from State Board of Education members and members of the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

- A. Kathy Goldenberg, President, State Board of Education
- B. Andrew J. Mulvihill, Vice President, State Board of Education
- C. Arcelio Aponte, Member, State Board of Education
- D. Elaine Bobrove, Member, State Board of Education
- E. Mary Beth Berry, Member, State Board of Education
- F. Dr. Nedd James Johnson, Member, State Board of Education
- G. Dr. Joseph Ricca, Member, State Board of Education
- 1. Joseph Manicone
- 2. Sylvia Kocses
- 3. Anna Lopez
- 4. Paul Szesko
- 5. Carrie Freed
- 6. William Earnes
- 7. Ted Geuther
- 8. Victoria DeFelice
- 9. Larry Akins

10. Shawn Hyland
11. John Kiczek
12. Meaghan Williams
13. Leslie Workman
14. Jason Hansman
15. Pilar Betancourt
16. Jonathan Schiedlo, Sr.
17. Eric Young
18. Raymond Lillie
19. Stephanie Santos
20. Cathy Boon
21. Mary S. Ketter
22. Janice Mitchell
23. Tammy Freeman
24. Diane Jakobczuk
25. Deborah Huber
26. Emily Chiommino
27. Ann Dubow
28. Donna Lemoire
29. Josette Kluender
30. Ineabelle Rodriguez
31. Michael Sicilia
32. Josue Santiago
33. Marissa Ekback
34. Bill Grabow
35. Charles Davidson

36. Emily D'Antuono
37. April Mancuso
38. Brandon Cobb
39. Margaret Patrick
40. Crystal Dover
41. Henrietta Kaiser
42. Michael Skomba
43. Thomas Schmidt
44. Gary Morris
45. Joseph Rival
46. Sandra Sweetman
47. Cathy Fulton
48. Joseph Sorce
49. Justin Wright
50. Anita Kitanovski
51. Marize Said
52. Alison Davis
53. Elena Fetch
54. Judith Holtz
55. Peggy Harris
56. Mary Lawrence
57. Lois Carr
58. Ani Barber
59. Cynthia Viola
60. Dave Powell
61. Kobporn Howell

62. Cheryl Kaiser
63. Dana Gabriel
64. Nanette Amatulli
65. Donna Morici
66. Mary Marrale
67. Dennis McQuaid
68. Mary Peyerl
69. Erik Lunde
70. Donna Torrado
71. Ellen Mulligan
72. Jesse Gennarelli
73. Rose Mangini
74. Luciano Marquez
75. Karen Hollenback
76. Wong Young
77. Asher Levy
78. Nancy Lang
79. Fred Kutner
80. Amy Klas
81. Emily Sparks
82. Fred Kutner
83. Nancy Cammarota
84. Michelle Mallozzi
85. Donita Jones
86. Michele Gatto
87. Daniel Keeler

88. Ivana Wilkie
89. Judith Wright
90. Stephen Chisholm
91. Donna Oktem
92. Carin Burke
93. Ann Thompson
94. Karen Blanchard
95. Emina Regjaj
96. Amanda Mejias
97. Barbara Lacca
98. Donald Adams
99. Kenneth and Ruth Choflet
100. James Spinelli
101. Jonathan Zechmeister
102. Susan Slater
103. Richard Rogers
104. Edith Bingaman
105. Mary Ann Cooney
106. Darry Blusnavage
107. Richard Rogers
108. Amy Kijowski
109. Ed DeLeon
110. Raymond Carr
111. Carmelita Patricola
112. Glenn Moore
113. Eileen Cosentino

114. Anthony Curcio
115. Ellen Schiller
116. John Jones
117. Sheryl Wheeldon
118. Dian Cucchisi
119. Michael Quariadi
120. Devon Ritchey
121. Ellen Zechmeister
122. Kris Gebhardt
123. Laurie McAdams
124. Cathy Williams
125. Ronald Peri
126. Gina Dugo
127. Kevin Mary Anderson
128. Amy Dickerson
129. Lisa Dalia
130. Anthony Musillo
131. R. Fuller
132. Anita Mercanti
133. Evelyn Anderson
134. Diana DiAngelis
135. Roman Zacharko
136. Maureen Moyer
137. Carolyn Pfeiffer
138. Philip Alcock
139. Daniel Yacykewych

140. Diane Petroni
141. Theresa Glynn
142. Tracey Ivaldi
143. Kathy Cobucci
144. Robin Clinton
145. Dana Lowe
146. Daniel Girlando
147. Andrew Digesu
148. Jean Judge
149. Patricia Babij
150. Jacqueline Vonschmidt
151. Barbara Coscarello
152. Anne Donnelly
153. Peter Manning
154. Deb Suta
155. David Botti
156. Anna Bilotta
157. Jenny Morganti
158. Carlos Rocha
159. Lee Iden
160. Jennifer Gelatt
161. Rosa Torres Verges
162. Gail Stern
163. John Braun
164. Sara Soliman
165. Anthony Annuzzi

166. Steve Okken
167. Susan Viscardi
168. Lou Yvonne Scheidt
169. Marie Sniffen
170. Jason Kiefer
171. Mary Morse
172. Patty Pantale
173. Lisa Williams
174. Jessica Huddle
175. Alice Giunta
176. Lynn Schepis
177. Catherine Harris
178. Kimberlee Caputo
179. Tahaney Fahumy
180. Richard Galasso
181. Louis Graglia
182. Ruth Raymond
183. Azeb Hailu
184. Kenneth Sopher
185. Carl Morrison
186. Denise Barrett
187. Will Joseph
188. Lisa Connolly
189. Carol Lewandowski
190. Steve Weicberger
191. Joel Davis

192. Jacqueline Cochran
193. Joan Miller
194. Kedrick Brown
195. David Furbish
196. Erin Roneree
197. Holly Huber
198. Norma Tavarez
199. Raul Tavarez
200. Paul Vitt
201. Adriel Bastos
202. Sandra Cribbin
203. William Nieves
204. Sharon Uibel
205. Carl Mire
206. Kathleen Farley
207. Linda Karpyn
208. Katherine Young
209. Joy Whitney
210. Brian Wallace
211. Shawn Hyland
212. Shawn Hyland, Director of Advocacy, New Jersey Family Policy Center
213. Vincent Borrelli
214. Richard Donat
215. Lori Pena
216. Kathy Gagliardi
217. Carol Roberts

218. Earl Sammond
219. Karen Wesdyk
220. Amal Iskaros
221. Marian Howell
222. Gil Fernandez
223. Orest Mirchuk
224. Rob Riehl
225. Nicholas Vietri
226. Lisabeth Rich
227. Adam Davis
228. Robert Arcari
229. Kathy Gawrys
230. Lucy Franceus
231. Holly Hoffmann
232. Steve Chomo
233. Alice Bresett
234. John Griffiths
235. Dottie Scalzo
236. Joseph Franceus
237. Lynn Lappert
238. Maria Kahl
239. William N. Hons
240. Nancy Paladino
241. Sarah-Grace Outlaw
242. Harold Takooshian
243. Ray Merop

244. Gerard Palmieri
245. Kimberly Pachman
246. Jo Ann Puleo
247. David Ridder
248. Kimberly Pachman
249. Gail Lantz
250. John Robben
251. Kimberly Kraus
252. John and Maria Di Marco
253. Kelly Janho
254. Mark Papera
255. Michael Fichter
256. Irving Bodine
257. Werner Schwarzenbach
258. Tammy Chicko
259. Charles Wasilewski
260. John May
261. Walter Nistorenko
262. Michael J. Mulcahy
263. Linda Fantasia
264. Theresa Niles
265. Richard Wagner
266. Tigran Mikaelyan
267. Stephen Sandra Settles
268. Cliff Jones
269. Katie Doeler

270. Jim Livengood
271. Jean Pennie
272. AP DiFrancesco
273. Carole Devaul
274. Catherine Hannett
275. Darlene Peterzak
276. Kenneth Gustavsen
277. Dan Licknack
278. Lydia Gorter
279. Vincent Capone
280. Valerie Beckett
281. Dina-Marie Farrell
282. Luz Hunton
283. Niccole Munoz
284. Giacomo Palumbo
285. Joanne Kukol
286. Elizabeth Kinosian
287. Connie Jones
288. Barbara Ingalls
289. Lia Ribeiro
290. Milad Hanna
291. Elena Kornas
292. Rachel Janho
293. Jessica Henderson
294. Janet Warhol
295. Jenna Palmieri

296. Louis Susan Graglia
297. Melanie Higgins
298. Keith Harris
299. Robert Meyers
300. Carole Bates
301. Shantal Sanchez
302. Paul Zachary
303. Adam Schneider
304. William Murphy
305. Denis Mayer
306. Suzanne Bowles
307. Paulo Vares
308. Savannah Licknack
309. Richard Watson
310. Glennys Hyland
311. Shanna Scott
312. Rae Rinaldi
313. Dennis Morgan
314. Heather Venezia
315. Jennifer McNamara
316. Tanya Williams
317. Lindsey Kusior
318. Shanna Scott
319. Jeffrey Linn
320. Noah Fine
321. Michael Bolch

322. Linda Rockwell
323. Heather Venezia
324. Ted Geuther
325. Ann Walsh
326. Deborah Bradshaw
327. Dorothy Hargest
328. Scott Koenig
329. Cynthia Mitchell
330. Jacqueline Cox
331. Anne Tomasko
332. Dorothy Thomas
333. Dave Corrado
334. Barbara Vidal
335. Daniel Wiginton
336. Breanna Contravo
337. Theresa Leno
338. Michael Machos
339. Janice Staiger
340. Linda Salerno
341. Clemente Salerno
342. George Aue
343. Christine Flaherty
344. Donna Suszynski
345. Missy Jones
346. Kristine Monaco
347. George Cain

348. Victoria Risavy
349. Anne Bolick
350. Carol Palmquist
351. Marilyn Scharfenberg
352. Thomas Mooney
353. Chloe Contarino
354. Mark Avery
355. Pamela Opdyke
356. Kelly DeJesus
357. Alan Young
358. Kathy Salter
359. Patricia O'Neal
360. Gina Laughery
361. William Bergmann
362. Victoria Millheim
363. Conrad Orta
364. JoAnne Lotorto
365. Janet Dellaperute
366. Kenneth Menzel
367. Melissa Barber
368. John Trombetta
369. William Kessler
370. Jennifer Chinchilla
371. Michele Fischer
372. Gary Hibberd
373. Deborah E. Craig

374. Ron Meola
375. Sheila Dwyer
376. Jennifer Monti
377. MiMi Von See
378. Christina Lechnos
379. Charles Dennis
380. Jennifer Rose
381. Elena Francisco
382. Alan Cipolone
383. Jennifer Parese
384. Liz Mcpherson
385. Tim Sherwood
386. Kathy DeBell
387. Cheryl Siruk
388. Bill Fenty
389. Fran Bouwense
390. Gina Laughery
391. Ian Erickson
392. Dina Benford
393. Al Parker
394. Michelle Alvare
395. David Amendola
396. Jack Pensabene
397. Linette Rios
398. James Brunn
399. Teresa Hubbard

400. Carrie Carrie Babcock
401. Frances Drago
402. Lynette Vincenti
403. Mary March
404. Judith Baum
405. Edward Namowicz
406. Frank Meyers
407. Edward Duran
408. Haley Shorten
409. George Cain
410. Diane Potts
411. Kurt Kalenak
412. Rachel Janho
413. Joseph Spinosi
414. Kate Junice
415. Frank Settineri
416. Karen Iveson
417. Kevin Towers
418. Daniel Zaloum
419. Christine Tortora
420. Vera Olinski
421. Thomas Rapp
422. Jeffrey Ruth Wolinsky
423. William Willard
424. Amy Greene
425. Scott and Christine Ghysels

- 426. Lynn Kiernan
- 427. Raymond Torres
- 428. Elaine Santo
- 429. Maureen Dzwill
- 430. Martha Galloway
- 431. Alma I. Medina
- 432. Alma Medina
- 433. Lindsay Garbini
- 434. Patricia Wenzel
- 435. Andrew Paleologos
- 436. Frances Ogno
- 437. Lynn Gallagher
- 438. Diane DiGiovacchino
- 439. Clairissa Chapman
- 440. Mark Papera
- 441. Mario Dianora
- 442. Linda Rockwell
- 443. Robert Mazzeo
- 444. Scott Storms
- 445. Kalli Wood
- 446. Jeryl Maglio

1. **Comment:** The commenters raised concern that the title of N.J.A.C. 6A:7, Managing for Equality and Equity in Education, should be amended to reflect the Department is proposing to delete the term “equality” at N.J.A.C. 6A:7-1.3 and instead proposed to use the term “equity” throughout the chapter. The commenters questioned the rationale for keeping “equality” in the title when the term will no longer appear in rule text throughout the chapter. The commenters requested the chapter’s title be amended to remove “equality” for consistency /with rule text throughout the chapter, as proposed for amendment. (A, C)

Response: The Department agrees with the commenters and proposes to delete “Equality and” from the chapter’s title as the term does not appear in the chapter as proposed for amendment. The proposed amendment is as follows:

Managing for ~~[[Equality and]]~~ Equity in Education

2. **Comment:** The commenter questioned the use of “atypical hereditary cellular or blood trait” at recodified N.J.A.C. 6A:7-1.1(a). The commenter also asked whether the inclusion of “atypical hereditary cellular or blood trait” could create problems, including the expansion of the scope to all medical issues a person might have. Further, the commenter was concerned with whether the recodified N.J.A.C. 6A:7-1.1(a), as proposed for amendment, includes everything that is accounted for in the New Jersey Law Against Discrimination (NJLAD). (A)

Response: The term “atypical hereditary cellular or blood trait,” which is a protected characteristic pursuant to the NJLAD and N.J.S.A. 10:5-5.x, means sickle cell trait, hemoglobin C trait, thalassemia trait, Tay-Sachs trait, or cystic fibrosis trait. The term has been included at recodified N.J.A.C. 6A:7-1.1(a) along with all classes and characteristics that are protected pursuant to NJLAD. The Department does not anticipate a problem with “atypical hereditary cellular or blood trait” because the term, as defined at N.J.S.A. 10:5-5.x, is not applicable to all medical conditions.

3. **Comment:** The commenter asked why “affirmative action” is not defined in the chapter. The commenter stated that the term is used at N.J.A.C. 6A:7-1.5(a), which requires each school district to designate a member of its staff as an affirmative action officer and to form an affirmative action team and needs to be defined. (B)

Response: The Department contends that a definition for “affirmative action” is unnecessary because it is a generic term that is utilized in various areas of State law as it pertains to attempts to eliminate discrimination and create greater equity. N.J.A.C. 6A:7-1.5 clearly sets forth the duties and responsibilities of an affirmative action officer and affirmative action team.

4. **Comment:** The commenter raised concern about the replacement of the term “achievement gap” with “opportunity gap.” The commenter stated that changing terminology may cause problems related to Federal funding and other issues because other states and jurisdictions still utilize “achievement gap” and New Jersey’s terminology would be inconsistent. (C)

Response: The Department initially proposed to delete the term “achievement gap” at N.J.A.C. 6A:7-1.3 and replace it with “opportunity gap.” After a robust discussion with the State Board’s Policy Committee and additional internal deliberation, the Department proposes to maintain the term “achievement gap” and amend the definition and term’s use throughout the chapter. Please see Agency-initiated Change 2 below.

5. **Comment:** The commenter raised concerns regarding that proposed amendments at N.J.A.C. 6A:7-1.4(c) will eliminate the requirement for each district board of education to submit to the executive county superintendent the comprehensive equity plan for approval. The commenter questioned whether there is adequate staffing given the number of plans that the executive county superintendent will be required to review. The commenter expressed concern that the Department is placing its responsibility on the executive county superintendent and being removed from the process. (A)

Response: Under existing N.J.A.C. 6A:7-1.4(c), the school district submits the comprehensive equity plan to the Department and the executive county superintendent. The Department's proposed amendment will not change the process and, instead, will eliminate a duplicative step that can encumber the process. The Department contends that each executive county superintendent and State staff in the county offices of education are adequate to review the comprehensive equity plans. The executive county superintendents and the county offices of education are familiar with the school districts within the county and the issues that arise in the school districts. The executive county superintendent is a Department employee who operates the county offices of education, which serve as the focal point of general support, oversight, and routine communications between school districts in the county and the Department's central offices.

6. **Comment:** The commenter questioned whether the comprehensive equity plans work and whether the goal of the plans is being achieved by requiring school districts to go through the process. The commenter stated that this process has been going on for approximately 18 years and that the Department needs to ensure that the plans are working and that they justify the continuance of this approach. **(B)**

Response: School districts are required to conduct an analysis of the effectiveness of their comprehensive equity plans and adjust the plans based on the needs of the school district pursuant to N.J.A.C. 6A:7-1.4(c). Pursuant to N.J.A.C. 6A:7-1.4(d), each district board of education is required to submit a statement of assurance regarding achieving the objectives of the comprehensive equity plan. Statements of assurance allow the county office of education to assess whether school districts are achieving the comprehensive equity plan's goals.

7. **Comment:** The commenter stated that the comprehensive equity plan has to review the overrepresentation of certain student groups such as students with disabilities. The commenter provided the example of a teacher who was required by administrators to reduce the number of students receiving special education services and, therefore, was distraught because students were not receiving necessary services. **(B)**

Response: The comprehensive equity plan is one of the tools that school districts can use to ensure that access to educational services and programs is equitable for all protected classes of students. The plans can assist district boards of education and the Department in addressing opportunity and achievement gaps. The Department will continue to work to ensure that all students receive the services that they need.

8. **Comment:** The commenter stated the comprehensive equity plans are an important part of the process of ensuring equity. The commenter also stated that, if there is one student denied access or discriminated against, then the plans need to be in place. The commenter further stated that the comprehensive equity plans are not the only tool available to school districts and, on their own, are not enough to resolve all discrimination or eliminate all inequities. **(G)**

Response: The Department appreciates the commenter's support.

9. **Comment:** The commenter stated that improvement will never cease, and the comprehensive equity plans are reflection tools that allow school districts to make continuous growth and improvement. The commenter also stated that this is a process of reflection and that having comprehensive equity plans has resulted in New Jersey's public schools being in a better place than when the plans were first required. **(F)**

Response: The Department appreciates the commenter’s support.

10. **Comment:** The commenter stated that each comprehensive equity plan is developed locally, which allows school districts to analyze data and to customize the plans to their unique challenges. (C)

Response: The Department appreciates the commenter’s support.

11. **Comment:** The commenter stated that the comprehensive equity plans are important because there is an overrepresentation of African-American, Hispanic, and other minority students in special education. The commenter also stated that the comprehensive equity plan and other tools are needed to help school districts understand the behavior of individual students and not push students into special education when it is not necessary or appropriate. The commenter further stated that school districts should be providing other supports for the students and not classifying them from third grade and thereafter. (G)

Response: The Department agrees that the comprehensive equity plan is one of the tools that school districts can use to ensure access to educational services and programs is equitable for all protected classes of students.

12. **Comment:** The commenter stated that any failure to close achievement gaps is not solely the failure of the comprehensive equity plans or affirmative action. The commenter also stated that this is a complicated issue and there are number of factors that cause achievement gaps, including housing, socioeconomic status, homelife, and many other factors that cannot be addressed through comprehensive equity plans. (C)

Response: The Department agrees that that closing the achievement gap is a complicated issue that involves addressing many factors, and the comprehensive equity plans are one means.

13. **Comment:** The commenter stated that there is an underrepresentation of minority students in gifted and talented programs and Advanced Placement classes and that this needs to be addressed. (C)

Response: The Department appreciates the commenter’s concern regarding underrepresentation of minority students in gifted and talented programs and Advanced Placement classes. The comprehensive equity plan is one of the tools that school districts can use to ensure access to educational services and programs is equitable for all protected classes of students and the same can assist in addressing the opportunity gap that minority students face with regard to gifted and talented programs and Advanced Placement classes.

14. **Comment:** The commenters stated that the additional data points regarding factors associated with protected classes, as proposed at N.J.A.C. 6A:7-1.4(c)1, will assist school districts in identifying the appropriateness of educational services and programs for groups of students and for individual students. (C, F)

Response: The Department appreciates the commenters’ support for the proposed amendments at N.J.A.C. 6A:7-1.4(c)1.

15. **Comment:** The commenter questioned whether the comprehensive equity plan should be posted on the school district’s or the Department’s website. (G)

Response: School districts are not required to maintain websites. As proposed for amendment, the district board of education is responsible for submitting the

comprehensive equity plan to the executive county superintendent. The plan is made available to the public at a district board of education meeting, during which the plan is discussed and approved for submission. The Department does not require school districts that maintain a website, to post the comprehensive equity plan, because school districts are not required to maintain a website it leads to inconsistent practices throughout the state. The Department does not maintain all school district comprehensive equity plans because they are not submitted in a manner that the Department can post them and maintain accessibility on the Department website.

16. **Comment:** The commenter questioned whether students can be a member of a school district's affirmative action team. The commenter questioned whether N.J.A.C. 6A:7-1.5(a)3 should explicitly state that the affirmative action team can include a student. **(D)**

Response: The Department contends that it is unnecessary to amend N.J.A.C. 6A:7-1.5(a)3 to allow a student to be part of the affirmative action team. The affirmative action team is responsible to both students and faculty. N.J.A.C. 6A:7 does not regulate the composition of the affirmative action team, except that the affirmative action officer must be a member. School districts determine the composition of the team based on the diversity and identified needs of the school district's student population.

17. **Comment:** The commenter expressed opposition to the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i. The commenter stated that individuals have expressed concern about the amendment, which will permit school districts to separate classes based upon gender identity as opposed to biological sex (male or female), as currently allowed. The commenter stated that NJLAD also says that students are to be protected based upon sex, not just gender identity and the commenter stated that this change is discriminating against sex. The commenter expressed concern that the Department is dictating from the top down. The commenter also stated that many people think it is a bad idea to allow school districts to separate health class based upon gender identity. The commenter asked what was the basis for the proposed amendment and whether it is required by law. **(B)**

Response: If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education's guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student's gender identity.

Separating students for class sessions on human sexuality on the basis of "sex assigned at birth" or "biological sex" without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court's 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute's protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See Enforcement of Title IX of the Education Amendments of 1972 with Respect to

Discrimination on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States Department of Education recently explained that a 2014 guidance issued by the Department's Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

In addition, the Department disagrees with the commenter's position. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of an extensive review and consultation with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, eliminate discrimination, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq. N.J.A.C. 6A:7-1.7(b)2 requires district boards of education to ensure that courses are not offered separately based on any of the protected categories, including sex and gender identity or expression. As proposed for amendment, N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts, if they so choose, the ability to hold separate sessions based on gender identity that are developmentally appropriate portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. A school district is not required to hold separate sessions and can continue to develop health education curriculum based upon the school district's curriculum development and review process. All locally adopted instructional materials must be aligned to the school district's curriculum as a whole and the NJSL. Curriculum is required to be current, medically accurate, developmentally, and age-appropriate, and developed and selected through meaningful and ongoing consultation with the school community. Given the ability of school districts to align their curricula to local needs, the issues raised regarding comfort of students can be addressed at the local level when decisions are made regarding whether to hold separate sessions on this subject matter.

18. **Comment:** The commenter asked whether N.J.A.C. 6A:7-1.7(b)2i, as proposed for amendment, will essentially enable discrimination against people who are born a certain biological sex and, therefore, will be unable to ask questions in health class because of feeling uncomfortable because a biological male whose gender identity is that of a girl is in the class of students who identify as girls. **(D)**

Response: If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education's guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student's gender identity.

Separating students for class sessions on human sexuality on the basis of “sex assigned at birth” or “biological sex” without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court’s 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute’s protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States Department of Education recently explained that a 2014 guidance issued by the Department’s Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

In addition, the Department disagrees with the commenter’s position. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of an extensive review and consultation with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, eliminate discrimination, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq. N.J.A.C. 6A:7-1.7(b)2 requires district boards of education to ensure that courses are not offered separately based on any of the protected categories, including sex and gender identity or expression. As proposed for amendment, N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts, if they so choose, the ability to hold separate sessions based on gender identity that are developmentally appropriate portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. A school district is not required to hold separate sessions and can continue to develop health education curriculum based upon the school district’s curriculum development and review process. All locally adopted instructional materials must be aligned to the school district’s curriculum as a whole and the NJSLS. Curriculum is required to be current, medically accurate, developmentally, and age-appropriate, and developed and selected through meaningful and ongoing consultation with the school community. Given the ability of school districts to align their curricula to local needs, the issues raised regarding comfort of students can be addressed at the local level when decisions are made regarding whether to hold separate sessions on this subject matter.

19. **Comment:** The commenter stated that educating students about human sexuality is a multifaceted situation and the Department needs to be careful how it is addressed. The commenter also stated that parents can object to their child attending a particular lesson, but that does not solve the problem. The commenter further stated that there must be access for children who have other types of questions related to gender identity.

Response: The Department appreciates the comments.

20. **Comment:** The commenters raised concerns regarding the reduction in time for the implementation of the comprehensive equity plans from 180 days to 60 days and the possible withholding of funding for non-compliance as required at recodified N.J.A.C.

6A:7-1.8(e), as proposed for amendment. The commenters also inquired about what the education community is saying about the reduction in time for the implementation of the comprehensive equity plans and whether there has been a discussion with stakeholders regarding the comprehensive equity plans. **(A, B)**

Response: The Department contends that 60 days is an adequate timeframe for school districts to implement plans and that it is critical to reduce the implementation timeline to ensure that school districts do not have six months to implement inequitable practices. The Department has begun stakeholder engagement and education associations have not commented on the plans or raised concerns regarding the reduction in time for implementation.

- 21. Comment:** The commenter stated that the achievement gap is associated with only discrimination throughout the chapter, even though other factors contribute to the achievement gap. The commenter cited schools not being operated well as a factor. The commenter stated that charter schools have had success in decreasing achievement gaps and that the Department should expand them as one solution to eliminate the achievement gap. **(B)**

Response: The Department continues to address the number of factors that contribute to achievement gap and suggests that the generalization that charter schools have had success in decreasing achievement gaps does not hold true for all charter schools.

- 22. Comment:** The commenter stated that the future of New Jersey is dependent upon the Department, the State Board, administrators, and teachers to get things right and keep improving as it pertains to the achievement gap and issues of discrimination. **(A)**

Response: The Department agrees with the commenter.

- 23. Comment:** The commenter expressed general opposition to the proposed changes at N.J.A.C. 6A:7. **(1)**

Response: The Department is unable to respond to the commenter's objection as the commenter did not provide specifics or a rationale for the opposition.

- 24. Comment:** The commenter questioned the Department's focus on N.J.A.C. 6A:7 when students from other countries learn multivariable calculus in the equivalent of eighth grade, which is far before students in the United States. **(9)**

Response: N.J.A.C. 6A:7 is scheduled to sunset on March 2, 2023. Therefore, the Department has proposed to readopt the chapter with amendments to continue the chapter and update its provisions.

- 25. Comment:** The commenter opposed the proposed amendments at N.J.A.C. 6A:7-1.6(a)2 and requested that the State Board retain the existing language. The commenter stated that it is vital that parents, caregivers, and community members have the right, and are encouraged, to attend in-service training that is mandated by each school district for staff professional development. The commenter also stated that outside third-party groups or presenters are hired at significant cost to school districts and local taxpayers should have the right to evaluate the cost effectiveness of the programs. The commenter further stated that parents, caregivers, and community members also have the right to know the presentation's content and any activities associated with the training because community oversight is vital. The commenter encouraged the State Board to recommend that all district boards of education advertise, invite, and encourage community members to attend the professional development training sessions. **(2)**

Response: The Department disagrees with the commenter. The existing rule requires a district board of education to invite the parents and guardians to attend the actual training of district personnel, which may be inappropriate and disruptive to the professional development. The proposed amendments at N.J.A.C. 6A:7-1.6(a)2 will ensure that parents and community members are aware of professional development training provided to school district personnel regarding topics around equity in an appropriate format separate from the professional development training. Involving parents and community members in the professional development opportunities afforded to school district personnel is not optimal and considered outside of best practices.

26. **Comment:** The commenter opposed the proposed amendments at N.J.A.C. 6A:7-1.6(a)2. (3)

Response: Existing N.J.A.C. 6A:7-1.6(a)2 requires a district board of education to invite the parents and guardians to attend the actual training of educators, which would be inappropriate and disruptive to the professional development. The proposed amendments at N.J.A.C. 6A:7-1.6(a)2 will ensure that parents and community members are aware of professional development training provided to school district personnel regarding topics around equity in an appropriate format separate from the professional development training. Involving parents and community members in the professional development opportunities afforded to school district personnel is not optimal and considered outside of best practices.

27. **Comment:** The commenter requested that the State Board maintain the status quo and continue to allow school districts to determine how health and sexual education topics will be taught. The commenter requested that the Department require boys and girls to be taught in separate classrooms when teaching of health and sexual education because it will allow students to feel comfortable asking questions. The commenter also requested that the Department stop the indoctrination of children and honor parental and constitutional rights. (4)

Response: If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education's guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student's gender identity.

Separating students for class sessions on human sexuality on the basis of "sex assigned at birth" or "biological sex" without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court's 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute's protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States

Department of Education recently explained that a 2014 guidance issued by the Department's Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

In addition, the Department disagrees with the commenter's position. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of an extensive review and consultation with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, eliminate discrimination, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq. N.J.A.C. 6A:7-1.7(b)2 requires district boards of education to ensure that courses are not offered separately based on any of the protected categories, including sex and gender identity or expression. As proposed for amendment, N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts, if they so choose, the ability to hold separate sessions based on gender identity that are developmentally appropriate portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. A school district is not required to hold separate sessions and can continue to develop health education curriculum based upon the school district's curriculum development and review process. All locally adopted instructional materials must be aligned to the school district's curriculum as a whole and the NJSL. Curriculum is required to be current, medically accurate, developmentally, and age-appropriate, and developed and selected through meaningful and ongoing consultation with the school community. Given the ability of school districts to align their curricula to local needs, the issues raised regarding comfort of students can be addressed at the local level when decisions are made regarding whether to hold separate sessions on this subject matter.

- 28. Comment:** The commenter opposed the adoption of any amendments at N.J.A.C. 6A:7-1.7(b)2i and requested that the existing language be retained. The commenter stated that the concept of "gender identity" may be popular today, but it goes against all of human history until recently. The commenter also stated that the adoption of "gender identity" framework has already caused serious psychological and physical harm to students. The commenter further stated that the proposed standards expose the Commissioner and each member of the State Board to liability for a harm that will inevitably occur. The commenter also stated that there was serious learning loss due to the Governor's decision to close schools and a dramatic drop in test scores. The commenter further stated that the State Board should be focused on reading, writing, mathematics, and science and not on individuals and their sexuality. The commenter also stated that children's feelings on these issues may change. **(6)**

Response: If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the

other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education’s guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student’s gender identity.

Separating students for class sessions on human sexuality on the basis of “sex assigned at birth” or “biological sex” without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court’s 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute’s protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States Department of Education recently explained that a 2014 guidance issued by the Department’s Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

In addition, the Department disagrees with the commenter’s position. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of an extensive review and consultation with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, eliminate discrimination, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq. N.J.A.C. 6A:7-1.7(b)2 requires district boards of education to ensure that courses are not offered separately based on any of the protected categories, including sex and gender identity or expression. As proposed for amendment, N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts, if they so choose, the ability to hold separate sessions based on gender identity that are developmentally appropriate for portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. A school district is not required to hold separate sessions and can continue to develop health education curriculum based upon the school district’s curriculum development and review process. All locally adopted instructional materials must be aligned to the school district’s curriculum as a whole and the NJSLs. Curriculum is required to be current, medically accurate, developmentally, and age-appropriate, and developed and selected through meaningful and ongoing consultation with the school community. Given the ability of school districts to align their curricula to local needs, the issues raised regarding comfort of students can be addressed at the local level when decisions are made regarding whether to hold separate sessions on this subject matter.

To the commenter’s comments regarding learning loss and the other areas that the Department should be focusing on are outside of the scope of this rulemaking.

29. **Comment:** The commenter opposed the adoption of any amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter stated that the focus should be on pandemic-related learning loss

instead of identity politics. The commenter also stated that it is shocking that the State Board would be focused on identity politics when there has been learning loss due to the pandemic and students are far behind. The commenter further stated that the Department does not have a plan to help students get caught up, but rather is focused on infusing gender identity and progressive politics into every aspect of children’s education. The commenter also stated that the Department is oversexualizing children. (7)

Response: If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student’s expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education’s guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student’s gender identity.

Separating students for class sessions on human sexuality on the basis of “sex assigned at birth” or “biological sex” without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court’s 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute’s protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States Department of Education recently explained that a 2014 guidance issued by the Department’s Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

Additionally, the Department disagrees with the commenter’s position. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of an extensive review and consultation with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, eliminate discrimination, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq. N.J.A.C. 6A:7-1.7(b)2 requires district boards of education to ensure that courses are not offered separately based on any of the protected categories, including sex and gender identity or expression. As proposed for amendment, N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts, if they so choose, the ability to hold separate sessions based on gender identity that are developmentally appropriate portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. A school district is not required to hold separate sessions and can continue to

develop health education curriculum based upon the school district's curriculum development and review process. All locally adopted instructional materials must be aligned to the school district's curriculum as a whole and the NJSL. Curriculum is required to be current, medically accurate, developmentally, and age-appropriate, and developed and selected through meaningful and ongoing consultation with the school community. Given the ability of school districts to align their curricula to local needs, the issues raised regarding comfort of students can be addressed at the local level when decisions are made regarding whether to hold separate sessions on this subject matter.

The commenter's comments regarding learning loss and the other areas that the Department should be focusing on are outside of the scope of this rulemaking.

- 30. Comment:** The commenter opposed the adoption of any amendments to N.J.A.C. 6A:7-1.7(b)2i and stated that the focus should be on academics. The commenter also stated that tax dollars fund schools and expressed resentment over a lack of representation. The commenter further stated that children deserve to be taught academics and requested that classes on civics, the Constitution, and the branches of government be taught. **(8)**

Response: If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education's guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student's gender identity.

Separating students for class sessions on human sexuality on the basis of "sex assigned at birth" or "biological sex" without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court's 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute's protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States Department of Education recently explained that a 2014 guidance issued by the Department's Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

Additionally, the Department disagrees with the commenter's position. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of an extensive review and consultation with stakeholders who are experts in the field of educational equity. The

Department's objective is to ensure equity in education, eliminate discrimination, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq. N.J.A.C. 6A:7-1.7(b)2 requires district boards of education to ensure that courses are not offered separately based on any of the protected categories, including sex and gender identity or expression. As proposed for amendment, N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts, if they so choose, the ability to hold separate sessions based on gender identity that are developmentally appropriate portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. A school district is not required to hold separate sessions and can continue to develop health education curriculum based upon the school district's curriculum development and review process. All locally adopted instructional materials must be aligned to the school district's curriculum as a whole and the NJSL. Curriculum is required to be current, medically accurate, developmentally, and age-appropriate, and developed and selected through meaningful and ongoing consultation with the school community. Given the ability of school districts to align their curricula to local needs, the issues raised regarding comfort of students can be addressed at the local level when decisions are made regarding whether to hold separate sessions on this subject matter.

The commenter's concerns regarding academics and specific classes are outside the scope of the rulemaking.

- 31. Comment:** The commenters opposed the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenters asserted that, if amended, the regulation would force schools that have decided to separate students for certain health and physical education lessons to do so based upon gender identity. The commenters contend that this would be problematic in elementary grades that focus on biologically based puberty and physical growth and development. The commenters asserted that students need to learn about their sex's biological reproductive system and be encouraged to understand and take proper care of their anatomy. The commenters stated that the proposed amendment will hinder students from asking questions and seeking clarification regarding important information about their body's anatomy and physiology. The commenters expressed concerned that elementary students will be face an undue burden and are likely to become too confused and embarrassed to publicly discuss these sensitive topics with peers of the opposite sex present in the classroom because separating classes by gender identity will enable, for example, biological males that identify as girls the ability to interrupt the comfortable and trusting learning environment that young female elementary students deserve. **(9 to 445)**

Response: If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination. N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education's guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student's gender identity.

Separating students for class sessions on human sexuality on the basis of “sex assigned at birth” or “biological sex” without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court’s 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute’s protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States Department of Education recently explained that a 2014 guidance issued by the Department’s Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

Additionally, the Department disagrees with the commenter’s position. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of an extensive review and consultation with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, eliminate discrimination, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq. N.J.A.C. 6A:7-1.7(b)2 requires district boards of education to ensure that courses are not offered separately based on any of the protected categories, including sex and gender identity or expression. As proposed for amendment, N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts, if they so choose, the ability to hold separate sessions based on gender identity that are developmentally appropriate portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. A school district is not required to hold separate sessions and can continue to develop health education curriculum based upon the school district’s curriculum development and review process. All locally adopted instructional materials must be aligned to the school district’s curriculum as a whole and the NJSLS. Curriculum is required to be current, medically accurate, developmentally, and age-appropriate, and developed and selected through meaningful and ongoing consultation with the school community. Given the ability of school districts to align their curricula to local needs, the issues raised regarding comfort of students can be addressed at the local level when decisions are made regarding whether to hold separate sessions on this subject matter.

32. Comment: The commenters asked the Department to consider the following questions in regard to the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i:

- How will this impact many school districts that have locally approved policies that require male teachers to instruct male students on puberty and growth development and female teachers to instruct female students?
- How will parental concerns and objections be addressed?
- Will local parents and district boards of education once again face intimidation and threatening rhetoric from the Department such as withholding funding or removing district board of education members because they incorporated parental input in their decision-making process? **(9 to 445)**

Response: The Department thanks the commenters for the questions. The proposed amendments will have no impact on school district policies requiring male teachers to instruct students who identify as a boy or man on puberty and growth development and female teachers to instruct students who identify as girls or women. N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts if they so choose, the ability to hold separate sessions based upon gender identity that are developmentally appropriate portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. School districts are not required to separate students based upon gender identity as it pertains to these classes. Parents and guardians have always had the right to object to their child attending lessons related to health, family life education, or sex education pursuant to N.J.S.A. 18A:35-4.7. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i will not impact the statutory provisions. The Department expects that school districts will adhere to the regulatory requirements around teaching the important topics. However, school districts remain responsible for determining, how the classes will be taught. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student’s expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination. N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education’s guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student’s gender identity.

Separating students for class sessions on human sexuality on the basis of “sex assigned at birth” or “biological sex” without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court’s 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute’s protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States Department of Education recently explained that a 2014 guidance issued by the Department’s Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

33. **Comment:** The commenter opposed the amendments proposed at N.J.A.C. 6A:7 and stated that the proposed amendments defy biology, common sense, and law. The commenter stated that parents in the State of New Jersey have strongly objected to the sexualization of their children and the promotion of “transgender ideology.” The commenter also stated that research entitled *Transgender Research: Five Things Every*

Parent and Policy-Maker Should Know from The Institute for Research & Evaluation demonstrates the following:

1. “Gender dysphoria” in children is not a permanent condition and usually goes away on its own by young adulthood, if “transition” is not encouraged;
2. Social and cultural factors can have a significant influence on whether a young person will identify as transgender;
3. There is no scientific research showing that young children benefit from being taught in school about sexuality, transgender identity, or homosexuality, or testing whether such teaching is harmful; and
4. The “transition or suicide” claim that parents must choose between a “live trans son or a dead daughter” is not supported by scientific evidence.

The commenter claimed that, in light of the research, it is inappropriate and harmful to promote transgender ideology on impressionable vulnerable children. The commenter stated that “gender-confused youth” are being preyed upon by individuals promoting gender-affirming care. The commenter also stated that promoting gender affirmation in schools opens the door to mutilation where professionals in both education and medicine prioritize money and ideology over science, health, and what is in the best interests of New Jersey students. The commenter further stated that Federal and State laws protect the constitutional and legal rights of parents to make decisions concerning the care, custody, and control of their children and the liberty to direct the upbringing and education of children. The commenter also claimed that any violation of these rights can result in legal action against individuals or entities that infringe upon these rights. (446)

Response: The Department disagrees with the commenters’ position. Based upon the nature and subject matter of the comment, the Department presumes that the commenter is opposed to the amendments found at N.J.A.C. 6A:7-1.7(b)2i, though the commenter has not identified the same. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. That means that the assignment to a class session must be done based upon the student’s expressed gender identity. Permitting school districts to assign students to classes based upon sex assigned at birth or biological sex would not be consistent with State law. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-12(f), prohibits discrimination on the basis of gender identity, and generally requires a place of public accommodation (including a school), when reasonably separating individuals based on sex, to admit individuals to one or the other group based on their gender identity or expression. Relatedly, N.J.S.A. 18A:36-41(b)(8) anticipates that the Commissioner of Education’s guidelines to school districts concerning transgender students will include permitting a transgender student to participate in gender-segregated school activities in accordance with the student’s gender identity.

Separating students for class sessions on human sexuality on the basis of “sex assigned at birth” or “biological sex” without regard to their expressed gender identity would likely also violate protections of the rights of LGBTQ+ students under Title IX of the Education Amendments of 1972 (Title IX). Specifically, following the Supreme Court’s 2020 decision in *Bostock v. Clayton County*, the Federal authorities responsible for enforcing Title IX now interpret the statute’s protections against sex discrimination to reach discrimination on the basis of gender identity or sexual orientation. See *Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021). Further, in July of 2022, the United States Department of Education recently explained that a 2014 guidance issued by the

Department's Office for Civil Rights remains effective. See 87 Fed. Reg. 41,390, 41,529 (2022). Under that guidance, a recipient of funds from the United States Department of Education, must treat transgender students consistent with their gender identity in all aspects of the planning, implementation, enrollment, operation, and evaluation of single-sex classes. For these reasons, the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i is both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of an extensive review and consultation with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, eliminate discrimination, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq. N.J.A.C. 6A:7-1.7(b)2 requires district boards of education to ensure that courses are not offered separately based on any of the protected categories, including sex and gender identity or expression. As proposed for amendment, N.J.A.C. 6A:7-1.7(b)2i is a narrow and limited exception that permits school districts, if they so choose, the ability to hold separate sessions based on gender identity that are developmentally appropriate portions of classes dealing exclusively with human sexuality, provided that the course content for the sessions is the same. A school district is not required to hold separate sessions and can continue to develop health education curriculum based upon the school district's curriculum development and review process. All locally adopted instructional materials must be aligned to the school district's curriculum as a whole and the NJSLs. Curriculum is required to be current, medically accurate, developmentally, and age-appropriate, and developed and selected through meaningful and ongoing consultation with the school community. Given the ability of school districts to align their curricula to local needs, the issues raised regarding comfort of students can be addressed at the local level when decisions are made regarding whether to hold separate sessions on this subject matter.

The commenters' comment opposing the curriculum as required by statute, the NJSLs, and N.J.A.C. 6A:8 is outside of the scope of the proposed rulemaking.

- 34. Comment:** The commenter requested that the Department restore the requirement related to instruction regarding the Holocaust and genocide, as set forth at existing N.J.A.C. 6A:7-1.7(b)5. The commenter encouraged the Department to maintain the requirement to teach about genocides, like the Holocaust, in a developmentally appropriate way. The commenter stated that the proposed amendment should not ever have been considered and that the hard truths of the world must still be taught. **(3)**

Response: The proposed amendments at N.J.A.C. 6A:7-1.7(b)5 would not have removed the requirement that instruction regarding the Holocaust and genocide must be included in a school district's curriculum. The Department originally proposed to delete the definitions for "African American history curriculum" and "Holocaust and genocide curriculum" as they would not be used in the chapter, as proposed for amendment, because the Department proposed language that referred to all curricular requirements pursuant to N.J.A.C. 6A:8 and the New Jersey Student Learning Standards (NJSLs). The language proposed at first discussion included the curricular mandates related to the African-American history and Holocaust/genocide, as well as other curricular components related to the State's cultural commissions, the LGBTQ community, and individuals with disabilities. However, after a robust discussion with the State Board's Policy Committee and additional internal deliberation, the Department proposes at second discussion to maintain the existing language

at N.J.A.C. 6A:7-1.7(b), with amendments to reflect proposed changes in terminology, and to add references to the other similar curricular requirements. Please see Agency-initiated Change 1 below for details.

- 35. Comment:** The commenter objected to the elimination of the study of the Holocaust and genocide at N.J.A.C. 6A:7-1.7(b). The commenter stated that schools must continue to teach the history of the Holocaust to ensure it does not happen again and to make sure history is accurate. **(5)**

Response: The proposed amendments at N.J.A.C. 6A:7-1.7(b)5 would not have removed the requirement that instruction regarding the Holocaust and genocide must be included in a school district’s curriculum. The Department originally proposed to delete the definitions for “African American history curriculum” and “Holocaust and genocide curriculum” as they would not be used in the chapter, as proposed for amendment, because the Department proposed language that referred to all curricular requirements pursuant to N.J.A.C. 6A:8 and the New Jersey Student Learning Standards (NJSLS). The language proposed at first discussion included the curricular mandates related to the African-American history and Holocaust/genocide, as well as other curricular components related to the State’s cultural commissions, the LGBTQ community, and individuals with disabilities. However, after a robust discussion with the State Board’s Policy Committee and additional internal deliberation, the Department proposes at second discussion to maintain and amend the definitions at N.J.A.C. 6A:1.3 to better align the definitions with the language used in the statutory mandates for the Amistad Commission and the Commission on Holocaust Education. The Department also proposes at second discussion to maintain the existing language at N.J.A.C. 6A:7-1.7(b)5 and to add references to the other similar curricular requirements. Please see Agency-initiated Change 1 below for details.

- 36. Comment:** The commenters raised issues regarding the public comments received between December 2019 and February 2020 during the draft and review phase of the NJSLS that were adopted in June 2020. The commenters claimed that the adopted NJSLS were developmentally inappropriate and deceptively worse than the revisions that were publicly available. The commenters stated that the trust in New Jersey public schools has been undermined and that an unhealthy tension and intense conflict between parents and school districts has been created. The commenters also stated that local control of educational decisions best serve families and communities. **(9 to 445)**

Response: The comments are outside the scope of this rulemaking, which concerns the readoption of N.J.A.C. 6A:7.

Agency-initiated Changes

1. At second discussion, the Department proposes to not delete the definitions at N.J.A.C. 6A:7-1.3 for “African American history curriculum” and “Holocaust and genocide curriculum,” which were proposed for deletion at first discussion, and to instead amend the existing definitions to better align with the statutory mandates related to the Amistad Commission and the Commission on Holocaust Education. The Department also proposes, at second discussion, to amend existing N.J.A.C. 6A:7-1.7(b)5 and 6 to add language stating that all curricular requirements must be taught and not exclusively “African American history curriculum” and “Holocaust and genocide curriculum.” The Department proposes new N.J.A.C. 6A:7-1.7(b)7 to require that district boards of education ensure 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). The proposed amendments to the terms and regulations will include all curricular mandates related to African-American history and Holocaust/genocide, as well as other curricular components related to the State's cultural commissions, the LGBTQ community, and individuals with disabilities. The proposed changes at second discussion are as follows:

N.J.A.C. 6A:7-1.3

["African-American history curriculum" means instructional content, materials, and methods infused into the New Jersey Student Learning Standards (NJSLS) designed to enable students to learn and develop an understanding of the persecution, emancipation, discrimination, achievements, and contributions by people of African descent and how the experiences helped to transform America and continue to contribute toward the emergence of a global society.]

***"Amistad Commission curriculum" means instructional content, materials, and methods that were developed in consultation with the Amistad Commission and infused into the New Jersey Student Learning Standards (NJSLS) in accordance with N.J.S.A. 18A:35-4.42 and 4.43. The Amistad Commission curriculum as infused into the NJSLS is designed to enable students to learn and develop an understanding of the persecution, emancipation, discrimination, achievements, and contributions by people of African descent and how the experiences helped to transform America and continue to contribute toward the emergence of a global society. ***

["Holocaust and genocide curriculum means instructional content, materials, and methods infused into the NJSLS and meet the Holocaust/genocide mandate. Materials and curricula are designed to enable students to understand: genocide is a consequence of prejudice, bias, intolerance, and discrimination; issues of moral dilemma and conscience

have a profound effect upon a society; and all citizens share a responsibility to oppose prejudice and discrimination in all facets of their lives.]

***"Commission on Holocaust Education curriculum" means instructional content, materials, and methods that were developed in consultation with the New Jersey Commission on Holocaust Education and infused into the New Jersey Student Learning Standards (NJSLS) and that meet the Holocaust/genocide mandate set forth at N.J.S.A. 18A:35-28. Materials and curricula are designed to enable students to understand: genocide is a consequence of prejudice, bias, intolerance, and discrimination; issues of moral dilemma and conscience have a profound effect upon a society; and all citizens share a responsibility to oppose prejudice and discrimination in all facets of their lives. ***

N.J.A.C. 6A:7-1.7(b)4 through 7

4. Ensuring schools demonstrate the inclusion of a multicultural curriculum in its instructional content, materials, and methods, and ensuring students understand the basic tenet of multiculturalism; **[[and]]**
5. Ensuring [African-American history, as well as the history of other cultures, is infused into the curriculum and] **[[all curricular requirements pursuant to N.J.A.C. 6A:8 and the NSLS are]]** ***the Amistad Commission Curriculum is infused into the curriculum and is*** taught^{[[.]]}; [as part of U.S. history, pursuant to N.J.S.A. 18A:35-1 and the NJSLS;] **[[and]]**
- [6. Ensuring instruction on the Holocaust and other acts of genocide is included in the curriculum of all elementary and secondary schools, as developmentally appropriate, pursuant to N.J.S.A. 18A:35-28.]

- *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) and or developed by any commission constituted for the development of curriculum concerning any of the protected categories listed at N.J.A.C. 6A:7-1.1(a). ***

Note: The rule text provided above reflects the progression of the rule proposal. The rule text included in the Administrative Code portion of this document reflects the rule as it is being put forth at second discussion level.

2. At second discussion, the Department proposes to maintain the definition of “achievement gap” at N.J.A.C. 6A:7-1.3, with amendments, and its use throughout the chapter. The Department proposes to amend the definition of “achievement gap” so it encompasses all of the protected categories listed at N.J.A.C. 6A:7-1.1(a). The Department also proposes at second discussion to amend the proposed definition for “opportunity gap.” The Department proposes to maintain and amend “achievement gap” and amend proposed “opportunity gap” because each term represents a separate and distinct issue. “Opportunity gap” represents inputs and what can be affected by the chapter’s regulations. “Achievement gap” represents the results created by opportunity gaps and other factors. The proposed amendments to the definitions and at N.J.A.C. 6A:7-1.6(a) and 1.7(b), and recodified N.J.A.C. 6A:7-1.8(c)3 are as follows:

[“Achievement gap” means the difference in academic performance among student groups defined, at a minimum, by race, ethnicity, social and economic status, and student status, for example, limited English proficient or students with disabilities and other significant student populations, which may include gender, national origin, affectional or sexual orientation, religion, and marital status.]

***“Achievement gap” means the difference in academic performance among student groups as result of membership in one or more of the protected categories listed at N.J.A.C. 6A:7-1.1(a). ***

“Opportunity gap” means the difference in [[academic performance among student groups due to differences in opportunities that include, at a minimum, experiences impacted by]] ***access to educational activities and programs as result of membership in one or more of*** the protected categories listed at N.J.A.C. 6A:7-1.1(a).

N.J.A.C. 6A:7-1.6

- (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] ***achievement and*** opportunity gaps 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] **the protected categories listed at N.J.A.C. 6A:7-1.1(a).**

N.J.A.C. 6A:7-1.7

- (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] ***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 [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a).**

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

3. Progress targets for closing the [achievement] ***achievement and*** opportunity gaps;

Note: The rule text provided above reflects the progression of the rule proposal. The rule text included in the Administrative Code portion of this document reflects the rule as it is being put forth at second discussion level.

3. At second discussion, the Department proposes an amendment at N.J.A.C. 6A:7-1.4(c), which requires that each district board of education develop, once every three years, a comprehensive equity plan that must identify and correct all discriminatory and inequitable educational and hiring policies, patterns, programs, and practices affecting its facilities, programs, students, and staff. As the Department is proposing to repeal N.J.A.C. 6A:7-1.8, Equality in employment and contract practices, the Department proposes at N.J.A.C. 6A:7-1.4(c) to delete “and hiring” equity in hiring practices is governed by labor laws and regulations. The Department proposes to amend N.J.A.C. 6A:7-1.4(c) at second discussion as follows:

- (c) Each district board of education shall 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.



State of New Jersey

EDUCATION
TRENTON, NJ 08625-0500

Second Discussion
January 11, 2023

PHILIP P. MURPHY
Governor
SHEILA Y. OLIVER
Lt. Governor

ANGELICA ALLEN-MCMILLAN, Ed.D.
Acting Commissioner

To: Members, State Board of Education
From: Angelica Allen-McMillan, Ed.D., Acting Commissioner
Subject: N.J.A.C. 6A:7, Managing for Equality and Equity in Education
Reason for Action: Readoption with Amendments
Authority: N.J.S.A. 18A:4-15 and 18A:36-20
Sunset Date: March 2, 2023

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:7, Managing for Equality and Equity in Education, with amendments, including the re-titling of the chapter as “Managing for Equity in Education”. The chapter provides rules governing equality and equity in educational programs to guarantee each student equal access to all educational programs, services, and benefits of school district regardless of the student’s race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status. The rules also provide an objective basis for evaluating a school district's progress toward equality and equity in educational programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules directly impact students by ensuring school districts provide for their basic rights to equitable treatment and services and to a quality education.

N.J.A.C. 6A:7 was adopted as new rules, effective June 2, 2003, and readopted twice in 2008 and 2015.

As part of the current readoption, the Department proposes amendments and repeals to eliminate gendered nouns and pronouns; utilize more inclusive language reflective of protected categories or classes as defined under New Jersey Law Against Discrimination (NLAD), N.J.S.A. 10:5-12; streamline and clarify rules, procedures, and operations throughout the chapter; update terminology to align to provisions throughout Title 6A of the New Jersey Administrative Code, Title 18A of the New Jersey Statutes, and evidence-based practices regarding equity in education; and remove redundant language or sections within the chapter covered under other provisions and laws.

The Department proposes to amend the chapter’s title to delete “Equality and.” “Equality” means sameness, uniformity, and equivalence, and focuses on a student's access to educational resources. The Department proposes to delete the term throughout the chapter because “equity,” as proposed for amendment, better aligns with current terminology and evidence-based practices in education.

Unless otherwise noted in the Summary, the proposed amendments are to correct statutory or Administrative Code citations or for stylistic or grammatical improvement.

The following summarizes the chapter's provisions and the proposed amendments and repeals.

Subchapter 1. General Provisions

N.J.A.C. 6A:7-1.1 Purpose

This section sets forth the purpose of the chapter.

The Department proposes to recodify the first and second sentence at N.J.A.C. 6A:7-1.1 as recodified N.J.A.C. 6A:7-1.1(a) and the last sentence as recodified N.J.A.C. 6A:7-1.1(b).

The Department proposes amendments to the first sentence at recodified N.J.A.C. 6A:7-1.1(a), which states that the purpose of this chapter is to ensure all students, 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, are provided equal access to educational programs and services by district boards of education. The Department proposes to add housing status, immigration status, or any protected category as stated in N.J.S.A. 10:5-1 et seq.. The Department also proposes to include the following as protected categories or classes to better align the chapter's purpose with the NJLAD: civil union status, domestic partnership status, genetic information, pregnancy or breastfeeding, sex, atypical hereditary cellular or blood trait of any individual, the nationality of any individual, liability for services in the United States Armed Forces, and the nationality of any individual.

The Department proposes amendments in the second sentence at recodified N.J.A.C. 6A:7-1.1(a), which requires the educational programs to include, in part, high teacher expectations for students learning. Instead, the Department proposes to require that the educational programs include the professional standards for teachers and school leaders to align the chapter's purpose with N.J.A.C. 6A:9, Professional Standards, and 6A:10, Educator Effectiveness. The same amendment is proposed throughout the chapter, where necessary.

The Department proposes amendments at recodified N.J.A.C. 6A:7-1.1(b), which requires district boards of education to establish policies and procedures for the provision of educational activities and programs for all students, pursuant to laws and statutes that establish the protected categories of individuals covered by these rules. The Department proposes to delete the references to the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e) and the Equal Pay Act of 1963 (29 U.S.C. § 206(d)) because the Department is proposing to delete N.J.A.C. 6A:7-1.8, Equality in employment contract practices, as described below. Therefore, the Federal laws will no longer apply to the chapter.

N.J.A.C. 6A:7-1.2 Scope

This section sets forth the entities for which the chapter applies.

The Department proposes amendments at N.J.A.C. 6A:7-1.2, which states the rules specify standards that apply to district boards of education providing general education services to students in preschool through grade 12, special education services to students ages three through 21, or adult education programs, and to charter schools. The Department proposes to add "renaissance school projects" to include all local education agencies (LEAs). The Department also proposes to add that, unless otherwise indicated, "district board of education" and "school district" refer to the governing body of school districts, charter schools, and renaissance school

projects. The proposed amendment will clarify that the terms refer to the governing body of all entities that are subject to this chapter's provisions.

N.J.A.C. 6A:7-1.3 Definitions

The section sets forth the terms and definitions used throughout the chapter.

The Department proposes to amend the definition of "achievement gap," which means the difference in academic performance among student groups and includes a by race, ethnicity, social and economic status, and student status, as well as examples of student groups. The definition as proposed for amendment, instead, will encompass all of the protected categories listed at N.J.A.C. 6A:7-1.1(a).

The Department proposes amend the term "African American history curriculum," which means instructional content, materials, and methods infused into the NJSLS designed to enable students to learn and develop an understanding of the persecution, emancipation, discrimination, achievements, and contributions by people of African descent and how the experiences helped to transform America and continue to contribute toward the emergence of a global society. The Department proposes to amend the term and to "Amistad Commission curriculum." The Department also proposes to add that the content, materials, and methods referenced were developed in consultation with the Amistad Commission. The definition, as proposed for amendment, will align with the statutory mandates related to the Amistad Commission.

The Department proposes a definition for "chief school administrator" to mean the superintendent, the administrative principal if there is no superintendent, or charter school lead person and renaissance school project administrator.

The Department proposes the term "Commission on Holocaust Education curriculum" to mean " instructional content, materials, and methods that were developed in consultation with the New Jersey Commission on Holocaust Education and infused into the NJSLS and that meet the Holocaust/genocide mandate set forth at N.J.S.A. 18A:35-28. The proposed definition also states that materials and curricula are designed to enable students to understand: genocide is a consequence of prejudice, bias, intolerance, and discrimination; issues of moral dilemma and conscience have a profound effect upon a society; and all citizens share a responsibility to oppose prejudice and discrimination in all facets of their lives. The proposed definition will replace the term "Holocaust and genocide curriculum," which is proposed for deletion. The proposed amendments will more closely align the chapter with the statutory requirements related to Holocaust/genocide education.

The Department proposes to amend the definition of "comprehensive equity plan," which means a plan designed specifically to ensure an equal educational opportunity is available to all students through the identification and correction of discriminatory and inequitable practices prohibited by State and Federal law. The Department proposes to replace "equal educational opportunity" with "equitable educational opportunity" to align the definition with current terminology and evidence-based practices in the field of education. "Equal" implies that all students receive the exact same instruction regardless of a student's particular needs, while "equitable" supports differentiated instruction that is based on individual student needs. The Department proposes the same amendment throughout the chapter, where necessary.

The Department proposes to delete the term "disability" because it is included in the chapter's purpose, which aligns with the NJLAD protected categories. Therefore, a definition is unnecessary.

The Department proposes to amend the definition of “discriminatory practices,” which means a policy, action, or failure to act that limits or denies equal access to, or benefits from, the educational activities or programs of a school, or that generates or permits injustice or unfair or otherwise inequitable treatment of students or staff on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status. The Department proposes to replace the listed protected categories with “the protected categories listed at N.J.A.C. 6A:7-1.1(a)” to streamline the definition and align it with N.J.A.C. 6A:7-1.1(a), as proposed for amendment. The Department proposes the same amendment throughout the chapter, where necessary.

The Department proposes to amend the definition of “educational equity,” which 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. The Department proposes, instead, to state that the cohesive set emphasizes high expectations and achievement and ensures equitable access.” The proposed amendment will align of the definition with the term “equal,” as proposed for amendment.

The Department proposes to delete the term “employment and contract practices” because the term no longer will be used in the chapter, as proposed for amendment. Labor laws and regulations, which fall outside of the Department’s authority, govern the provision of equitable employment and contract practices. Personnel employed by LEAs can file equality in employment and contract practices complaints through local collective bargaining entities or through the New Jersey Division on Civil Rights.

The Department proposes to amend the term “equal educational opportunity” to “equitable educational opportunity.” The Department also proposes to amend the definition, which means the creation of environments that enable the provision of a thorough and efficient education as defined by the New Jersey Student Learning Standards (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. The Department proposes to add that “equitable education opportunity” also means 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. The proposed amendments will ensure the definition is inclusive of all protected categories.

The Department proposes to delete the term “equality,” which means sameness, uniformity, and equivalence. The definition also states that equality focuses on a student’s access to educational resources. The Department proposes to delete the term throughout the chapter, except in the chapter’s title, because “equity,” as proposed for amendment, better aligns with current terminology and evidence-based practices in education.

The Department proposes to amend the definition for “equity,” which means when all groups of students master the goals of the curriculum to approximately the same degree. The definition also states that equity focuses on students’ access to knowledge. The Department proposes, instead, that the term means students have the opportunity to master the goals of the curriculum in an educational environment that is fair, just, and impartial to all individuals. As proposed for amendment, the definition also will state that equity focuses on consistent and systematic access for all students to curriculum, resources, instruction, and environments that

sustain opportunities for excellent outcomes. The proposed amendments will support differentiated instruction and formative assessments aligned to the NJLS.

The Department proposes to delete the term “national origin,” which means ethnic groups consisting of persons from countries other than the United States of America and reflects a category established by the Federal government that includes persons of the following minority groups: Alaskan Native, Asian, Haitian, Hispanic or Latino, Native American, or Pacific Islander. Proposed amendments to the list of protected categories or classes that is referenced throughout the chapter will align the regulations with the NJLAD; therefore, a definition of one of the protected categories is unnecessary.

The Department proposes a definition for “opportunity gap” to mean the difference in access to educational activities and programs as result of membership in one or more of the protected categories listed at N.J.A.C. 6A:7-1.1(a). “Opportunity gap” is an asset-based term that represents the disparity in access to equitable educational opportunities that are regulated by this chapter based upon the membership in one of the protected categories listed at N.J.A.C. 6A:7-1.1(a).

N.J.A.C. 6A:7-1.4 Responsibilities of the district board of education

The section sets forth the responsibility of the district board of education to adopt and implement written educational equity policies.

The Department proposes an amendment at N.J.A.C. 6A:7-1.4(c), which requires that each district board of education develop, once every three years, a comprehensive equity plan that must identify and correct all discriminatory and inequitable educational and hiring policies, patterns, programs, and practices affecting its facilities, programs, students, and staff. The Department proposes to delete “and hiring” because hiring practices are governed by labor law and regulations. The proposed deletion also is consistent with the proposed repeal of N.J.A.C. 6A:7-1.8.

The Department proposes an amendment to the first sentence at N.J.A.C. 6A:7-1.4(c)1, which requires the district board of education to assess, prior to developing the comprehensive equity plan, the school district’s needs for achieving equity in educational programs based on an analysis of student performance data such as National Assessment of Educational Progress and State assessment results, preschool-through-grade-12 promotion/retention data and completion rates, and 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; and stakeholder satisfaction data. The purpose of the needs assessment is to identify and eliminate discriminatory practices and other barriers to achieving equity in educational programs. The Department proposes to delete “and behavioral” before “data” because that type of data is not collected. The Department also proposes to add attendance data. The same amendments are proposed at recodified N.J.A.C. 6A:7-1.8(c)1. The Department further proposes at N.J.A.C. 6A:7-1.4(c)1 to add the following to the types of data that can be considered as part of the school district’s analysis: attendance data; the federally mandated Civil Rights Data Collection; student access to educational activities and programs; discipline, graduation rate, and postsecondary enrolment; student, staff, and community member interviews; enrollment and scoring in advanced classes; and teacher workforce diversity. The proposed amendments more specifically identify data that may be analyzed prior to developing the comprehensive equity plan and ensure interoperability. The Department proposes in the second sentence to delete “and eliminate” as a needs assessment is used to identify inequities and inform the comprehensive equity plan.

The Department proposes to amend N.J.A.C. 6A:7-1.4(c)2ii, which requires the comprehensive equity plan to address equality in school and classroom practices. The Department proposes to add “educational activities and programs” to align the subparagraph to N.J.A.C. 6A:7-1.1, as proposed for amendment. The Department also proposes to delete N.J.A.C. 6A:7-1.4(c)2iii, which requires equality in employment and contract practices, pursuant to N.J.A.C. 6A:7-1.8, because labor laws and regulations govern this area.

The Department proposes an amendment at N.J.A.C. 6A:7-1.4(c)3 to add “measurable and actionable” to specify the types of goals, objectives, timelines, and benchmarks for measuring progress that must be included in comprehensive equity plans.

The Department proposes an amendment at N.J.A.C. 6A:7-1.4(c)4, which requires the district board of education to submit the comprehensive equity plan to the executive county superintendent for approval and a copy of the comprehensive equity plan to the Department. The Department proposes, instead, to state the executive county superintendent confirms completion of the plan and to delete the requirement that a copy of the plan be submitted to the Department. The Department also proposes amendments at N.J.A.C. 6A:7-1.4(c)4i, which states that, if the comprehensive equity plan is not approved by the executive county superintendent, the district board of education must revise the plan in accordance with the executive county superintendent’s instructions and to submit the revised plan within 30 days of the notification of non-approval. The proposed amendments will replace references to the executive county superintendent’s approval or non-approval with the executive county superintendent’s review of the plan for completion. The proposed amendments will clarify that the district board of education approves the comprehensive equity plan and the executive county superintendent ensures completion.

The Department proposes an amendment at N.J.A.C. 6A:7-1.4(d), which requires each district board of education to submit to the Department at the end of each school year a statement of assurance regarding achieving the objectives of the comprehensive equity plan. The Department proposes to replace “Department” with “executive county superintendent” to specify to whom the board of education submits the annual statement of assurance. The Department proposes new N.J.A.C. 6A:7-1.4(d)4 to require the chief school administrator to certify in the statement of assurance that the school district has evaluated the comprehensive equity plan for effectiveness and has submitted a revised comprehensive equity plan to the executive county superintendent, if necessary. The proposed regulation is necessary because the existing rules do not to require school districts to evaluate the effectiveness of their comprehensive equity plans and modify them, as necessary.

The Department proposes to recodify existing N.J.A.C. 6A:7-1.4(d)4 as new N.J.A.C. 6A:7-1.4(d)5.

N.J.A.C. 6A:7-1.5 Affirmative action officer

The section requires the district board of education to annually designate a member of its staff as the affirmative action officer and to form an affirmative action team to coordinate and implement the chapter’s requirements. The section also sets forth the responsibilities assigned to the affirmative action officer and team.

The Department proposes an amendment to the first sentence at N.J.A.C. 6A:7-1.5(a), which requires each district board of education annually to designate a member of its staff as the affirmative action officer and form an affirmative action team, of whom the affirmative action officer is a member, to coordinate and implement the chapter’s requirements. The Department

proposes to delete “of whom the affirmative action officer is a member” because this responsibility will be relocated to proposed new N.J.A.C. 6A:7-1.5(a)2iv.

The Department proposes new N.J.A.C. 6A:7-1.5(a)3 to state that the affirmative action officer may also serve as the school district’s Title IX coordinator to clarify roles the affirmative action officer may also have within the school district. The Department proposes to recodify existing N.J.A.C. 6A:7-1.5(a)3 as new N.J.A.C. 6A:7-1.5(a)4.

The Department proposes new N.J.A.C. 6A:7-1.5(a)4i to require the affirmative action team to include, to the extent possible, members who represent the diversity of the school district’s student population. The proposed subparagraph will ensure members of the affirmative action team represent the diversity of individuals from protected classes listed at N.J.A.C. 6A:7-1.1(a). The Department proposes to recodify existing N.J.A.C. 6A:7-1.5(a)3i, ii, iii, and v as new N.J.A.C. 6A:7-1.5(a)3ii, iii, iv, v, and vi, respectively. The Department proposes at recodified N.J.A.C. 6A:7-1.5(a)4iv, to delete “with the affirmative action officer” because the affirmative action officer already is a member of the affirmative action team and will collaborate on coordination of professional development training.

N.J.A.C. 6A:7-1.6 Professional development

The section requires each district board of education to provide, on a continuing basis, professional development for all school district personnel to identify and resolve problems associated with the student achievement gap and other inequities on the basis of protected categories and classes. The section also requires the Commissioner to provide technical assistance to school districts for the development of policy guidelines, procedures, and in-service training for affirmative action officers.

The Department proposes in this section the same amendments regarding achievement gap and the protected categories and classes as described above.

The Department proposes an amendment at N.J.A.C. 6A:7-1.6(a), which requires each district board of education to provide, on a continuing basis, professional development training 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 race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status. The Department proposes to delete “arising from prejudice” to align to evidence-based practices regarding equity in education and the remainder of the chapter. Inequities must be addressed regardless of the cause.

The Department proposes an amendment at N.J.A.C. 6A:7-1.6(a)1, which requires the professional development to be provided to all certificated and non-certificated staff. The Department proposes, instead, to require the professional development training to be differentiated based on staff position type and based on the analysis of data conducted pursuant to N.J.A.C. 6A:7-1.4(c)1. The proposed amendments will ensure that all staff receive professional development training necessary to succeed in their respective positions since knowledge and skills needed vary by position, role, and responsibilities.

The Department proposes amendments at N.J.A.C. 6A:7-1.6(a)2, which requires the district board of education to invite parents and other community members to participate in the professional development training. The Department proposes, instead, to require the district board of education to ensure that parents and community members are aware of professional development training provided to school district personnel regarding topics around equity. The proposed amendments ensure that parents and community members receive information

regarding topics around equity in an appropriate format separate from professional development training for school district personnel.

The Department proposes amendments at N.J.A.C. 6A:7-1.6(a)3, which requires the district board of education to ensure all new staff are provided within the first year of employment with professional development training on educational equity issues. The Department proposes to replace “year” with “90 days” to expedite the timeframe during which the district board of education must provide to new staff professional development training on educational equity issues.

N.J.A.C. 6A:7-1.7 Equality in school and classroom practices

The section requires each district board of education to provide all students with equal and bias-free access to all school facilities, courses, programs, activities, and services. The section also requires district boards of education to ensure the school district’s curriculum and instruction are aligned to NJSLs and address the elimination of discrimination by narrowing the achievement gap, providing equity in educational programs, and providing opportunities for students to interact positively with others. The section further requires district boards of education to ensure all students have access to adequate and appropriate counseling services and equitable and co-educational physical education and athletic programs.

The Department proposes an amendment at N.J.A.C. 6A:7-1.7(a)2, which requires each district board of education to 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 attaining, within each school, minority representation that approximates the school district’s overall minority representation. The regulation also states that 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. The Department proposes to replace “racial balance” with “a representative balance” to foster alignment to protected categories and classes. The Department proposes an amendment at N.J.A.C. 6A:7-1.7(a)3, which requires each district board of education to utilize, 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. The Department proposes, instead, to require the use of an assessment that evaluates a student’s English language proficiency on the four domains of listening, speaking, writing, and reading for determining the eligibility and placement of students who may be identified as multilingual. The proposed amendments will align the regulation with N.J.A.C. 6A:15, Bilingual Education. The proposed amendment also reflects the current use of “multilingual learner” to refer to students whose native language is other than English.

The Department proposes amendments at N.J.A.C. 6A:7-1.7(b)2i, which permits district boards of education to conduct portions of classes that deal exclusively with human sexuality to be conducted in separate developmentally appropriate sessions for male and female students, provided the course content for such separated conducted sessions is the same. The Department proposes to replace “for male and female students” with “based on gender identity.” The proposed amendment will allow portions of classes that deal exclusively with human sexuality to be conducted in separate developmentally appropriate sessions based on gender identity of the students, provided the course content for such separated conducted sessions is the same. The proposed amendment will provide school districts with the necessary level of flexibility in determining how to conduct sessions regarding portions of classes that deal exclusively with human sexuality. The proposed amendment is consistent with the New Jersey Law Against

Discrimination, Title IX of the Education Amendments of 1972 (Title IX), and [guidance](#) issued by the United States Department of Education’s Office for Civil Rights.

The Department proposes amendments at N.J.A.C. 6A:7-1.7(b)3, which requires each district board of education to ensure its curriculum and instruction reduce or prevent the underrepresentation of minority, female, and male students in all classes and programs, including gifted and talented, accelerated, and advanced classes. The Department proposes, instead, to require the curriculum and instruction to increase and promote equitable representation of all students in all classes and programs. The proposed amendments will use assets-based language, remove gender-specific language, be inclusive of all protected classes and categories for which this chapter applies, and ensure all classes and programs offered by the school district are represented.

The Department proposes amendments at N.J.A.C. 6A:7-1.7(b)5, which requires each district board of education to ensure its curriculum and instruction are infused with African-American history, as well as the history of other cultures, and taught as part of U.S. history, pursuant to N.J.S.A. 18A:35-1 and the NJSLS. The Department proposes, instead, to require a district board of education to ensure that the curriculum developed by the Amistad Commission is infused into the curriculum and is taught. The Department proposes amendments at N.J.A.C. 6A:7-1.7(b)6, which requires each district board of education to ensure that instruction on the Holocaust and other acts of genocide is included in the curriculum of all elementary and secondary schools, as developmentally appropriate. The Department proposes, instead, to require the Commission on Holocaust Education curriculum to be included in a school district’s curriculum. The Department also proposes new N.J.A.C. 6A:7-1.7(b)7 to ensure that all curricular requirements pursuant to N.J.A.C. 6A:8 and the NSLS are taught, including any of the curriculum concerning any of the protected classes listed at N.J.A.C. 6A:7-1.1(a) or curriculum developed by any commission legislatively constituted for the purpose of developing curriculum any of the protected categories listed at N.J.A.C. 6A:7-1.1(a). The proposed amendments will encompass the curricular mandates related to the Amistad Commission, the Commission on Holocaust Education, as well as other curricular components related to the State’s cultural commissions, the LGBTQ community, and individuals with disabilities.

The Department proposes amendments at N.J.A.C. 6A:7-1.7(d), which requires the district board of education to ensure the school district's physical education and athletic programs are equitable and co-educational and do not discriminate on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status. The Department proposes to delete the reference to athletic programs because the New Jersey Interscholastic Athletic Association (NJSIAA) regulates athletic programs rather than the Department. The Department also proposes to replace “equitable and co-educational” with “in a co-educational setting that is developmentally appropriate” to ensure that the programs can meet the needs of all categories of protected classes based on students’ developmental needs.

The Department proposes amendments at N.J.A.C. 6A:7-1.7(d)2, which allows a school district to choose to operate separate teams for the two sexes in one or more sports or single teams open competitively to members of both sexes, as 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. The Department proposes to replace the references to “two” or “both” sexes with “based on sex” or “all” sexes, respectively, to ensure that the regulation captures all gender identities and not only male and female.

N.J.A.C. 6A:7-1.8 Equality in employment and contract practices

The section requires school districts to ensure all persons have equal and bias-free access to all categories of employment in the State’s public education system. The rules also prohibit district boards of education from entering into any contract with a person, agency, or organization that discriminates on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status. The section also prohibits district boards of education from assigning, transferring, promoting, or retaining staff, or failing to do so, on the sole basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status. The rules further require district boards of education to ensure equal pay for equal work among members of the school district’s staff.

The Department proposes to repeal the section because its requirements are protected by labor laws and regulations.

N.J.A.C. 6A:7-1.9 Accountability

The section requires each district board of education to comply with the chapter’s requirements regardless of the rules or regulations of any organization, club, athletic association, or other league or group. The rules also require the comprehensive equity plan to include an assessment of the school district’s needs for achieving equity in education programs. The section further stipulates the required contents of the comprehensive equity plan, timelines for its creation and implementation, and possible sanctions if the plan is not implemented within 180 days of approval.

The Department proposes to recodify existing N.J.A.C. 6A:7-1.9 as new N.J.A.C. 6A:7-1.8.

The Department proposes amendments at recodified N.J.A.C. 6A:7-1.8(a) to clarify that the regulation includes any rule or regulation of any “recreational” organization, club, athletic association, or other league or “organizing” group.

The Department also proposes amendments at recodified N.J.A.C. 6A:7-1.8(c)1, which requires the comprehensive equity plan to contain an assessment of the school district’s needs for achieving equity in educational programs. The regulation also requires the assessment to 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 and completion rates, and re-examination and re-evaluation of classification and placement of students in special education programs if there is overrepresentation within certain groups. The Department proposes to replace “limited English proficiency” with “multilingual learner status, homeless status” to align the regulation with N.J.A.C. 6A:15 and 6A:17. The Department also proposes to replace “overrepresentation” with “disproportionality” because the latter is inclusive of both overrepresentation and underrepresentation.

The Department proposes to delete recodified N.J.A.C. 6A:7-1.8(d), which requires the comprehensive equity plan shall be written every three years, because the requirement already appears at N.J.A.C. 6A:7-1.4(c).

The Department proposes to recodify existing N.J.A.C. 6A:7-1.9(e) and (f) as new N.J.A.C. 6A:7-1.8(d) and (e), respectively.

The Department proposes amendments at recodified N.J.A.C. 6A:7-1.8(d), which requires the district board of education to initiate the comprehensive equity plan within 60 days

of its approval and to implement the plan in accordance with the timelines approved by the Department. The Department proposes, instead, to require the district board of education to implement the comprehensive equity plan within 60 days of the executive county superintendent's certification of completion. The proposed amendments will clarify that the executive county superintendent certifies completion of the comprehensive equity plan and each board of education approves the plan.

The Department proposes amendments at recodified N.J.A.C. 6A:7-1.8(e), which states that the Commissioner will impose appropriate sanctions if the district board of education does not implement the comprehensive equity plan within 180 days of the plan's approval date, or fails to report its progress annually. The regulation also states that 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. The Department proposes to replace the 180-day deadline with a 60-day timeframe to ensure that school districts are not implementing inequitable practices for up to six months. The Department further proposes to replace the reference to the plan's approval with the executive county superintendent's certification of completion because the Commissioner certifies completion of the comprehensive equity plan through the executive county superintendent.

N.J.A.C. 6A:7-1.10 Appeals

The section sets forth how to resolve a dispute arising under the chapter.

The Department proposes to repeal N.J.A.C. 6A:7-1.10, as the provisions already exists at N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments and repeals provide parents, students, school district officials, and the general public with a concise summary of the legal framework governing equity and problems associated with the opportunity gap in the public schools. As such, the rules proposed for readoption with amendments and repeals identify inequitable practices and define factors that constitute equity in an educational setting.

Eliminating inequity in school communities and in society requires that inequitable practices in an educational setting be explicitly defined and prohibited. The rules proposed for readoption with amendments and repeals provide school districts, parents, students, and other citizens with a clear guide and mechanism for all students to have equitable access to educational opportunity and have equitable opportunity for learning by narrowing the opportunity gap.

Economic Impact

The existing rules require school districts to hire an affirmative action officer and to create a comprehensive equity plan, which may result in personnel costs to a school district. School districts are also required to address any equity needs identified through a needs assessment, which may require a school district to incur costs depending upon the identified deficiency and cost to remediate. The proposed amendments and repeals will not change the current economic impact on school districts. School districts receive State aid that may be utilized to fulfill the chapter's requirements.

Federal Standards Statement

Inclusion of all protected categories will allow district boards of education to develop policies that protect students and staff from inequitable educational environments pursuant to: 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.). There are no other points in the rules where the rules exceed Federal standards. There are no other Federal laws or regulations that impact the rules proposed for readoption with amendments and repeals.

Jobs Impact

The Department anticipates the rules proposed for readoption with amendments and repeals will have no impact upon the generation or loss of jobs in the State. The rules proposed for readoption with amendments and repeals concern school district, charter school, and renaissance school project operations.

Agriculture Industry Impact

The rules proposed for readoption with amendments and repeals will have no impact upon the agriculture industry in the State. The rules proposed for readoption with amendments and repeals concern school district, charter school, and renaissance school project operations.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments and repeals do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments and repeals impact school districts, charter schools, and renaissance school projects.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the rules proposed for readoption with amendments and repeals will have any impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the rules proposed for readoption with amendments and repeals would evoke a change in the average costs associated with housing because the rules apply only to school district, charter school, and renaissance school project operations.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and repeals will have an insignificant impact on smart growth. There is an extreme unlikelihood the rules proposed for readoption with amendments and repeals would evoke a change in housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments and repeals concern school district, charter school, and renaissance school project operations.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood the proposed rules for readoption with amendments and repeals would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendments concern school district, charter school, and renaissance school project operations.

Full text of the rules proposed for readoption and the proposed amendments and repeals follow (additions indicated as boldface **thus** and ***thus***; deletions indicated in brackets [thus] and [[thus]]):

Chapter 7. Managing for [[Equality and]] Equity in Education

Subchapter 1. General Provisions

6A:7-1.1 Purpose

- (a) The purpose of this chapter is to ensure all students, regardless of **housing status, socioeconomic status, immigration status, or any protected category as stated in 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, [gender] **genetic information, pregnancy or breastfeeding, sex,** gender identity or expression, religion, disability, [or socioeconomic status,] **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 [and services] by district boards of education. The educational **activities and** programs [and services] 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 [high teacher expectations for student learning] **professional standards for teachers and school leaders.**
- (b) The rules specify standards for district boards of education in establishing policies and procedures for the provision of educational **activities and** programs [and services] for all students, pursuant to: Article I, Paragraph 5 of the New Jersey State Constitution; the New Jersey Law Against Discrimination (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.); [the Equal Employment Opportunity Act of 1972 (42 U.S.C. § 2000e);] Title IX of Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.); [the Equal Pay Act of 1963 (29 U.S.C. § 206(d));] 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.).

6A:7-1.2 Scope

The rules specify standards that apply to district boards of education providing general education services to students in preschool through grade 12, special education services to students ages three through 21, or adult education programs, and to charter schools[,] **and renaissance school projects. Throughout this chapter, unless otherwise indicated, “district board of education” and “school district” refer to the governing body of school districts, charter schools, and renaissance school projects.**

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.

“Achievement gap” means the difference in academic performance among student groups [defined, at a minimum, by race, ethnicity, social and economic status, and student status, for example, limited English proficient or students with disabilities and other significant student populations, which may include gender, national origin, affectional or sexual orientation, religion, and marital status] ***as result of membership in one or more of the protected categories listed at N.J.A.C. 6A:7-1.1(a) *.**

“Affectional or sexual orientation” means male or female heterosexuality, homosexuality, or bisexuality by inclination, practice, identity, or expression, having a history thereof, or being perceived, presumed, or identified by others as having such an orientation.

“[African-American history] **Amistad Commission** curriculum” means instructional content, materials, and methods ***that were developed in consultation with the Amistad Commission**

and* infused into the New Jersey Student Learning Standards (NJSLs) ***in accordance with N.J.S.A. 18A:35-4.42 and 4.43. The Amistad Commission curriculum as infused into the NJSLs is*** designed to enable students to learn and develop an understanding of the persecution, emancipation, discrimination, achievements, and contributions by people of African descent and how the experiences helped to transform America and continue to contribute toward the emergence of a global society.

“Chief school administrator” means the superintendent, the administrative principal if there is no superintendent, or charter school lead person and renaissance school project administrator.

***“Commission on Holocaust Education curriculum” means instructional content, materials, and methods that were developed in consultation with the New Jersey Commission on Holocaust Education and infused into the New Jersey Student Learning Standards (NJSLs) and that meet the Holocaust/genocide mandate set forth at N.J.S.A. 18A:35-28. Materials and curricula are designed to enable students to understand: genocide is a consequence of prejudice, bias, intolerance, and discrimination; issues of moral dilemma and conscience have a profound effect upon a society; and all citizens share a responsibility to oppose prejudice and discrimination in all facets of their lives.**

“Comprehensive equity plan” means a plan designed specifically to ensure an [equal] **equitable** educational opportunity is available to all students through the identification and correction of discriminatory and inequitable practices prohibited by State and Federal law.

[“Disability” means any physical limitation, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a service or guide dog,

wheelchair, or other remedial appliance or device. “Disability” also means any mental, psychological, or developmental limitation that results from an anatomical, psychological, physiological, or neurological condition and that prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.]

“Discriminatory practices” means a policy, action, or failure to act that limits or denies equal access to, or benefits from, the educational activities [or] **and** programs of a school, or that generates or permits injustice or unfair or otherwise inequitable treatment of students or staff on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a).**

"Educational activities and programs" means all activities and programs conducted, sponsored, or permitted by the school during the school day, after regular school hours, on weekends, or during the summer months.

"Educational equity" means a cohesive set of policies, programs, and practices that [ensure] **emphasizes** high expectations[, positive] **and** achievement patterns, and [equal] **ensures equitable** access to educational opportunity for all learners, including students and teachers.

["Employment and contract practices" means all policies and practices governing the recruitment, hiring, assignment, evaluation, retention, and promotion of a school’s employees, the solicitation and awarding of contracts, and the purchasing of materials and services.]

“[Equal] **Equitable** 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 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; 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] **opportunity** gap; and when all students and staff enjoy [equal] **equitable** access to all programs and benefits provided by, or offered within, [the public schools of] the school district.

[“Equality” means sameness, uniformity, and equivalence. Equality focuses on a student's access to educational resources.]

“Equity” means [when] all [groups of] students **have the opportunity to** master the goals of the curriculum [to approximately the same degree] **in an educational environment that is fair, just, and impartial to all individuals.** Equity focuses on [students'] **consistent and systematic access for all students to [knowledge] curriculum, resources, instruction, and environments that sustain opportunities for excellent outcomes.**

“Formative assessments” means classroom assessments aligned to the NJSLs administered on an ongoing basis to inform instruction and monitor student progress.

“Gender identity or expression” means having or being perceived as having a gender-related identity or expression whether or not stereotypically associated with a person's assigned sex at birth.

[“Holocaust and genocide curriculum” means instructional content, materials, and methods that are infused into the NJSLs and meet the Holocaust/genocide mandate. Materials and curricula are designed to enable students to understand: genocide is a consequence of prejudice, bias, intolerance, and discrimination; issues of moral dilemma and conscience have a profound effect upon a society; and all citizens share a responsibility to oppose prejudice and discrimination in all facets of their lives.]

"Multicultural curriculum" means to incorporate throughout the curriculum the experiences, perspectives, and accomplishments of [men and women] **persons** 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.

["National origin" means ethnic groups consisting of persons from countries other than the United States of America and reflects a category established by the Federal government that includes persons of the following minority groups: Alaskan Native, Asian, Haitian, Hispanic or Latino, Native American, or Pacific Islander.]

“Opportunity gap” means the difference in access to educational activities and programs as result of membership in one or more of the protected categories listed at N.J.A.C. 6A:7-1.1(a).

"Prejudice" means feelings, opinions, attitudes, or perceptions that produce disparate educational or hiring treatment of, or have adverse educational or hiring impact upon, any person or group of persons on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a).**

6A:7-1.4 Responsibilities of the district board of education

- (a) Each district board of education shall adopt and implement written educational equity policies that:
 - 1. Recognize and value the diversity of persons and groups within [society] **the community** 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] **the protected categories listed at N.J.A.C. 6A:7-1.1(a);** and

2. Promote [equal] **equitable** educational opportunity and 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] **the protected categories listed at N.J.A.C. 6A:7-1.1(a)**.
- (b) The district board of education shall inform the school community of its policies in a manner including, but not limited to, the school district's customary methods of information dissemination.
- (c) Each district board of education shall 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.
 1. Prior to developing the comprehensive equity plan, the district board of education shall assess the school district's needs for achieving equity [and equality] in educational **activities and** programs based on an analysis of [student performance] data, [such as] **including, but not limited to**, National Assessment of Educational Progress and State assessment results, 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 [over representation] **overrepresentation** within [certain groups] **the protected categories listed at N.J.A.C. 6A:7-1.1(a)**; staffing practices; student demographic [and behavioral] data; **attendance data**; quality of program data; **the federally mandated Civil Rights Data Collection**; **student access to educational activities and programs**; **discipline, graduation rate, and postsecondary enrollment**; **student, staff, and community member**

interviews; enrollment and scoring in advanced classes; teacher workforce diversity; and stakeholder satisfaction data. The [purpose of the] needs assessment [is to] **shall** identify [and eliminate] discriminatory practices and other barriers to achieving equity in educational **activities and** programs, **if applicable**.

2. The comprehensive equity plan shall address:
 - i. Professional development, pursuant to N.J.A.C. 6A:7-1.6; **and**
 - ii. [Equality] **Equity** in school and classroom practices, **educational activities and programs** pursuant to N.J.A.C. 6A:7-1.7[; and].
 - [iii. Equality in employment and contract practices, pursuant to N.J.A.C. 6A:7-1.8.]
 3. The comprehensive equity plan shall include **measurable and actionable** goals, objectives, timelines, and benchmarks for measuring progress.
 4. The district board of education shall submit the comprehensive equity plan to the executive county superintendent for [approval and a copy of the comprehensive equity plan to the Department] **confirmation of completion**.
 - i. If the **executive county superintendent determines that the** comprehensive equity plan is not [approved by the executive county superintendent] **complete**, the district board of education shall revise the plan in accordance with the **executive county superintendent's** instructions [of the executive county superintendent] and shall submit to the executive county superintendent the revised plan within 30 days of the notification of [non-approval] **incompletion**.
- (d) Each district board of education shall submit to the [Department] **executive county superintendent** at the end of each school year a statement of assurance regarding achieving the objectives of the comprehensive equity plan. The chief school administrator also shall certify in the statement of assurance to the following:

1. The school district will continue to maintain compliance with N.J.A.C. 6A:7; Titles VI and VII of the Civil Rights Act of 1964; the Guidelines for the Desegregation of Public Schools in New Jersey; and the Rehabilitation Act of 1973 (29 U.S.C. § 794);
 2. The school district will perform all required activities as provided for in this chapter and annually report such assurances to the district board of education;
 3. The school district will continue to implement its [approved] comprehensive equity plan; and
 4. **The school district has evaluated the comprehensive equity plan for effectiveness and has submitted a revised comprehensive equity plan to the executive county superintendent, if necessary.**
- [4.] 5. The district board of education will provide a resolution approving the affirmative action officer for each school year of the three-year comprehensive plan.

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[, of whom the affirmative action officer is a member,] to coordinate and implement the chapter's requirements. Each district board of education shall assure all stakeholders know who the affirmative action officer is and how to contact [him or her] **the affirmative action officer**.
1. The affirmative action officer shall have a New Jersey standard [certification] **certificate** with an administrative, instructional, or educational services endorsement, pursuant to N.J.A.C. 6A:9B, State Board of Examiners and Certification.
 2. The affirmative action officer shall:
 - i. Coordinate the required professional development training for [certificated and non-certificated staff] **all personnel**, pursuant to N.J.A.C. 6A:7-1.6;

- ii. Notify all students and employees of the school district’s grievance procedures for handling discrimination complaints; [and]
- iii. Ensure the school district’s grievance procedures, including investigative responsibilities and reporting information, are followed[.]; **and**
- iv. **Serve as a member of the affirmative action team.**

3. The affirmative action officer may also serve as the school district’s Title IX coordinator;

[3.] **4.** The affirmative action team shall:

i. Include, to the extent possible, members who represent the diversity of the school district’s student population.

[i.] **ii.** Develop the comprehensive equity plan, pursuant to N.J.A.C. 6A:7-1.4(c);

[ii.] **iii.** Oversee the implementation of the **school** district's comprehensive equity plan, pursuant to N.J.A.C. 6A:7-1.4(c);

[iii.] **iv.** Collaborate [with the affirmative action officer] on coordination of the required professional development training for [certificated and non-certificated staff] **all personnel**, pursuant to N.J.A.C. 6A:7-1.6;

[iv.] **v.** Monitor the implementation of the comprehensive equity plan; and

[v.] **vi.** Conduct the annual school district internal monitoring to ensure continuing compliance with State and Federal statutes governing educational equity, pursuant to N.J.A.C. 6A:7-1.4(d).

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 [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] **the protected categories listed at N.J.A.C. 6A:7-1.1(a).**

1. The professional development training shall be [provided to all certificated and non-certificated] **be differentiated based on staff position type and shall be based on the analysis of data conducted pursuant to N.J.A.C. 6A:7-1.4(c)1.**
 2. The district board of education shall [invite] **ensure that** parents and other community members [to participate in the] **are aware of** professional development training **provided to school district personnel regarding topics around equity.**
 3. The district board of education shall ensure all new [certificated and non-certificated staff] **personnel** are provided within the first [year] **90 days** of employment with professional development training on educational equity issues.
- (b) The Commissioner or [his or her] **the Commissioner's** 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] **the protected categories listed at N.J.A.C. 6A:7-1.1(a).**

6A:7-1.7 [Equality] **Equity** in school and classroom practices

- (a) Each district board of education shall provide all students with [equal] **equitable** 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] **the protected categories listed at N.J.A.C. 6A:7-1.1(a),** by:
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] **a representative** 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] **assessment that evaluates a student's English language proficiency on the four domains of listening, speaking, writing, and reading** for determining the [special needs] **eligibility and placement** of [English language] **students who may be identified as multilingual** learners [and their progress in learning English], pursuant to N.J.A.C. 6A:15-1.3[(b)](a)**3**;
 4. Utilizing bias-free multiple measures for determining the special needs of students with disabilities, pursuant to N.J.A.C. 6A:14-3.4;
 5. Ensuring support services, including intervention and referral services and school health services, pursuant to N.J.A.C. 6A:16, are available to all students; 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.
 - i. If excluded, the student shall be provided with equivalent and timely instruction that may include home instruction, without prejudice or penalty.
- (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 [race, creed, color, national origin, ancestry,

age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a)**, by:

1. Ensuring there are no differential requirements for completion of course offerings or programs of study solely on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a)**;
2. Ensuring courses shall not be offered separately on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **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 [for male and female students] **based on gender identity**, provided the course content for such separately conducted sessions is the same;
3. [Reducing or preventing the underrepresentation] **Increasing and promoting equitable representation** of [minority, female, and male] **all** students in all classes and programs[, including gifted and talented, accelerated, and advanced classes];
4. Ensuring schools demonstrate the inclusion of a multicultural curriculum in its instructional content, materials, and methods, and ensuring students understand the basic tenet of multiculturalism; **[[and]]**
5. Ensuring [African-American history, as well as the history of other cultures,] **the Amistad Commission Curriculum** is infused into the curriculum and **is** taught[as part of U.S. history, pursuant to N.J.S.A. 18A:35-1 and the NJSL; and];
6. Ensuring [instruction] **the Commission** on [the] Holocaust [and other acts of genocide] **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 NSLS 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) The district board of education shall ensure all students have access to adequate and appropriate counseling services.
1. When informing students about possible careers or professional or vocational opportunities, the district board of education shall not restrict or limit the options presented to students on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a).**
 2. The district board of education shall not use tests or guidance or counseling materials that are biased or stereotyped on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a).**
- (d) The district board of education shall ensure the school district's physical education [and athletic programs] are [equitable and] **in a co-educational setting that is developmentally appropriate** and does not discriminate on the basis of [race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status] **the protected categories listed at N.J.A.C. 6A:7-1.1(a),** as follows:

1. The district board of education shall provide separate restroom, locker room, and shower facilities on the basis of gender, but such facilities provided for students of each gender shall be comparable;
2. A school **district** may choose to operate separate teams [for the two sexes] **based on sex** in one or more sports or single teams open competitively to members of [both] **all** sexes, as long as the athletic program as a whole provides equal opportunities for students of [both] **all** sexes to participate in sports at comparable levels of difficulty and competency; and
3. The activities comprising such athletic programs 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.

[6A:7-1.8 Equality in employment and contract practices

- (a) Each district board of education shall ensure all persons, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, have equal and bias-free access to all categories of employment in the State's public educational system, pursuant to N.J.A.C. 6A:7-1.1.
- (b) A district board of education shall not enter into any contract with a person, agency, or organization that discriminates on the basis of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, either in employment practices or in the provision of benefits or services to students or employees, pursuant to N.J.A.C. 6A:7-1.1.
- (c) A district board of education shall not assign, transfer, promote, or retain staff, or fail to assign, transfer, promote, or retain staff, on the sole basis of race, creed, color, national

origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, pursuant to N.J.A.C. 6A:7-1.1.

- (d) The district board of education shall ensure equal pay for equal work among members of the school district's staff, regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status, pursuant to N.J.A.C. 6A:7-1.1.]

6A:7-[1.9]1.8 Accountability

- (a) The district board of education's obligation to be accountable for the chapter's requirements is not precluded or alleviated by any rule or regulation of any **recreational** organization, club, athletic association, or other league or **organizing** group.
- (b) Each school district shall complete a comprehensive equity plan that includes a cohesive set of policies, programs, and practices that ensure high expectations, positive achievement patterns, and [equal] **equitable** access to [education opportunity] **educational opportunities** for all learners, including students and teachers.
- (c) [A] **The** comprehensive equity plan shall include the following:
 - 1. An assessment of the school district's needs for achieving equity in educational **activities and** 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] **multilingual learner status, homeless status**, 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, **attendance data**, and re-examination and re-evaluation of classification and placement **process** of students in special education programs if there is [overrepresentation] **disproportionality** within certain groups;

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 **and opportunity** gaps;
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 (NJSLS), differentiated instruction, and formative assessments aligned to the NJSLS and [high expectations for teaching and learning] **professional standards for teachers and school leaders**; and
5. Annual targets that address school district needs in equity in school and classroom practices and are aligned to professional development targets.

[(d) The comprehensive equity plan shall be written every three years.]

[(e)] **(d)** The district board of education shall [initiate] **implement** the comprehensive equity plan within 60 days of [its approval, and shall implement the plan in accordance with the timelines approved by the Department] **the executive county superintendent's certification of completion.**

[(f)] **(e)** If the district board of education does not implement the comprehensive equity plan within [180] **60** days of the [plan's approval] **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 [his or her] **the Commissioner's** 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.

[6A:7-1.10 Appeals

Pursuant to N.J.S.A. 18A:6-9, any individual may petition the Commissioner in writing to resolve a dispute arising under the chapter, pursuant to procedures set forth in N.J.A.C. 6A:3, Controversies and Disputes.]