

**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 proposal level 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 January 11, 2023, meeting of the State Board of Education when the rulemaking was considered at Second Discussion Level.

Topic: Managing for Equality and Equity in Education

Meeting Date: March 1, 2023

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

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. Mary Beth Berry, Member, State Board of Education
- D. Elaine Bobrove, Member, State Board of Education
- E. Dr. Joseph Ricca, Member, State Board of Education
- F. Sylvia Sylvia-Cioffi, Member, State Board of Education
1. Thea Malley
2. Paige Wolf Bederka
3. Rosalie Wong
4. Rachel McGreevy
5. Kani Ilangovan, M.D.
6. Laura Beverage
7. Jamie Evans
8. Cheryl Dunican-Hein, LCSW
9. Rev. Danielle Martin, South Jersey Chapter Leader, Free Mom Hugs
10. Anna Fe Rebadavia

11. Joy Hertzog
12. Martha Hickson, MLIS
13. Sindhu Xirasagar
14. Cori Vail
15. Dee M.
16. Jane Rothfuss
17. John Saul
18. Sara Nichols
19. Amy Menes
20. Martha Friend
21. Jennifer Denlinger
22. Anu Shanbhag
23. Penni Trionfo
24. Jenny Noonan
25. Ivette Fagundo
26. Rocky Schwartz
27. Patricia Allen
28. Baramadai Sharma (Alicia)
29. Anthony Hollingworth
30. Kristin Schloss
31. Krystyn Wukitsch Foran
32. Julie Noonan
33. Sara Varga
34. Shelley Krause
35. Eileen Lloyd
36. Dorothea Kellogg

37. Rosemary Topar
38. Christopher Bone
39. Raina Filipiak
40. Kent Davis
41. Lindsey F. Hintelmann
42. Beth Thomas
43. Michelle McGreivey
44. Olga Polites, New Jersey Chapter Leader, Media Literacy Now
45. Carol Phillips
46. Beth Ruff, President Elect and Mary Moyer Stubbs, Legislative Consultant, on behalf of the New Jersey Association of School Librarians
47. Jonathan Pushman, Director of Governmental Relations, New Jersey School Boards Association
48. Esther Lewars, Ed.S.
49. Marcella Simadiris
50. Peter Terranova
51. Dawn Large
52. Michele Petersen
53. Brenda Escobar
54. Jeff Ryder
55. Ivana Wilkie
56. Judith Hall
57. Mary Lockshin
58. Helena Coles
59. Al Ghaly
60. Margo Kelada
61. Nancy Mamdouh

62. Sara Tadros
63. Melissa Gardner
64. Nick Mininni
65. Edward Gambino
66. Susan Egan
67. Elaine Schultz
68. Josephine Mininni
69. Christine Klein
70. Chuck and Ellen Sona
71. Mody Nassif
72. Margerit Raof
73. Nicole Ferolano
74. DK Brattlie
75. Lisa Amoyer
76. Dawn Horner
77. Susan Fischer
78. Beatrice Di Stefano
79. Andrew and Jo-Ann Sangataldo
80. Yvonne Moss
81. Donna Dickson
82. Anthony Moss
83. Cynthia Bergamo
84. Esther Santis
85. Ashley Boyle
86. Tracey Flanagan
87. Victor La Mantia

88. Dianne Waters
89. Deborah Wellings
90. Lori Trabokia
91. Nicole M. Martinez
92. Stacey Gordaychik
93. Daniel McGinty
94. Gary Meyers
95. Elizabeth Zafonte
96. Dahlia Salama
97. Lauren Fanti
98. Victoria A. Jakelsky, Team PYC - Protect Your Children State Director, New Jersey Parental Rights State Director
99. Elizabeth Acosta
100. Feby Farg
101. Debbie McCollum
102. Will DeMuth
103. Christie LaconteJones
104. Robin
105. Ellyn and Robert High
106. Carmela Spieler
107. Dena Nunez
108. Edyta Martewicz
109. Casie Crawford
110. Eileen M. Marczan
111. Renata Brand
112. Feiby Dawod
113. Ashley Boyle

114. Eveleth Roderer
115. Victoria Herrera
116. Catherine Diana
117. Nancy Georgy
118. Arminda Rubio-Pitio
119. Manal Zare
120. Haydi Boles
121. Marina
122. Iwana Juwana
123. Rita Tota
124. Helmy Asaad
125. Gmaged
126. Daniel Moussa
127. Jina Refaat
128. Mariam Hassaballah
129. Sami Shehata
130. Eva Mounir
131. Mariam Bekhet
132. Ihab Guirguis
133. Youstina Nekola
134. Magdleen Khairy
135. ehab5421
136. Remon Rezik
137. Hanaa Sarofeem
138. Maruma Maruma
139. Kerolous Aymen

140. Mariam Hany
141. Youstina Girgis
142. Mekha Lora
143. Anog Tomas
144. Engy Mekaeel
145. Mekha Lora
146. Hanan Youssef
147. Heba Salama
148. Emy Sh
149. Eman Khalil
150. Hanan Eskander
151. Madonna Eskander
152. Shereen Mubarak
153. srmoundasasa
154. Marina Ishak
155. Nancy Habeb
156. Emad Boles
157. Ezzat Adly
158. Mary Nassim
159. Marian Awadalla
160. Robin Wilkins
161. Germine Soliman
162. Amira Tony
163. Nancy Ayad
164. A Amirmonda
165. Eman Ayoub

166. Andrew Noseir
167. Methat Estafanous
168. Mark Allen
169. Ruth Rivera
170. Susan Linzey
171. Linda Rockwell
172. Ellen Dougherty
173. Laura and Dave Erber
174. Hannah Devlin
175. Brooke Bonilla
176. Andrea Fiocco
177. Larry Steffani
178. Constantine West
179. David Marion Bucci
180. Allison Bast
181. Maureen Eisenhart
182. Andrea Gingrich
183. Joanne Eisenhart
184. Maria Collini
185. Jeannie Monge
186. Hilary Jersey
187. Denise DiCarlo Barrett
188. Amanda Palermo
189. Denise DiCarlo Barrett
190. Robin Shaffer
191. John Henry

192. Anne Shaw
193. Delia Burgos
194. Elena Fetch
195. Amanda Palermo
196. Robert Orcinolo
197. William Hughey
198. Jane Flynn
199. Thomas Flounders
200. Viola Girgis
201. Diane Sheehan
202. Roger Wilkin
203. Louise Riccobene
204. Holly Hoffmann
205. Dominic Diorio
206. Gary Hermenau
207. Mary Oswald
208. Mary Oswald
209. Tony Montemurro
210. Gail Lantz
211. Renato Gadenz
212. Grace Bourbon
213. Phyllis Rempe
214. Maged Mikhail
215. Anna Tomasello
216. Don Adams
217. Karen Weicberger

218. James Moorhead
219. Valerie Barradale
220. Kenneth Albert
221. Steve Weicberger
222. Lori Brooks
223. Beth Salkowitz
224. Melissa Eisele
225. Anthony Mastroeni
226. Andrea Bartley
227. David Botti
228. Meggan Wren
229. Mark Hoch
230. Frank & Barbara Amodeo
231. Paul Vincenti
232. Samuel Beshara
233. Shannon Przelomiec
234. Dianne Johnson
235. Kenneth Gustavsen
236. Barry Kakos
237. Joseph Orchard
238. Mark Grawehr
239. Joseph Rua
240. Tracey Adams
241. Jennifer Blander
242. Perley Patrick
243. Debra Bernardi-Weine

244. Marilene Defreitas
245. Peter Padula
246. Vicky Pfister
247. Wayne Rossman
248. Joanne Godlewsky
249. Sean Healy
250. Patrick Whipp
251. Carole Miliziano
252. Tina Rosamilia
253. Carole Miliziano
254. Jenny Morganti
255. George Lobman
256. Shantal Rybak
257. Lindsay Garbini
258. Ed Cooney
259. Youssef Zakhary
260. Robert Dueben
261. Mary Ann Cooney
262. Michael Marco
263. Hany Ayad
264. Nicole Aulicino
265. Richard Wagner
266. James Hennessy
267. Mark Tanios
268. William Murphy
269. Daniel Wiginton

270. Andrea Zacharko
271. Raul Tavarez
272. John Di Marco
273. Adam Schneider
274. Stephen Okken
275. Beverly Nowakowski
276. Stephen Perkowski
277. Mark Trunkwalter
278. John Wassef
279. Thomas Wnorowski
280. Kimberly Kraus
281. Joyce Mulford
282. Joyce Locknish
283. Mike Pisano
284. Jeffrey Hart
285. Eugene Lyon
286. Louis Scheidt
287. Kamika Freeman
288. Karin Burke
289. Sheri Owenburg
290. Rusty Gramiak
291. Paul Zachary
292. Virginia Clancy
293. Richard Miller
294. Lynn Kiernan
295. Lynette Cace

296. Donna Torrado
297. John Jones
298. Diane Potts
299. Brian Daly
300. Fallon Strobe
301. Carol Powell
302. Danilyn Thevanayagam
303. Luz Morales
304. Jeffrey Scanga
305. Sue Graglia
306. Bruce Stine
307. Hanan Ayoub
308. Chris Rastguelenian
309. Linda Galella
310. Ana Cerrato
311. Wafa Alsharabi
312. Fathet St Antony
313. Gregory Montague Sr.
314. Victor Lisboa
315. Richard Rogers
316. Ghali Boles
317. David George
318. Mark Kathy Cobucci
319. Jennifer Chinchilla
320. Susan Viscardi
321. Lisa Bartolotto

322. Nicholas Vietri
323. Jeanine Branch
324. Allan Wright
325. Luis Fernandez
326. Daniel Cochran
327. Robin Clinton
328. Dorothy Thomas
329. Dina-Marie Farrell
330. Sonya Rodas
331. David Amendola
332. Christopher Torchia
333. Vanessa Koury
334. Vincent Capone
335. Rosa Bratcher
336. Barbara Mort
337. Debra Lang
338. George Leon
339. Gary Charwin
340. John Row
341. Nardine Tobia
342. Arthur Arthur Lavis
343. Alyson Andress
344. Steve Vidam
345. Raymond H. Carr, Jr.
346. Mark Bodrog
347. John Abreu

348. Bernadette Young
349. Kelly Babulski
350. David Habib
351. Hanan Kamel
352. Stephanie Santos
353. Robert Rypkema
354. Ianni Joseph
355. Marissa LaMorte
356. Mary Kao
357. Tigran Mikaelyan
358. Amy Greene
359. Jeanne Brown
360. Jacob Mathew
361. Don Hollingsworth
362. Tim Wolf
363. Alan Cipolone
364. Thomas Osterman
365. Raymond Lillie
366. Daniel Yacykewych
367. Josette Kluender
368. Emily D'Antuono
369. Anita Cavalier
370. Dave Corrado
371. Marilyn Scharfenberg
372. Sherry Hansen
373. Yuliya Pekhman

374. Ann Urban
375. Dale Kiley
376. Diane Colville
377. Mark Avery
378. Sylvia Smith
379. Dorothy Young
380. Lyla Lucas
381. Glenn Frischmann
382. Peggy McHugh
383. Ann Senger
384. Patrick Misciagna
385. Mary Lawrence
386. Adel Elsharkawi
387. Gary Bartz
388. Constantine West
389. David Larkin
390. Thomas Van Lenten
391. Lisa Leibowitz
392. Robert Arcari
393. Maryann Preuster
394. Charles Darida
395. George Aue
396. Richard Vincent
397. Tom Freeman
398. Joe Lacopo
399. Vincent Borrelli

400. Ellen Clinebell
401. Kathleen Kilpatrick
402. Jacklyn DeGraff-Cipriani
403. Nicole Green
404. Leslie Workman
405. Veronica Duffy
406. Kevin Johnson
407. Thomas Schmidt
408. Serafin Lopez
409. Jessica Henderson
410. Joli Toth
411. John Kraemer
412. George Cain
413. Charlotte Garemore
414. Marion Gillespie
415. Cathy Hall
416. Emilio Portelli
417. Peter Abadear
418. Linette Rios
419. Marc Williams
420. Robert Mazzeo
421. Ted Risko
422. Kristie OKeefe
423. Kelly Pratt
424. Francis Dollbaum III
425. Tanya Williams

426. James Brunn
427. Joseph Miczak
428. Darlene Peterzak
429. Jessica Gonzalez
430. Kerri Richardson
431. Dawn Zeevalk
432. Dorothy Emmanuel
433. Ivana Wilkie
434. Dawne Gimbert
435. Alison Davis
436. Anthony Musillo
437. Amal Iskaros
438. Lora Mattia
439. Christine Lenten
440. Amy Wagner
441. John Provinsal
442. Fred Kutner
443. Antonio Rios
444. Christine Ducane
445. Peter Gad
446. Elizabeth Feliciano
447. Carrie Babcock
448. Michael Machos
449. Joseph Spinosi
450. David Marion Bucci
451. Susan Amerman

452. Rich Moore
453. Steve D'Amico
454. Howard Berry
455. Kathy DeBell
456. Ron Spagnoli
457. Glennys Hyland
458. Mark Patricia Papera
459. Christie Alston
460. Maribel Rodriguez
461. Henrietta Kaiser
462. Alice Freeman
463. Charles Davidson
464. Teresa Rusmisl
465. Anne Donnelly
466. Linda Pisano-Gunneson
467. Asher Levy
468. Kasia Pitera
469. Glenn Moore
470. Maria Palumbo
471. Paul Johnson
472. Jacqueline Breejen
473. Sonia Hernandez
474. Tammie Elfstrum
475. Tracey Bober
476. Kelly Grace
477. Lisa Roser

478. Annalee Davis
479. Laurie McAdams
480. Helen Bajek
481. Susan Vitelli
482. Ronald DiLapo
483. Martin Vitelli
484. Karen Alexander
485. Ruth and Kenneth Choflet
486. Peter Dolan
487. Peter and Melinda Dolan
488. Constance Bell-Jones
489. Easter G Frazier
490. Patricia Barone
491. Nancy Rogers
492. Margaret Patrick
493. Serena Bocchino
494. Stacy Dougherty
495. David Bulka
496. Mary Foley
497. Robert Castro
498. Kristine Cevasco
499. Nancy Dean
500. Jessica Oliveira
501. Carola Iorio
502. Michael Bolch
503. Steve MacFarland

504. Maureen Srinivasa
505. Cathy Hons
506. Shelly Ristow
507. Randy Juzwiak Sr
508. Mario Dianora
509. Rosemarie Stone
510. John Wright
511. Patricia Babij
512. Carl Morrison
513. Susan Kampschmidt
514. Jane Bianchini
515. Frank Melicharek
516. Karen Wesdyk
517. Marcel Dartee
518. James Schmitt
519. Eleanor Gallagher
520. Jessica Cummings
521. Adriel Bastos
522. Dorothy Turse
523. Maria Maggi
524. Eduard Mauer
525. Patricia Blaney
526. Anita Mercanti
527. Patricia Manfredi
528. Jeff Danco
529. Stephen Natale

530. Clare Guglielmo
531. Holly McKay
532. Noelle Meltsch
533. Kenneth Platt
534. Gregory Cindy Schwegel
535. Jason Hansman
536. Holly Huber
537. Donald Paul
538. Kelly Caulfield
539. Patricia Carrera
540. Germine Soliman
541. Jamie Coyne
542. Bruce Hess
543. David Mitchell
544. Donald Paul
545. Linda Rockwell
546. Lou Abruzzese
547. David Strittmatter
548. Lisa Munoz
549. Missy Jones
550. Peter Amerman
551. Jacqueline Cochran
552. Daniel Cochran
553. John Hallanan
554. James Boland
555. Elizabeth Pinsonault

556. Patricia Blaney
557. Maged Youssef
558. Julie Ferrara
559. Kate Goode
560. Grace Styer
561. Louis Gazzara
562. Florence Palmeri
563. Angela Williams
564. Kathy Brooks
565. Joseph Sinacore
566. Anette Gordon
567. Dawn Horner
568. Andrew Paleologos
569. Al Parker
570. Deborah Gilmartin
571. Sean Parkot
572. Luz Hunton
573. Cindy Montalvo
574. Kenneth Sopher
575. Haley Shorten
576. Robert Mazzeo
577. Marisol Rodriguez
578. Bonnie Rosa
579. Karen Callamari
580. Martha Galloway
581. Mark Razzoli

582. Michele Petersen
583. Rudy Gonzalez
584. Aase Hare
585. Kimmarie Scheetz
586. Richard Shearstone
587. William Rieger
588. Linda Ruggieri
589. Toni Fernandez
590. Mariano Hernandez
591. Elizabeth Malinis
592. Georgina Vastola
593. Zoray Casale
594. Susan Slater
595. Suzana Morgan
596. Kevin McLaughlin
597. Susan Lubbe
598. William Eames
599. Camille Intelisano
600. Elaine Gutowski
601. Mary Haaf
602. Nday Kamal
603. Nina Marchi
604. Katherine Kelly
605. Janet Hagan
606. Sylvia Smalley
607. Michael Heffernan

608. Maria Flippone
609. Kurt Kalenak
610. Gayle Heffernan
611. Dana Veronica
612. Feiby Dawod
613. Bill Knapp
614. Emmanuel Okoye
615. Donna Moen
616. Michelle Gentle
617. Jeff McLeod
618. William T. Rieger
619. Joan Mueller
620. Francis and Rosemary Canuso
621. Toni Meyer
622. Jenny Tang
623. Mena Jacoup
624. Jean Marino
625. Shawn Hyland, Director of Advocacy, New Jersey Family Policy Center
626. Kathryn McGinty
627. Cliff Ellen Schiller
628. Boltz Boltz
629. Aline Dymkowski
630. Keith Young
631. Barbara Michalski
632. Linda Rockwell
633. Ray Zirilli

634. Evelyn Wasniewski
635. Linda Rockwell
636. Mina Makar
637. Carol Eng
638. Kurt Schwarz
639. Donita Jones
640. Kirsten Checchio
641. Daniel Keeler
642. M. Toni Buckley, Ed.D.
643. Janis Bordi
644. Anita Usmiani
645. Anne Shaw
646. Lena Counts
647. Tanya Williams
648. Richard Shenowski
649. Karen Alexander
650. Beverly Marinelli
651. Tracey Flanagan
652. Elizabeth Shimwell
653. Dr. Hanna
654. Ehab Bob
655. Gwen Shenowski
656. Laura Erber, R.N. C.S.N., English as a second language educator
657. Engy Naseem
658. Anne Junda
659. Jessica Melando

660. Nancy Rogers
661. Arthur Goldberg
662. Ruth Kanyuck
663. G. Fernandez
664. Dorothy Turse
665. er21081
666. Ana Samuel
667. Whitney Perkins
668. Joseph Antunez
669. Tara McKean
670. Justin Michael Murphy, Former Deputy Mayor, Tabernacle Township
671. Bonnie Rosa
672. Natalie Farry
673. Claire Hamilton
674. Susan Carlin
675. Yvonne Moss
676. Nicole Gallo
677. Carol Palmquist
678. Richard Vincent
679. Toni Ann Esposito, R.N.
680. Mary Seponosky
681. Arlene Harder
682. Sandra C. Baringer
683. Lauren Pearson
684. Tom Byrnes
685. Susan Sawyer, Member Team PYC

- 686. Greg Sawyer, Member Team PYC
- 687. Nancy Rogers
- 688. Barbara Eames, Working Together for New Jersey
- 689. Frances Benemowitz
- 690. William Eames
- 691. Lorraine Regan
- 692. Louann Ranne
- 693. Lynda Wilson
- 694. John Kulak

1. **Comment:** The commenter inquired about the meaning of “ensuring of an asset-based orientation” and requested that the Department clarify the same. **(A)**
Response: The Department thanks the commenter for the inquiry and request for clarification. An “asset-based approach” prioritizes and recognizes the strengths and assets of individuals and communities. “Asset-based language” focuses on the positive as opposed to the negative. The Department notes that often in the spoken and written vernacular and in terminology, certain words, phrases, and concepts may have a negative connotation, though a negative connotation is not necessarily intended. As such, the Department, is seeking to ensure that while addressing the concerns of equity, as the purpose and goal of N.J.A.C. 6A:7, that the same is approached with a mindset on growth which emphasizes the positive as opposed to the negative and ensuring the same is utilized in our school systems.

2. **Comment:** The commenters inquired whether a school district can separate students for portions of classes that deal exclusively with human sexuality based upon male and female or are they required to do so by gender identity, pursuant to N.J.A.C. 6A:7-1.7(b)2i. The commenters contended that it must be done by gender identity. The commenters questioned what happens regarding a biological male whose gender identity is that of a female. The commenters stated that under this scenario, this student would be in classes where there are discussions regarding anatomy that the student does not possess. The commenters further questioned how this provision affects students who choose to be in the class with the students who share their biological makeup. The commenters stated that separation based upon gender identity would preclude those students from getting the information. The commenters noted that this is a very sensitive issue and that there have been over 1,000 comments objecting to this change in language. The commenters further stated that we have to treat children with love and respect, and we must have passionate ideas on how to handle this. The commenters indicated the approach that was the smartest was the school districts that did not have a policy. Instead, the commenters contend that those school districts would talk to the child and their family and make a decision that would make the child most comfortable. The commenters suggested that the Department and the State Board of Education (State Board) should not force this policy from the top down. The commenters suggested that the Department allow school districts to make the decision and that the Department revert to the prior language, but the school district decides with regard to

transgender students. The commenters contended that it has been a long-standing tradition to separate by sex. The commenters disagreed with the Department's interpretation of anti-discrimination laws and how they would be applied in this situation. Further, the commenters suggested that the Department's proposed change discriminates biological males and females and may constitute discrimination along the protected class of sex. **(B and C)**

Response: The Department disagrees with the commenters' position and proposal to revert to the prior language. The commenters are correct that, pursuant to N.J.A.C. 6A:7-1.7(b)2i as proposed for amendment, a school district can separate students for portions of classes that deal exclusively with human sexuality based upon gender identity, not by biological sex or male or female. Regarding the commenters' concerns about students having access to the information concerning their particular biological make-up and anatomy, the Department notes that, pursuant to N.J.A.C. 6A:7-1.7(b)2i, if a school district chooses to conduct separate class sessions dealing exclusively with human sexuality, those sessions must have the same course content. The Department notes that, if a school district is conducting separate class sessions dealing exclusively with human sexuality, and the material in the separate sessions includes a discussion of the anatomy and biology, then the students attending would learn about the anatomy and biology of both biological females and biological males, regardless of who was attending the class session.

In response to the commenters' suggestion that school districts be permitted to make the decision regarding the separation of students, the Department highlights that school districts have the option of not separating students for human sexuality classes, but that, if they do decide to separate students, they must do so in a manner that complies with the New Jersey Law Against Discrimination (NJLAD) and Federal anti-discrimination laws. That is, if students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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 New Jersey Student Learning Standards (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, any 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.

3. **Comment:** The commenter expressed support for the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter noted that the subject matter surrounding this issue is a sensitive topic, and that the State Board should be careful about infringing upon anyone's rights. The commenter acknowledged and agreed that there has been a long-standing tradition of separating the sexes. However, the commenter asserted, that when children come to school, they select their gender, and that is the end of it. The commenter noted that school districts do not inquire beyond that, unless a student requests additional support. The commenter noted that parents and families are going to make decisions in the best interests of their children. The commenter asserted that the language of the amendment supports that proposition. The commenter contended that, as a general principal, the vast majority will agree on an issue, but it is the minority group needs the extra protection and extra support. The commenter wanted to remind and assure the public that he and others want transgender students and persons to know that there is nothing wrong with them. The commenter posed the following questions to those who are coming at this from a religious standpoint: "Is there room? Is there space for all people? Is there room for all people to co-exist?" The commenter stated that, if any of the members of the State Board are projecting desires or wishes upon other people, then it is wrong. The commenter asserted that the State Board must separate politics and religious beliefs. The commenter asserted that the State Board must do what is helpful and supportive for all. **(E)**

Response: The Department thanks the commenter for the insightful comment and support of the Department.

4. **Comment:** The commenter questioned whether having the classes separated in any method forces a public decision to be made by students who may be non-binary who may not want to say either way as to their gender identity. The commenter noted that one school district has transitioned to co-ed classes dealing with human sexuality and, based

on personal experience, there were no noted issues of discomfort with students attending classes dealing with human sexuality. The commenter stated that separating classes can be problematic as it creates the scenario where students may not feel comfortable in the separated class that they are in or it may require students who are gender non-conforming, non-binary, or transgendered to out themselves publicly when they may not be prepared or willing to do so. As such, the commenter is not comfortable having students to choose out loud their gender identity. **(F)**

Response: The Department thanks the commenter for the insightful comment. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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, any 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.

5. **Comment:** The commenter stated that after further review of the materials provided by the Department, the question arises regarding the course material being the same. The commenter stated that it appears that, if a school district conducts separate class sessions dealing exclusively with human sexuality, those sessions must have the same course content. The commenter further stated the importance that all students be provided the same information. Additionally, the commenter stated that all students should learn what their classmates are experiencing. Specifically, the commenter stated that a boy needs to understand what a girl is going through, and girl needs to understand what a boy is going through. The commenter noted that if class sessions that are separated focus only on what the group is going through, then it is not the same course material as is required. The commenter requested clarification and confirmation of this understanding. **(D)**

Response: The Department thanks the commenter for the insightful comment and inquiry. Pursuant to N.J.A.C. 6A:7-1.7(b)2i, if a school district chooses to conduct separate class sessions dealing exclusively with human sexuality, those sessions must have the same course content.

6. **Comment:** The commenter stated that there is a physical education teacher in a particular school district who conducts these sessions in a gender-neutral and combined setting. **(A)**
Response: The Department agrees that a school district is free to conduct sessions in the manner described, as there is no Statewide requirement that class sessions that deal exclusively with human sexuality be separated. As proposed, 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 NJSLC 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.

7. **Comment:** The commenter stated that it is disingenuous for the Department to assert that school districts have a choice regarding the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter asserted that the proposed amendments are forcing school districts to conduct separate sessions based upon gender identity, which may not align with how the school district wants to conduct these sessions. The commenter asserted that there are more than 1,000 comments objecting to the proposed amendments. The commenter asserted that there may be a better way and that it may be better to let the school districts decide how to conduct the separate sessions instead of from a mandate from the Department. **(B)**

Response: The Department disagrees with the commenter's position that it is disingenuous to say that school districts have a choice. In response to the commenter's suggestion that school districts be permitted to make the decision regarding the separation of students, the Department notes that school districts have the option of not separating students for human sexuality classes, but that, if they do decide to separate students, they must do so in a manner that complies with the NJLAD and Federal anti-discrimination laws. That is, if students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law, which means 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

8. **Comment:** The commenters expressed support for the readoption of N.J.A.C. 6A:7, Managing for Equality and Equity in Education. The commenters stated that the intent of the proposed amendments to use asset-based language, remove gender-specific language, and include all protected classes under New Jersey law is commendable. The commenters agreed with the Department's focus on equitable education instead of equal education. The commenters expressed concern regarding "extremists" derailing the readoption of N.J.A.C. 6A:7, as proposed for amendment. **(1 through 35)**
Response: The Department appreciates the commenters' support for the proposed amendments at N.J.A.C. 6A:7.
9. **Comment:** The commenters supported the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenters asserted that forcing transgender students to take classes based upon their biological sex would be demeaning and harmful. **(1 through 35)**
Response: The Department appreciates the commenters' support for the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i.
10. **Comment:** The commenter stated that the State Board and district boards of education across the State have been inundated with claims from people who purportedly care about the safety of students. The commenter further stated that these claims are not genuine and that their positions put marginalized students at risk. The commenter stated that the Department's proposed changes are more inclusive and equitable and will pave the way for putting students first. **(33)**
Response: The Department appreciates the commenter's support for the proposed amendments at N.J.A.C. 6A:7.
11. **Comment:** The commenter stated that forcing transgender students to take classes based upon their biological sex would be demeaning and harmful. The commenter stated that students should be lifted up and not exposed to further risk. The commenter also stated that a review of the [executive summary](#) of the 2021 School Climate Survey provides an in-depth look at the challenges LGBTQIA+ students are facing in schools. **(34)**
Response: The Department appreciates the comment. The Department has considered the challenges that LGBTQIA+ students are facing and, through the proposed rulemaking,

aims to provide an opportunity for LGBTQIA+ students to feel more comfortable in the classroom.

12. **Comment:** The commenter thanked the Department for its continued work to promote equity in education. The commenter stated that the work is challenging and requires persistence and perseverance. The commenter expressed support for the proposed readoption with amendments at N.J.A.C. 6A:7. The commenter supported the proposed amendments to use asset-based language, the removal gender-specific language, and the inclusion of all protected classes under New Jersey law. The commenter agreed with the Department's focus on equitable education instead of equal education. **(36)**
Response: The Department appreciates the commenter's support for the proposed amendments at N.J.A.C. 6A:7.
13. **Comment:** The commenter expressed support for the proposed amendments at N.J.A.C. 6A:7. The commenter appreciated how the proposed amendments strengthen the Department's mission to provide equitable education to all of New Jersey's students in a way that includes and affirm each student's different identity and needs. The commenter stated that allowing transgender students to attend a gender-separated sexual education class that matches their gender identity is important, as it can cause psychological harm to force transgender students to conform to their biological sex. The commenter stated that school should be a welcoming and affirming place. **(37)**
Response: The Department appreciates the commenter's support for the proposed amendments at N.J.A.C. 6A:7.
14. **Comment:** The commenter expressed support for the readoption of N.J.A.C. 6A:7, which requires that district boards of education provide for equal opportunity and for equity in education without discrimination based upon the protected classes. The commenter stated that this is important for the future as children in New Jersey move through their adult lives as citizens. **(38)**
Response: The Department appreciates the commenter's support for the proposed amendments at N.J.A.C. 6A:7.
15. **Comment:** The commenters expressed support for the readoption of N.J.A.C. 6A:7, which requires that district boards of education provide for equal opportunity and for equity in education without discrimination based upon the protected classes. The commenters stated that this is important work so that generations will contribute to promote a more just and sympathetic society. **(39 and 40)**
Response: The Department appreciates the commenter's support for the proposed amendments at N.J.A.C. 6A:7.
16. **Comment:** The commenters requested the Department issue a broadcast memorandum to school districts reminding school districts of the importance in following the New Jersey statutes and the New Jersey Administrative Code as it relates to providing diverse materials and resources for all students. The commenters contended that there are number of school districts where parents of students have attempted to circumvent the legal requirements in the New Jersey Administrative Code and the NJSLs. **(41 through 45)**
Response: The Department thanks the commenters for their comments and insight; however, the comments are outside the scope of this rulemaking.
17. **Comment:** The commenters stated that school districts should be encouraged by the Department to have up-to-date policies on the selection of school library media resources, which are different from selection policies on instructional materials. The commenters

stated that purpose of N.J.A.C. 6A:7 is to ensure all students, regardless of protected class, are provided equal access to educational programs and services by district boards of education. The commenters further stated that the Department has created guidelines for school districts related to transgender resources, including a listing of books that can be included in school collections such as those found in school libraries. The commenters stated that the purpose of this guidance is to help school districts take steps to create a more inclusive environment where all students feel safe and supported and to ensure that school districts provide equal educational opportunities for all students, in compliance with N.J.A.C. 6A:7.

The commenters further stated that school libraries are places of voluntary inquiry. As such, the commenters stated that school districts should have district board of education approved selection policies that provide for a certified school library media specialist to select materials that speak to a wide range of maturity levels, interest levels, and cultural differences, and that explore various sides of controversial issues. The commenters also noted that school district policies should also include a policy requiring that a challenged material be read in its entirety by a committee of professionals and a recommendation regarding retention or removal of the material be made. The commenters requested that school administrators be reminded that all members of the school communities should follow district board of education approved policies. The commenters request that the Department and the State Board remind school districts that they must also provide equitable access to school library resources. **(41 through 45)**

Response: The Department thanks the commenters for their comments and insight; however, the comments are outside the scope of this rulemaking.

18. **Comment:** The commenter stated that, pursuant to N.J.A.C. 6A:13-2.1(h), schools are required to provide library media services. The commenter cited studies showing that library media services are not being provided equitably in New Jersey. **(6)**
Response: The Department thanks the commenter for their comments and insight; however, the comment is outside the scope of this rulemaking.
19. **Comment:** The commenter stated that the terms “educational resources” and “resources” are utilized regularly in the NJSLS but are absent from the proposed amendments at N.J.A.C. 6A:7. The commenter recommended that “educational resources” be added throughout N.J.A.C. 6A:7 for consistency. The commenter specifically requested that N.J.A.C. 6A:7-1.1(a) be amended to add “educational resources” in “educational activities and programs.” The commenter also requested that the definition of “educational equity” at N.J.A.C. 6A:7-1.3 and N.J.A.C. 6A:7-1.4(c)1 be amended to include “resources.” **(6)**
Response: The Department declines to adopt the commenter’s proposed changes because the implementation of educational activities and programs is inclusive of educational resources. Resources are required to implement any educational activity or program in accordance with the NJSLS.
20. **Comment:** The commenter requested that the definition of “equity” at N.J.A.C. 6A:7-1.3 be amended to add “including school library materials” after “resources.” The commenter also requested a change to the to the definition of “equitable education opportunity,” as proposed for amendment, to add “educational resources including school library materials” after “programs.” **(6)**
Response: The Department declines to adopt the commenter’s proposed changes. The addition of “resources” to the definition of “equity” is unnecessary as the same is already implied and encompassed in the implementation of the programs to ensure educational

equity. The Department notes that school library materials are already encompassed within educational resources.

21. **Comment:** The commenter expressed general support for the proposed amendments at N.J.A.C. 6A:7. The commenter requested clarification regarding the proposed amendments at recodified N.J.A.C. 6A:7-1.8(e), which call for a reduction in time for the implementation of the comprehensive equity plan (CEP) from 180 days to 60 days. The commenter stated that existing N.J.A.C. 6A:7-1.8(e) and (f) state that the executive county superintendent's approval of a district board of education's (CEP triggers a 60-day timeline for the district board of education to initiate the CEP, and a 180-day timeline for the district board of education to implement the CEP. The commenter asserted that the Department's proposed amendments would collapse that two-phased timeline to a single 60-day timeline to implement the CEP.

The commenter suggested that the Department assess the impact of the proposed amendment, specifically to assess the potential burden of a reduced timeframe to implement the CEP. The commenter further suggested the Department elaborate on how a district board of education is currently expected to demonstrate compliance with the requirement at recodified N.J.A.C. 6A:7-1.8(e) to initiate the CEP within 60 days. The commenter further suggested that the Department explain how the district board of education will be expected to demonstrate compliance with the requirement at recodified N.J.A.C. 6A:7-1.8(d) to implement the CEP within 60 days. The commenter stated that additional information comparing the steps involved for a district board of education to operationalize the current process to initiate and then implement the CEP compared to the steps involved for a district board of education to operationalize the proposed process to implement the CEP. The commenter stated that the information would assist district boards of education to understand the potential impact of the proposed timeframe. (47)

Response: The Department's proposal to replace the 180-day deadline with a 60-day timeframe is to ensure that school districts are not implementing inequitable practices for up to six months. Further, implementation of a school district's CEP is a progression of actions and the school district must begin implementation within 60 days after completion. The district board of education will provide the Department with confirmation of implementation through an annual statement of assurance regarding the progression of the implementation of the CEP.

22. **Comment:** The commenter noted that the Department's proposed amendment at N.J.A.C. 6A:7-1.4(d) specifies to whom a district board of education must submit its annual CEP statement of assurance by replacing a reference to the "Department" with "executive county superintendent." The commenter expressed concern that the amendment retains the current language regarding timeline of that submission so that the district board of education submits the annual statement of assurance at the end of each school year.

The commenter suggested additional amendments at N.J.A.C. 6A:7-1.4(d) to provide a more concrete deadline for submission of the annual CEP statement of assurance. The commenter noted that previous Department guidance has advised, for example, that the deadline for submission of the annual statement of assurance is September 1 of the school year in which the current CEP applies. However, the commenter further noted that, because N.J.S.A. 18A:36-1 defines "school year" as July 1 through June 30, the most common interpretation of "end of the school year," where context does not suggest an alternative interpretation, is most likely June 30. The commenter stated that it would be helpful for the Department to specify a calendar date in the regulation to ensure clarity and predictability regarding the statement of assurance submission deadline. (47)

Response: The Department agrees with the commenter that the annual statement of assurance must be submitted by June 30 annually. The Department is not making an amendment at N.J.A.C. 6A:7-1.4(d) because guidance will reflect the June 30 due date.

23. **Comment:** The commenter questioned the rationale for requiring school districts to ensure that the Amistad Commission curriculum be infused into a school district’s curriculum while the Commission on Holocaust Education curriculum is required to be included in the curriculum of all elementary and secondary schools, as developmentally appropriate. The commenter stated that infusion of curriculum may or may not occur, but requiring the Amistad Commission curriculum be included in the curriculum ensures that it will be taught. The commenter further stated that, if there are two major education commissions, the chapter should demonstrate the importance of both. However, the commenter acknowledged that they are not familiar with the history of the proposed amendments, so the concern may have been an oversight. **(48)Response:** The use of “infusion” with regard to the Amistad Commission is the statutory language contained at N.J.S.A. 18A:35-4.3a, which requires that every district board of education “infuses into all courses on the United States, the centuries of accomplishments by African Americans in the building and development of America, including but not limited to, the areas of industry, military, government, and the professions; local communities, math, science, medicine, and space; architecture and the arts; social institutions and culture; and other aspects of life in America.” Pursuant to N.J.S.A. 18A:35-4.3c, the Department is required to work with the Amistad Commission to ensure that all Department assessment tools for New Jersey schools are inclusive of the curricular requirements established pursuant to N.J.S.A. 18A:35-4.3a. The definition of “Amistad Commission curriculum,” as proposed for amendment, means all instructional content, materials, and methods that were developed in consultation with the Amistad Commission and infused into the NJSLs.
24. **Comment:** The commenter expressed support for the proposed amendments at N.J.A.C. 6A:7-1.3 to the definitions of “education equity” and “equity” but objected to the language that was deleted in the definitions. The commenter stated that addressing root causes through opportunity gaps as opposed to achievement gaps better represents the Department’s intended focus as described at first discussion. The commenter questioned the commitment of the Department in addressing opportunity gaps. The commenter argued that the definitions of “education equity” and “equity” should be strengthened by including the insertions and the bracketed eliminations in the definition to better reflect a focus on opportunity gaps. **(49)**
Response: The Department disagrees with the commenter’s requests for changes to the proposed definitions of “education equity” and “equity.” The definitions, as proposed for amendment, include both achievement gap and opportunity gap, where appropriate, to support the Department’s commitment to addressing opportunity gaps.
25. **Comment:** The commenter asserted that the Department is engaging in narrative control. The commenter stated that the Department’s “apparent practice of excluding voices and effort from N.J.A.C. 6A:7 and compromising the education opportunity of [her] three Black children received from Montclair.” The commenter asserted there is narrative control occurring because she requested to be part of any further discussion on code revisions but did not receive a return call. **(49)**
Response: The Department invites the commenter to make public comment on any or all amendments to N.J.A.C. 6A:7 through the public comments process.
26. **Comment:** The commenter asserted that the State Board and the State Board President failed to alert the public regarding the comment period for N.J.A.C. 6A:7 as the State

Board typically does for other chapters. The commenter stated that N.J.A.C. 6A:7 at second discussion was not announced as a topic for January 11, 2023, public testimony during the December 7, 2022, meeting or listed in the minutes for that meeting. The commenter asked if the public was alerted about when they could submit testimony regarding N.J.A.C. 6A:7.

The commenter further asserted that the State Board Vice President alerted a special interest group consisting of 440 people and advised them to email comments representing opposition to the inclusion of gender identity at N.J.A.C. 6A:7-1.7(b)2i. The commenter stated: “This is how narratives and systems of oppression are controlled. Kind of like how districts can write such terrible things.” (49)

Response: Members of the public were made aware of public testimony through the public notice of the January 11, 2023, meeting agenda and through the Department website. The public testimony for January 11, 2023, included Open Topic, which means the public can submit comments on any education topic of their choice, including N.J.A.C. 6A:7.

The State Board and Department accept comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act.

Regarding the commenter’s assertion that the State Board Vice President alerted a special interest group to submit comments, the Department is unaware of any evidence or information that supports the same.

27. **Comment:** The commenter expressed general opposition to the readoption and amendments at N.J.A.C. 6A:7. The commenter asserted that the proposed amendments are contrary to Biology 101. The commenter further asserted that the minds of children are pliable and impressionable and that it is irresponsible to teach children things contrary to natural law and their own nature. (669)

Response: The Department disagrees with the commenter’s position. As proposed for readoption with amendments, N.J.A.C. 6A:7 provides rules governing equality and equity in educational activities and programs to guarantee each student equitable access to all educational programs, services, and benefits of the school district regardless of the student’s housing status, socioeconomic status, immigration status, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality. The rules also provide an objective basis for evaluating a school district’s progress toward equity in educational activities and programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules ensure school districts provide for students’ basic rights to equitable treatment and services, and to a quality education. The Department asserts that the amendments will promote equity for students.

28. **Comment:** The commenters expressed general opposition to the readoption and amendments at N.J.A.C. 6A:7. The commenters claimed that the Department is engaged in discrimination upon Christians and those with deeply held religious views. The commenters asserted that, if the amendments are adopted, the “decimation to truth will be devastating.” The commenters further asserted that the Department cannot deny the truth by citing guidance or case law. The commenters asserted that “the truth is there are two genders, male and female, NOT a combination of the two.” The commenters further asserted that “if you continue to spit in the face of GOD, our creator, by forcing all schools to draft ‘equity plans’ that align with the propaganda you are forcing into the

minds of all children, the ramifications will be great!” The commenters further asserted that “[t]here will be an exodus out of the public schools” and that “God cannot be mocked!” The commenters further stated that children need to learn and that the Department has a duty to assure they do so. The commenters also asserted that the Department has a duty to defend another protected classes, namely religious people. The commenters claim that the guidance cannot thwart First Amendment religious liberty. **(98 and 100)**

Response: The Department agrees with the commenters’ statement that children need to learn, and the Department has a duty to ensure that the children of the State of New Jersey learn. The Department disagrees with the entirety of the remainder of the commenters’ assertions and notes that any rule adopted by the Department must be consistent with existing State and Federal antidiscrimination laws. Further, pursuant to N.J. Const. Art. I, ¶ 4, and U.S. Const. amend. I, as applied through U.S. Const. amend XIV, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

The Department notes that, as proposed, N.J.A.C. 6A:7 provides rules governing equality and equity in educational activities and programs to guarantee each student equitable access to all educational programs, services, and benefits of school district regardless of the student’s regardless of housing status, socioeconomic status, immigration status, in addition to 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, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality. The rules also provide an objective basis for evaluating a school district’s progress toward equity in educational activities and programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules ensure school districts provide for students’ basic rights to equitable treatment and services, and to a quality education. The Department asserts that the amendments will promote equity for students.

29. **Comment:** The commenters expressed opposition to the readoption of and proposed amendments at N.J.A.C. 6A:7. The commenters requested that consideration of the readoption be paused until there is an opportunity to have an open public meeting with in-person testimony. The commenters claimed that the Department is focusing on indoctrination instead of education and that the learning loss of New Jersey students should be the Department’s greatest concern. **(50 through 103)**

Response: The State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. Regarding the commenters’ concern that the Department is engaged in “indoctrination,” the Department disagrees with the commenter’s position and the classification of the proposed amendments as “indoctrination.” The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq.

The commenters’ statement that the Department should be focusing on regarding learning loss are outside of the scope of this rulemaking.

30. **Comment:** The commenter expressed opposition to the readoption and proposed amendments at N.J.A.C. 6A:7. The commenter requested that the State Board hold further discussion until it has had an opportunity to review all submissions and the public has the opportunity to provide testimony. **(669)**
Response: The State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. Therefore, the public can continue to submit comments on the proposed readoption with amendments of N.J.A.C. 6A:7.
31. **Comment:** The commenters expressed opposition to the proposed amendments at N.J.A.C. 6A:7. The commenters requested that the State Board hold further discussion until the public can provide input in person. The commenters claimed that the proposed amendments stifle free speech, erode parental rights, and that changes of this magnitude should never take place without open public meetings and live input. **(669, 642, 643, and 669)**
Response: The State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. Regarding the commenter’s concern that the proposed amendments stifle free speech and erode parental rights, the proposed amendments are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq.
32. **Comment:** The commenters expressed opposition to the proposed amendments at N.J.A.C. 6A:7. The commenters asserted that the pending changes are overwhelming and will be harmful to all New Jersey public school students and many of the Department’s employees. **(50 through 103, 668, 769, 674, 685, 686, and 691)**
Response: The Department disagrees with the commenters position and notes that the commenters have not provided the specific harm that will befall the students or Department employees. The pending amendments are not intended to be harmful to the New Jersey public school students or the Department’s employees. Rather, as proposed for readoption with amendments, N.J.A.C. 6A:7 provides rules governing equality and equity in educational activities and programs to guarantee each student equitable access to all educational programs, services, and benefits of school district regardless of the student’s regardless of housing status, socioeconomic status, immigration status, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality. The rules also provide an objective basis for evaluating a school district’s progress toward equity in educational activities and programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules ensure school districts provide for students’ basic rights to equitable treatment and services, and to a quality education. The Department asserts that the amendments will promote equity for students.
33. **Comment:** The commenter expressed opposition to the proposed amendments at N.J.A.C. 6A:7. The commenter asserted that it is “unconscionable for the Governor to allow this matter to move forward without hearing from parents.” **(647)**

Response: The Department disagrees with the commenter. The State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act.

34. **Comment:** The commenter expressed opposition to the proposed amendments and readoption of N.J.A.C. 6A:7. The commenter asserted that amendments of this magnitude should not take place without broad notification, especially to parents and guardians of children, with the opportunity to submit written comments and live public comments. The commenter asserted that all parents need to be informed of the proposed amendments with ample time to read and digest, as well as to comment on the changes. The commenter asserted that parents should be invited to participate in multiple face-to-face meetings with the State Board and the Department. **(95)**

Response: The Department disagrees with the commenter. The State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. All proposed rulemakings are broadly available to the public through the Department’s website.

35. **Comment:** The commenter expressed opposition to the proposed amendments and readoption of N.J.A.C. 6A:7. The commenter requested that the proposed amendments be paused so the public can have face-to-face meetings with the State Board and the Department. **(653)**

Response: The Department disagrees with the commenter. The State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act.

36. **Comment:** The commenter expressed opposition to the proposed amendments and readoption of N.J.A.C. 6A:7. The commenter requested that the meetings be opened to the public, effective immediately. Further, the commenter requested that the Department postpone further discussion for at least 30 days. **(769)**

Response: The Department disagrees with the commenter. The State Board of Education accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. The Department is unable to postpone the State Board’s consideration of the readoption of N.J.A.C. 6A:7 because the chapter is scheduled to expire.

37. **Comment:** The commenter expressed general opposition to the proposed amendments and readoption of N.J.A.C. 6A:7. The commenter asserted that, if the Department “continues on this path to deny religious liberty, stifle free speech, and force certain thought, the exodus out of the public schools will continue.” **(101)**

Response: The Department disagrees with commenter. Further, pursuant to N.J. Const. Art. I, ¶ 4, and U.S. Const. amend. I, as applied through U.S. Const. amend XIV, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

The Department notes that, as proposed, N.J.A.C. 6A:7 provides rules governing equality and equity in educational activities and programs to guarantee each student equitable access to all educational programs, services, and benefits of school district regardless of the student’s regardless of housing status, socioeconomic status, immigration status, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality. The rules also provide an objective basis for evaluating a school

district's progress toward equity in educational activities and programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules ensure school districts provide for students' basic rights to equitable treatment and services, and to a quality education. The Department asserts that the amendments will promote equity for students.

38. **Comment:** The commenters expressed general opposition to the proposed amendments and readoption of N.J.A.C. 6A:7. The commenters asserted that the proposed amendments are overreaching and unacceptable. The commenters further asserted that if the Department "continues on this path which stifle free speech, and free thought, the exodus out of the public schools will continue." The commenters requested a pause so the public can testify in person. **(659, 669, 674, 676, 685, and 686)**

Response: The Department disagrees with the commenters' position as the pending amendments will not stifle free speech and free thought. Further, pursuant to N.J. Const. Art. I, ¶ 4, and U.S. Const. amend. I, as applied through U.S. Const. amend XIV, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

The Department notes that, as proposed, N.J.A.C. 6A:7 provides rules governing equality and equity in educational activities and programs to guarantee each student equitable access to all educational programs, services, and benefits of school district regardless of the student's regardless of housing status, socioeconomic status, immigration status, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality. The rules also provide an objective basis for evaluating a school district's progress toward equity in educational activities and programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules ensure school districts provide for students' basic rights to equitable treatment and services, and to a quality education. The Department asserts that the amendments will promote equity for students.

The State Board of Education accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act.

39. **Comment:** The commenter expressed a general objection to the proposed amendments at N.J.A.C. 6A-7. The commenter asserted that the Department is engaged in radical policies and attempting to indoctrinate students with false and dangerous racial and gender ideologies. The commenter further asserted that Department's proposal is exposing young children to harmful information that will lead to further division, confusion, discrimination, and many other negative outcomes. The commenter lastly asserted that the proposed amendments discriminate against students who are biologically male and female. **(667)**

Response: The Department disagrees with the commenter's position. The Department notes that, as proposed, N.J.A.C. 6A:7 provides rules governing equality and equity in educational activities and programs to guarantee each student equitable access to all educational programs, services, and benefits of school district regardless of the student's regardless of housing status, socioeconomic status, immigration status, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait,

service in the Armed Forces of the United States, or nationality. The rules also provide an objective basis for evaluating a school district’s progress toward equity in educational activities and programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules ensure school districts provide for students’ basic rights to equitable treatment and services, and to a quality education. The Department asserts that the amendments will promote equity for students.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i do not discriminate against biological male and biological female students. The proposed amendments 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 amendments are consistent with the NJLAD, 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.

40. **Comment:** The commenter expressed a general objection to the proposed amendments at N.J.A.C. 6A-7. The commenter asserted that “[e]quity by definition is biased based on race or ethnicity.” (694)

Response: The Department disagrees with the commenter’s position. The definition of “equity,” as proposed for amendment, includes all students without excluding a student based on race or ethnicity. The definition means all students have the opportunity to master the goals of the curriculum in an educational environment that is fair, just, and impartial to all individuals. Equity focuses on consistent and systematic access for all students to curriculum, resources, instruction, and environments that sustain opportunities for excellent outcomes.

41. **Comment:** The commenters expressed general opposition to the proposed amendments and readoption of N.J.A.C. 6A:7. The commenters asserted that the proposed amendments are overreaching and unacceptable. The commenters asserted that changes of this magnitude should not take place without an open public meeting and live input. (661, 663, 665, 666, and 669)

Response: The Department disagrees with the commenters position. The Department notes that, as proposed, N.J.A.C. 6A:7 provides rules governing equality and equity in educational activities and programs to guarantee each student equitable access to all educational programs, services, and benefits of school district regardless of the student’s regardless of housing status, socioeconomic status, immigration status, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality. The rules also provide an objective basis for evaluating a school district’s progress toward equity in educational activities and programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules ensure school districts provide for students’ basic rights to equitable treatment and services, and to a quality education. The Department asserts that the amendments will promote equity for students.

The State Board of Education accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act.

42. **Comment:** The commenters expressed objection to replacing “equality” with “equity” throughout the chapter. The commenters asserted that no clear explanation was given and it is greatly concerning. (50 through 103, 668, 669, 676, 685, 686, and 691)

Response: The Department disagrees with the commenters. The summary memorandum, which was publicly available prior to first discussion, sets forth at length the rationale for changing “equality” to “equity.” As proposed for amendment, “equity” means students can 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 NJSLS. The Department further proposes to delete “equality” throughout the chapter because “equity,” as proposed for amendment, better aligns with current terminology and evidence-based practices in education.

43. **Comment:** The commenters expressed objection to replacing “equality” with “equity” throughout the chapter. The commenters asserted that there is no clear definition of the terms. The commenters asserted that this is irresponsible, if not deceptive. The commenters questioned the intention of the Department for the proposed change. The commenters asserted that there is an underlying intention. The commenters asserted that this change comes with consequences and requires parents’ input. **(642 and 643)**

Response: The Department disagrees with the commenters. The summary memorandum, which was publicly published prior to first discussion, sets forth at length the rationale for changing “equality” to “equity.” As proposed for amendment, “equity” means students can 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 NJSLS. The Department further proposes to delete “equality” throughout the chapter because “equity,” as proposed for amendment, better aligns with current terminology and evidence-based practices in education. The use of “equity” is consistent throughout the proposed amendments.

The Department has no underlying intention for proposing the amendments. Every amendment within the chapter has a corresponding reason as indicated in the summary. Further, the State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act.

44. **Comment:** The commenters object to the amendments throughout the chapter that apply the protected categories listed at N.J.A.C. 6A:7-1.1(a) to the various code provisions. The commenters asserted that the same will not always create an environment to sustain opportunities for excellent outcomes. **(94, 104 through 118, 642, 643, 648, 655, and 691)**

Response: The Department disagrees with the commenter’s position. The proposed amendments at N.J.A.C. 6A:7 and the application of the protected categories listed at N.J.A.C. 6A:7-1.1(a) are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. The Department maintains that the continued promotion of equity in all areas of education will sustain opportunities for excellent outcomes for all students.

45. **Comment:** The commenter expressed an objection to the proposed amendment at N.J.A.C. 6A:7-1.1. The commenter asserted that the summary provided at the December 7, 2022, State Board meeting, which described N.J.A.C. 6A:7 as providing “rules governing equality and equity in educational programs, services and benefits,” represents a change in scope of N.J.A.C. 6A:7 and the commenter objected to this change. The commenter asserted that the proper purpose of N.J.A.C. 6A:7 is to define “the responsibilities of district boards of education in complying with the current law and public policy governing the elimination of discrimination and the provision equal educational opportunity in the public schools” as stated in the summary provided at the September 4, 2002, State Board meeting. **(49)**
- Response:** The Department disagrees with the commenter’s position. The Department notes that, as proposed, N.J.A.C. 6A:7 provides rules governing equality and equity in educational activities and programs to guarantee each student equitable access to all educational programs, services, and benefits of school district regardless of the student’s regardless of housing status, socioeconomic status, immigration status, in addition to any protected category set forth N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality. The rules also provide an objective basis for evaluating a school district’s progress toward equity in educational activities and programs and provide the basis for district boards of education to identify areas in which technical assistance may be needed. The rules ensure school districts provide for students’ basic rights to equitable treatment and services, and to a quality education. The Department asserts that the amendments will promote equity for students.
- Further, the scope of the rules requires district boards of education to establish policies and procedures for the provision of educational activities and programs for all students regardless of the protected class.
46. **Comment:** The commenter objected to the removal of “and services” at N.J.A.C. 6A:7-1.1(a) and (b). The commenter further objected to the removal of the references to the Equal Employment Opportunity Act of 1972 and The Equal Pay Act of 1962 at N.J.A.C. 6A:7-1.1(b). The commenter objected to the removal of “contract and employment practices” throughout N.J.A.C. 6A:7. **(49)**
- Response:** The Department disagrees with the commenter’s position. The deletion of “and services” is aligned with the purpose of the chapter and is consistent with the other proposed amendments throughout N.J.A.C. 6A:7. Further, the removal of references to the Equal Employment Opportunity Act of 1972 and The Equal Pay Act of 1962 and the removal of “contract and employment practices” throughout N.J.A.C. 6A:7 is consistent with the purpose and scope of the chapter. The regulation of employment practices is outside of the scope of the jurisdiction of the Department and governed by State and Federal law.
47. **Comment:** The commenters expressed concern and opposition to the proposed amendments to the definition of “equity” at N.J.A.C. 6A:7-1.3. The commenters asserted that “all,” as expressed in the definition of “equity,” includes Christians, Orthodox Jews, Muslims, and Coptic Christians. The commenters claimed that the “pending adopting is a complete circumvention of what parents want a clear effort to strip moral standard from the classroom with the goal to brainwash children and erase truth.” **(98 and 100)**
- Response:** The Department agrees that the term “all,” as used in the definition of “equity,” includes all religions and that school districts are required to ensure equitable access to activities and services to promote success of all students. The definition of “equity” does not prevent a student from believing in their individual moral standard.

The proposed amendments at N.J.A.C. 6A:7 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq.

48. **Comment:** The commenter expressed an objection to the removal of the definitions of “disability” and “national origin” at N.J.A.C. 6A:7-1.3. The commenter suggested that the definitions for “school and classroom practices” and “school desegregation,” which were removed in the 2016 readoption of the chapter, be reinstated. The commenter asserted that equity cannot be streamlined or approached as a chore and that the definitions of all protected classes should be spelled out in the chapter. **(49)**
Response: The Department disagrees with the commenter's position. Proposed amendments to the list of protected categories or classes that are referenced throughout the chapter will align the regulations with the NJLAD; therefore, a definition of “national origin” is unnecessary and superfluous. The deletion of the definition of “disability” is necessary because it is included in the chapter's purpose, which aligns with the NJLAD protected categories.

The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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. As such, reinstatement of the deleted definitions during the chapter's readoption in 2016 is unnecessary as the chapter, as proposed for amendment, encompasses and provides additional protections and is aligned with the NJLAD.

49. **Comment:** The commenters expressed concern and opposition to the proposed amended definitions at N.J.A.C.6A:7-1.3. The commenters asserted that their faith and deeply religious views are in peril. The commenters asserted that they care about children and support and defend equality. The commenters asserted that all children should be cared for, respected, protected, and have equal rights to learn, to excel, and to reach their fullest potential. However, the commenters claimed that treating all equally cannot result in those with deeply held religious beliefs being discriminated against. The commenters further claimed that the proposed changes deny their deeply held religious views and the way that the commenters practice their faith. **(98, 100, 685, and 686)**
Response: The Department agrees with the commenters' assertion that all children should be cared for, respect, protected, and have equal rights to learn, to excel, and to reach their fullest potential. The Department, however, disagrees with the remainder of the commenters' assertions. The proposed amendments to the chapter will protect students based on religion as that is one of the protected categories explicit within the chapter. Therefore, the proposed amendments will protect students with deeply held religious beliefs from being discriminated against while at school.

50. **Comment:** The commenters expressed concern and opposition to the proposed amended definitions for “achievement gap” and “opportunity gap” at N.J.A.C. 6A:7-1.3 regarding. The commenters asserted that the replacement of “achievement gap” and “opportunity gap” throughout the chapter will “create an environment where the responsibility for student outcomes has little to no bearing on student effort, a travesty in an already declining academic environment.” **(642, 643, and 648)**

Response: The Department disagrees with the commenters. 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 the protected categories listed at N.J.A.C. 6A:7-1.1(a). The Department also proposes a definition of “opportunity gap” as 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). Each term represents a separate and distinct issue, and the terms are complimentary. “Opportunity gap” represents the access to education activities and programs and “achievement gap” represents the results created by opportunity gaps and other factors. The responsibility for student outcomes does not rest solely on the opportunities afforded to each student but on the efforts each student puts into achievement.

51. **Comment:** The commenter expressed an objection to the amendments at N.J.A.C. 6A:7-1.4 as they do not provide monitoring procedures to achieve educational opportunity. The commenter suggested that the Department provide technical assistance to school districts in developing equity-focused monitoring systems outside testing. The commenter asserted that the removal of the approval language related to CEPs represents a lack of capacity to monitor the plans. **(49)**

Response: The Department disagrees with the commenter. The proposed amendment at N.J.A.C. 6A:7-1.4(c) will require that each district board of education develop, once every three years, a CEP that must identify and correct all discriminatory and inequitable educational, patterns, programs, and practices affecting its facilities, programs, students, and staff. The proposed amendment at N.J.A.C. 6A:7-1.4(c)3 adds “measurable and actionable” to specify the types of goals, objectives, timelines, and benchmarks for measuring progress that must be included in CEPs.

Compliance with the CEPs is done by school districts and district boards of education. The proposed amendment at N.J.A.C. 6A:7-1.4(d) will require each district board of education to submit to the Department at the end of each school year a statement of assurance regarding achieving the CEP’s objectives. Proposed new N.J.A.C. 6A:7-1.4(d)4 will require the chief school administrator of each school district to certify in the statement of assurance that the school district has evaluated the CEP for effectiveness and has submitted a revised CEP to the executive county superintendent, if necessary. The existing rules require school districts to evaluate the effectiveness of their CEPs and modify them, as necessary.

52. **Comment:** The commenters objected to the proposed amendment at N.J.A.C. 6A:7-1.4(c)1. Specifically, the commenters objected to the “[r]emoving of performance data as the first point of consideration when assessing criteria to achieve equity.” The commenters asserted that that there is learning loss and, as such, there should be a focus on performance data and student performance. **(642, 673, and 648)**

Response: The Department disagrees with the commenters. The proposed amendment at N.J.A.C. 6A:7-1.4(c)1 will require the district board of education to assess, prior to developing the CEP, 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 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, including performance data, that may be analyzed prior to developing the CEP and ensure interoperability.

53. **Comment:** The commenters objected to the requirement that school districts develop CEPs that include measurable and actionable goals, objectives, timelines, and benchmarks for measuring progress as proposed at N.J.A.C. 6A:7-1.4(c)3. The commenters expressed concern as to who will decide and mandate what action needs to be taken. The commenters requested that the proposed language not be added. **(50 through 103, 642, 643, 676, and 643)**

Response: The Department disagrees with the commenters. The proposed amendment at N.J.A.C. 6A:7-1.4(c) will require that each district board of education develop, once every three years, a CEP that must identify and correct all discriminatory and inequitable educational policies, patterns, programs, and practices affecting its facilities, programs, students, and staff. The proposed amendment at N.J.A.C. 6A:7-1.4(c)3 will add “measurable and actionable” to specify the types of goals, objectives, timelines, and benchmarks for measuring progress that must be included in CEPs.

In accordance with N.J.A.C.6A:7-1.4(a)4ii, the affirmative action team is responsible for the development of the school district’s CEP. Therefore, the affirmative action team will determine what actions need to be taken.

54. **Comment:** The commenters expressed opposition to the proposed amendment at N.J.A.C. 6A:7-1.4(c)4i. The commenters asserted that “[t]his paragraph gives the executive county superintendent the right to override the local board and administration.” The commenters further asserted that “[i]t removes local control of the schools and violates the spirit and intent of their existence.” The commenters requested that N.J.A.C. 6A:7-1.4(c)4i be revised or deleted. **(642, 643, and 648)**

Response: The Department disagrees with the commenters’ position. The proposed amendments at N.J.A.C. 6A:7-1.4(c)4i will require the executive county superintendent to review the CEP for completion. The proposed amendments will clarify that the district board of education approves the CEP, and the executive county superintendent ensures completion. The proposed amendments will retain local control by the district boards of education.

55. **Comment:** The commenter suggested that N.J.A.C. 6A:7-1.4 be amended to require school districts to submit their CEPs to both the Department and county offices of education. The commenter objected to the removal of the approval of the CEPs by the Department at N.J.A.C. 6A:7-1.4(c)4. The commenter stated that the Department should be attempting to strengthen the regulations. The commenter stated that removal of the approval component weakens accountability efforts. The commenter suggested that N.J.A.C. 6A:7-1.4(c)4ii be amended to require districts to post CEPs on their websites. **(49)**

Response: The Department disagrees with the commenter’s position. Under existing N.J.A.C. 6A:7-1.4(c), the school district submits the CEP to the Department and the executive county superintendent. The Department’s proposed amendment will not change the process and, instead, will eliminate the duplicative submission step. The executive county superintendent is a Department employee who operates the county office of education, which serves as the focal point of general support, oversight, and routine communications between school districts in the county and the Department’s central offices. It is the district board of education’s responsibility for complying with the provisions of N.J.A.C. 6A:7, including the CEP.

As proposed for amendment, the district board of education is responsible for

submitting the CEP 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 CEP because school districts are not required to maintain a website and it would lead to inconsistent practices throughout the State.

56. **Comment:** The commenters expressed opposition to proposed N.J.A.C. 6A:7-1.5(a)4i, which will require, to the extent possible, the affirmative action team to include members who represent the diversity of the school district’s student population. The commenters expressed concern that those with traditional family values and who hold deeply religious views will be excluded and they will be the ones undergoing discrimination. **(50 through 103, 642, 643, 676, and 691)**

Response: The Department disagrees with the commenters. 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). N.J.A.C. 6A:7-1.1(a), as proposed for amendment, states that 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, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality, are provided equal access to educational programs and services by district boards of education. Religion is a protected class under the chapter and the NJLAD. As such, those with deeply held religious views will be protected.

57. **Comment:** The commenters asserted that removing gender-specific language will cause confusion for children. The commenters asserted that the changes are subtle and are done on purpose for an ulterior motive, that being indoctrination not education. **(642, 643, and 676)**

Response: The Department is eliminating all gendered nouns and pronouns throughout all chapters of Title 6A of the New Jersey Administrative Code as the chapters are reviewed for readoption. The proposed amendments at N.J.A.C. 6A:7 ae consistent with the Department’s practice for regulatory amendments.

58. **Comment:** The commenter objected to proposed N.J.A.C. 6A:7-1.5(a)4i. The commenter expressed concern that those who hold traditionally family values, who prefer to not have their children bombarded with unnecessary information, and who desire to honor God in raising children will be excluded and their children will be the ones who will be the subjects of discrimination. The commenter also further stated that “later in life, many children who have transitioned, later had regrets, anger, and resentment toward the adults in their lives who allowed a child to make a life altering decision.” The commenter claimed that the proposed amendments border on child abuse. **(95)**

Response: The Department disagrees with the commenter. 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). N.J.A.C. 6A:7-1.1(a), as proposed for amendment, states that 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, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality, are provided equal access to educational programs and services by district boards of education.

The commenter's assertions regarding children transitioning and later in life having regrets are outside of the scope of the current rulemaking.

59. **Comment:** The commenter expressed an objection to the deletion of “prejudice” at N.J.A.C. 6A:7-1.6(a) and “racial” in “equity in school and classroom practices” at N.J.A.C. 6A:7-1.7(a)2. The commenter expressed alarm by the lack of intention addressing the issue of “black hate,” which the commenter asserted is at the root of all the disproportionality issues in schools. The commenter also asserted that it is improper to downplay the role of prejudices in perpetuating inequalities by eliminating “prejudice” and “racial” from the chapter. (49)

Response: The Department disagrees with the commenter's position. N.J.A.C. 6A:7-1.1(a), as proposed for amendment, states that 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, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality, are provided equal access to educational programs and services by district boards of education. The proposed amendments at N.J.A.C. 6A:7 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, and narrow the achievement gap by providing equity in educational activities and programs and opportunities for positive student interaction.

The deletion of “arising from prejudice” at N.J.A.C. 6A:7-1.6(a) emphasizes that inequities must be addressed, regardless of their cause. The deletion of “racial” and the addition of “a representative” at N.J.A.C. 6A:7-1.7(a)2 aligns the regulation with all protected categories and not only race.

60. **Comment:** The commenter requested that the Department clarify what “adequate and appropriate counseling” means at N.J.A.C. 6A:7-1.7(c). The commenter cited statistics from Paterson Public Schools showing that, in 2015, there were 13 student assistance coordinators (SACs) for nearly 30,000 students. The commenter asserted that today Paterson Public Schools has only 7 SACs for 26,000 students. The commenter asserted that Paterson Public Schools did not list any corrective actions or schools that were out of compliance in their last CEP. The commenter stated that the Department's current proposals for professional development and practices poses a serious compromise to access. The commenter suggested that the correlation between risk factors and services associated with historically marginalized communities be highlighted when determining what is adequate and appropriate. (49)

Response: The Department disagrees with the commenter's position. N.J.A.C. 6A:7-1.7 specifically 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 the 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 affirmative action team at each school district must determine what is adequate and appropriate counseling services for the student population during the needs assessment and subsequent evaluation of the CEP. Concerns raised regarding a specific school district are outside the scope of this rulemaking and the commenter is encouraged take those concerns to the district board of education or superintendent, as appropriate.

61. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter asserted that separating students based upon preferred gender is particularly problematic in elementary schools that focus on biology-based puberty and physical growth and development. The commenter requested an opportunity for the public to voice their opinions in person and directly to the State Board. **(645)**

Response: The Department disagrees with the commenter. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law, which require that the assignment to a class session 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to 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 State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. All proposed regulatory amendments are broadly available to the public through the Department's website.

62. **Comment:** The commenter expressed general opposition to the proposed amendments at N.J.A.C. 6A:7 with specific objection to N.J.A.C. 6A:7-1.7(b)2i. The commenter objected to a suspension of public testimony. The commenter further asserted that proposed amendments are forcing schools to separate students for certain health and physical education lessons based on gender identity, which the commenter stated is problematic and objectionable to the standards of the commenter's family." (677)

Response: The Department disagrees with the commenter. The State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. All proposed regulatory amendments are broadly available to the public through the Department's website.

Further, the Department disagrees with the commenter's assertion that N.J.A.C. 6A:7-1.7(b)2i, as proposed for amendment, will forcing school districts to separate students based upon gender identity for health class. 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.

If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

63. **Comment:** The commenter expressed general opposition to the proposed amendments at N.J.A.C. 6A:7 with specific objection to N.J.A.C. 6A:7-1.7(b)2i. The commenter asserted that proposed amendments are Statewide policy that would force schools that have decided to separate students for certain health and physical education lessons to do so based on gender identity. The commenter asserted that this is particularly problematic in elementary grades where a focus on biologically based puberty and physical growth and development is inappropriate for their age. The commenter also asserted that parents’ voices should be heard at in-person public meetings. **(678)**

Response: The Department disagrees with the commenter’s assertion that the N.J.A.C. 6A:7-1.7(b)2i, as proposed for amendment, will forcing school districts to separate students based upon gender identity for health class. 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.

If students are separated for class sessions that exclusively deal with human

sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to 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.

The State Board accepts comments on a rulemaking from the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. All proposed regulatory amendments are broadly available to the public through the Department's website.

64. **Comment:** The commenter expressed general opposition to the proposed amendments at N.J.A.C. 6A:7 and specifically at N.J.A.C. 6A:7-1.7(b)2i. The commenter asserted that "Gender Dysphoria, which is a mental health issue, is at the forefront of the discussion." The commenter expressed that the Department "is leaning into a delusion and that cannot bode well for these kids." The commenter further expressed opposition to the proposed amendments "based on the science of biology." (679)

Response: The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i 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 NJLAD, 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 proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of changes

to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq.

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.

65. **Comment:** The commenters objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenters asserted the option of separating students is absolutely essential but must be done based upon biological sex and not gender identity. The commenters asserted that, due to the 2020 NJSLS, sensitive topics will be discussed in second, fifth, and eighth grades, and regardless of course content it is a reasonable expectation that in these classes there will be discussions that are biological and sex specific. The commenters assert that in light of this, there will not be an excellent outcome for a student whose biological sex is male to be involved in a setting where all other students will be discussing their biological female anatomy. The commenters asserted that the same is true for biological female students who identify as male. **(104 through 118 and 655)**

Response: The Department disagrees with the commenters. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law, which means 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

66. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter requested that the language remain unchanged and permit school districts to separate classes by sex. The commenter asserted that the existing regulation allows for the separation based upon sex to protect the individual privacy of students at a young age and protects their freedom to speak and ask questions in an environment that is comfortable for them. The commenter asserted that the combining of male and female students in puberty education will quell learning because students will not feel free to ask questions. **(656)**

Response: The Department disagrees with the commenter. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

67. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter expressed concern that biological males, if they identify as females, would be allowed in classrooms where there would be sensitive sexual subject matter and basic human anatomy discussed. The commenter stated that youth at times can be very confused in many areas, which can hinder their ability to learn. The commenter asserted that the education system should not add to their confusion. **(660)**

Response: The Department disagrees with the commenter. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

68. **Comment:** The commenters objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1. The commenters asserted that permitting students to participate in classes dealing with human sexuality and/or any other school activity who identify as a gender based on how they feel about themselves does not change the objective reality of their biological sex. Additionally, the commenters asserted that the proposed amendments diminish the rights of the biological girls to privacy by allowing boys into female facilities. The commenters asserted that girls' safety and well-being is in jeopardy. The commenters further asserted that the new definition and requirement is a clear stripping of religious liberty and parental rights, and is very harmful and dangerous for all biological female students. **(646 and 671)**

Response: The Department disagrees with the commenters. Nothing in the proposed amendments alters the protections afforded by NJLAD, the protections afforded by N.J. Const. Art. I, ¶ 4, and the protections afforded by the U.S. Const. amend. I, as applied through the U.S. Const. amend XIV. Furthermore, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would

not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

In accordance with the Department's [Transgender Student Guidance for School Districts](#), all students are entitled to have access to restrooms, locker rooms, and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, [guidance](#) issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

69. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1. The commenter asserted that biological males should not be in health class or in locker rooms with girls. The commenter further asserted that God created males and females. The commenter requested that the gender-specific language be maintained. (658)

Response: The Department disagrees with the commenter. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

70. **Comment:** The commenters objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The commenters asserted that biological males should not be in health class or in a girls' locker room. The commenters claimed that the pending change in both definitions and the requirements is a stripping away of their religious liberty and parental rights. The commenters further claimed that the proposed amendments are harmful for all biological female students. **(50 through 103, 668, and 685)**

Response: The Department disagrees with the commenters and disagrees with their interpretation of the effect of the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. Nothing in the proposed amendments requires biological males to be in a girls' locker room. Nothing in the proposed amendments alters the protections afforded by the NJLAD, the protections afforded by N.J. Const. Art. I, ¶ 4, and the protections afforded by the U.S. Const. amend. I, as applied through the U.S. Const. amend. XIV. Furthermore, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

71. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The commenter requested that biological males not be permitted in a girls' locker room. The commenter also requested that the Department not force schools that choose to separate students for class sessions that exclusively deal with human sexuality be based on biological sex and not gender identity. **(648)**

Response: The Department disagrees with the commenter and disagrees with the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. Nothing in the proposed amendments requires that biological males be in a girls' locker room.

If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent

with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms, and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

72. **Comment:** The commenters objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1, claiming that basic education and child safety should be the Department’s highest priority. The commenters asserted that the Department is focusing on sexualization and gender identity of children by the school system, which, the commenters claimed, are confusing and potentially harmful to children. **(95 and 691)**

Response: The Department disagrees with the commenters and disagrees with the interpretation of the effect of the proposed amendment at N.J.A.C. 6A:7-1.7(b)2i and (d)1. Nothing in the proposed amendments focuses on sexualization and gender identity.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq.

73. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The commenter stated that replacing “male and female” with “based on gender identity” is not acceptable. The commenter claimed that biological gender must be used exclusively for the purposes of locker rooms, rest rooms, and team sports for the physical and emotional safety of the children. The commenter asserted that if a child’s parents have already legally changed their child’s name and allowed their child to dress in a way that conforms to their gender identity, other than their biological gender, an accommodation can be made to allow the students to use a separate rest room, locker room, and team sport. The commenter claimed that biological boys and girls must continue to have the physical and emotional safety and privacy and fair competition that has been traditionally enjoyed by children. **(95)**

Response: The Department disagrees with the commenter and disagrees with the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1. If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student’s expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

74. **Comment:** The commenter stated that the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i is not in the best interests of students. The commenter asserted that children need to attend developmentally appropriate sessions based on their birth gender. The commenter also stated that a student may make decisions to attend appropriate classes based upon gender identity when the student is 18 years old. The commenter further asserted that the policy would be particularly problematic in elementary schools that focus on biologically based puberty and physical growth and development. **(649)**
Response: The Department disagrees with the commenter. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

75. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The commenter asserted that the change from the traditional term “male and female” to “based upon gender identity” is potentially harmful and has dangerous ramifications for students. The commenter also asserted that the change is the stripping of religious liberty and parental rights. Furthermore, the commenter asserted that the change is a violation of inherent rights as human beings, civilized citizens, and the law itself. The commenter further asserted that biological males should not be in health class, girls’ bathrooms, or locker rooms under any circumstances because it would create an uncomfortable environment and put female students in vulnerable situations. **(651)**

Response: The Department disagrees with the commenter and disagrees with the

interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. Nothing in the proposed amendments alters the protections afforded by the NJLAD, the protections afforded by N.J. Const. Art. I, ¶ 4, and the protections afforded by the U.S. Const. amend. I, as applied through the U.S. Const. amend. XIV. Furthermore, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity.

76. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter asserted that the proposed amendments violate the Bible. **(652)**

Response: The Department disagrees with the commenter. Nothing in the proposed amendment alters the protections afforded by the NJLAD, the protections afforded by N.J. Const. Art. I, ¶ 4, and the protections afforded by the U.S. Const. amend. I, as applied through the U.S. Const. amend XIV. Furthermore, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

77. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The commenter asserted that the policy behind the proposed amendments is wrong both scripturally and morally. The commenter suggested that it will only harm heterosexual children and promote what is not natural. The commenter asked the Department to reconsider the proposed amendments.

(673)

Response: The Department disagrees with the commenter and the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. Nothing in the proposed amendments alters the protections afforded by the NJLAD, the protections afforded by N.J. Const. Art. I, ¶ 4, and the protections afforded by the U.S. Const. amend. I, as applied through the U.S. Const. amend XIV. Furthermore, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and 1.7(d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

78. **Comment:** The commenters objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The commenters asserted that the change in definitions and the requirements is a clear stripping of family values, religious liberty, and parental rights. The commenters asserted the proposed amendments are harmful and dangerous for all biological female students. The commenters further asserted that girls should not be forced to take health class with biological boys and biological males should not be permitted to participate in girls' sports or be in girls' locker rooms. (99, 103, 119 through 167, 648, 654, 657, 662, 664, 669, and 675)

Response: The Department disagrees with the commenters and disagrees with the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. Nothing in the proposed amendments alters the protections afforded by the NJLAD, the protections afforded by N.J. Const. Art. I, ¶ 4, and the protections afforded by the U.S. Const. amend. I, as applied through the U.S. Const. amend XIV. Furthermore, the Department cannot adopt any policy, rule, or regulation which establishes a preference for any religious sect or belief. Regarding school sports, N.J.A.C. 6A:7-1.7(d)2 allows a school district to operate separate sports teams based upon sex or operate single teams open competitively to members of all sexes, so long as the athletic program as a whole provides equal opportunities for students of all sexes to participate in sports at comparable levels of difficulty and competency.

If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the

assignment to a class session that is divided by gender or provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may

access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

79. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The commenter asked the Department to reconsider allowing biological males into female spaces because it is dangerous for females. The commenter also stated that it is unkind to young men who are experiencing what the commenter called gender dysphoria because they will not be able to pass and will be the subject of bullying. The commenter suggested using a separate non-gendered bathroom for students who have gender-identity issues. The commenter asked the Department not to contribute to a fad that is a liability for individuals and society. **(689)**
- Response:** The Department disagrees with the commenter and with the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. N.J.S.A. 10:5-12f 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq.

Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms, and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

80. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1. The commenter expressed concern about allowing biological males to participate in girls' sports. The commenter further expressed concern about allowing biological males into girls' class sessions on human sexuality because it puts girls at risk and discriminates against girls' ability to fully benefit from these activities. **(680)**

Response: The Department disagrees with the commenter and disagrees with the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. and (d)1. N.J.A.C. 6A:7-1.7(d)2, as proposed for amendment, allows a school district to operate separate sports teams based upon sex or operate single teams open competitively to members of all sexes, so long as the athletic program as a whole provides equal opportunities for students of all sexes to participate in sports at comparable levels of difficulty and competency.

If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities, must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq.

Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

81. **Comment:** The commenters objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1. The commenters asserted that biological males should not be health class or in a girls locker room. The commenters also asserted that the new change in definitions is a clear stripping of religious liberty, parental rights, and is very harmful and dangerous for all female students. The commented asserted that the Department and its personnel are "all perverted to even consider this." (650 and 670)

Response: The Department disagrees with the commenters and disagrees with the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1. Nothing in the proposed amendments alters the protections afforded by the NJLAD, the protections afforded by N.J. Const. Art. I, ¶ 4, and the protections afforded by the U.S. Const. amend. I, as applied through the U.S. Const. amend XIV. Furthermore, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

If students are separated for class sessions that exclusively deal with human

sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and N (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq.

Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may

access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

82. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The commenter suggested that the proposed amendments would lead to a teenage girl being assaulted. The commenter further suggested that every "parent should ride up against this possible bill in our state government." The commenter asserted that the entire concept is outrageous and dangerous. The commenter indicated that she would not vote for any elected official in State government who votes in favor of the legislation. Lastly, the commenter asserted that gender identification is one thing and a choice a person makes along with the person's family, but putting boys in a girls' locker room with either boys or girls who are undressed is inviting trouble. (672)

Response: The Department disagrees with the commenter and disagrees with the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the readoption of N.J.A.C. 6A:7-1.7(d)1. The comment appears to be conflating the code readoption process and is confusing the changes to the New Jersey Administrative Code with legislation.

If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and N (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected

category set forth at N.J.S.A. 10:5-1 et seq.

Generally, 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.

In accordance with the Department's Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student's gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department's guidance.

83. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and the re-adoption of N.J.A.C. 6A:7-1.7(d)1. The commenter questioned why the proposed amendments have not been brought to a vote. The commenter queried whether the Department is afraid that the public will not agree with what the commenter stated is "evil thinking." The commenter asserted that, if gender issues are prevalent, the Department should bring in people, such as psychologists and psychiatrists, who have qualifications to work with these issues. Further, the commenter asserted that teachers are not qualified to deal with issues of gender. (682)

Response: The Department disagrees with the commenter and disagrees with their interpretation of the effect of the amendment to N.J.A.C. 6A:7-1.7(b)2i and the re-adoption of N.J.A.C. 6A:7-1.7(d)1. The comment appears to be conflating the code re-adoption process and the changes to the New Jersey Administrative Code with legislation.

If students are separated for class sessions that exclusively deal with human sexuality or they are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender or the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Separating students for class sessions on human sexuality or providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

In accordance with the Department’s Transgender Student Guidance for School Districts, all students are entitled to have access to restrooms, locker rooms, and changing facilities in accordance with their gender identity to allow for involvement in various school programs and activities. In all cases, the school principal must work with the student and staff so all parties are aware of facility policies and understand that the student may access the restroom, locker room, and changing facility that corresponds to the student’s gender identity. Additionally, guidance issued by the New Jersey Division of Civil Rights is consistent with the Department’s guidance.

84. **Comment:** The commenter stated that the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are very dangerous. The commenter also stated that the proposed amendments are a dangerous assault to God-given First Amendment rights and would violate the right to exercise religion and would abridge freedom of speech. The commenter additionally stated that a biological female who may identify as a male could potentially miss out on fundamental operations of anatomy, important health and hygiene topics, and future health problems. The commenter stated that Christian teachers are being forced to obey and deny God’s word or leave the profession. The commenter also contended that Christian teachers’ rights are being violated. The commenter stated that the Department is normalizing evil and equity will be used to silence Christian families. The commenter stated that this is overreach on parental rights, religious liberties, and harmful to female children. (669)

Response: The Department disagrees with the commenter and disagrees with the interpretation of the effect of the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. Nothing in the proposed amendments alters the protections afforded by the NJLAD, the protections afforded by N.J. Const. Art. I, ¶ 4, and the protections afforded by the U.S. Const. amend. I, as applied through the U.S. Const. amend XIV. Furthermore, the Department points out that it cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and 1.7(d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

Further, the Department notes that pursuant to N.J. Const. Art. I, ¶ 4, and U.S. Const. amend. I, as applied through U.S. Const. amend XIV, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

85. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter identified the numerous changes that children go through during puberty. The commenter asserted that these changes and the conversations regarding the same are difficult. The commenter stated that “adding gender identity men into a woman’s class and gender identity women into a man’s class will cause discomfort, insecurity and even shame to everyone involved.” The commenter suggested a separate class for students who are dealing with issues of gender identity. **(683)**

Response: The Department disagrees with the commenter and with the commenter’s suggestion that students who have issues with gender identity should be provided a separate class.

If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender must be done based upon the student’s expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

86. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter asserted that that biology prevails until a child reaches 21 years old and is at that point when issues of gender identity can be determined or addressed. (684)

Response: The Department disagrees with the commenter's assertion. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender must be done based upon the student's expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

87. **Comment:** The commenter objected to the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter asserted that the proposed amendments separate students based upon an individual student’s “fluid gender identity.” The commenter further asserted it has been clearly evident that there are two sexes -- male and female – for thousands of years. The commenter also asserted that the recent ideological construct that humans can become one or the other based on feelings is not true, even while it is presented as a popular belief. **(690)**

Response: The Department disagrees with the commenter. The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender must be done based upon the student’s expressed gender identity. Permitting school districts to assign students to classes or separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are consistent with and required by State and Federal law.

88. **Comment:** The commenters opposed the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenters asserted that the regulation, as proposed for amendment, 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 amendments will hinder students from asking questions and seeking clarification regarding important information about their body's anatomy and physiology. The commenters expressed concern 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. **(168 through 641)**

Response: The Department disagrees with the commenters' position. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

89. **Comment:** The commenter opposed the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i. The commenter asserted that the regulation, as proposed for amendment, would force schools that have decided to separate students for certain health and physical education lessons to do so based upon gender identity. The commenter stated that this would be problematic in elementary grades that focus on biologically based puberty and physical growth and development as it is inappropriate for their age. The commenter asserted that the Department should allow parent's voices to be heard at in-person public meetings. (681)

Response: The Department disagrees with the commenter's position. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department’s objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Generally, 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.

Regarding the commenter’s request for public testimony, the State Board and Department accept comments on a rulemaking from the time the time it is made public prior to first discussion to the end of the 60-day comment period required by the Administrative Procedure Act. Therefore, the public has been able to submit comments on the proposed readoption with amendments of N.J.A.C. 6A:7 since it was made public on December 5, 2022. Public testimony on the readoption with amendments of N.J.A.C. 6A:7 also will be accepted when it is scheduled for proposal level public testimony, which will occur after the notice of proposal is published in the New Jersey Register.

90. **Comment:** The commenters asked the Department to consider the following questions in regard to the proposed amendments 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 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? **(168 through 641)**

Response: 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. 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 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. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are both consistent with and required by State and Federal law.

Regarding the incorporation of parental concerns by the district boards of education, it is expected that school districts and district boards of education will comply with Federal law, including laws that regulate the recipients of funding from the United States Department of Education as noted above. If a district boards of education or its members fail to comply with the law, the district board of education members are subject to the School Ethics Act, N.J.S.A. 18A:12-23, including the removal of members whose violations warrant the sanction of removal.

91. **Comment:** The commenters objected to the proposed amendment at N.J.A.C. 6A:7-1.7(b)3. The commenters asserted that God created two genders -- male and female. The commenters claimed that the Department is taking action to confuse children. The commenters claim that the changes are subtle on purpose, but the intent is clear. **(50 through 103)**

Response: The Department disagrees with the commenters' position. The commenters suggest an ulterior motive for the proposed amendment that does not exist. Existing N.J.A.C. 6A:7-1.7(b)3 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 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 asset-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.

Further, pursuant to N.J. Const. Art. I, ¶ 4, and U.S. Const. amend. I, as applied through U.S. Const. amend XIV, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief. If students are separated for class sessions that exclusively deal with human sexuality, it must be done in accordance with State and Federal law. As explained, that means that the assignment to a class session that is divided by gender 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 without regard to their expressed gender identity would not be consistent with State law. 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.

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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i are both consistent with and required by State and Federal law.

In addition, the proposed amendments at N.J.A.C. 6A:7-1.7(b)2i are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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. Generally, 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.

92. **Comment:** The commenters objected to the proposed amendment at N.J.A.C. 6A:7-1.7(b)3. The commenters asserted that it is both racist and sexist to assume that children, regardless of race or biological gender identity is any less gifted or talented than any other child. The commenters further asserted that “[t]rying to promote an increase in gender-fluid kids in these programs will exert both attention and favoritism to such group and result in the confusion of children and put pressure on them to experiment with gender-fluidity.” (95 and 691)

Response: The Department disagrees with the commenters' position and assumption regarding gender identity being any more or less gifted or talented than other students. Existing N.J.A.C. 6A:7-1.7(b)3 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 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 representative of the school district's student population.

93. **Comment:** The commenter objected to the deletion of references to athletic programs at N.J.A.C. 6A:7-1.7(d). The commenter suggested that N.J.A.C. 6A:7-1.7(b) should be amended to add “discouraging the use of tracking” at between “narrowing the opportunity gap” and “providing equity in educational activities and programs.” While suggesting a deemphasis on tracking, the commenter cited testimonies from the Joint Committee on Public Schools meeting that showed the most glaring disparities have to do with who has access to advanced and rigorous coursework. The commenter asserted that, during the past 20 years, there has been a deemphasis on desegregation efforts in favor of closing the achievement gap. The commenter asserted that this shift in emphasis has led to an increase in segregation and was a mistake. The commenter suggested that “gifted and talented,” “accelerated,” and “advanced classes” should be emphasized in an effort to increase opportunities to participate in these classes. (49)

Response: The Department disagrees with the commenter's position. Proposed N.J.A.C. 6A:7-1.1(a) states that 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, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality, are provided equal access to educational programs and services by district boards of education. The proposed amendments at N.J.A.C. 6A:7 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity.

N.J.A.C. 6A:7-1.7 specifically 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 commenter's suggested changes are not fully aligned with the overall goal and mission of the chapter for re-adoption or this section.

94. **Comment:** The commenters stated that N.J.A.C. 6A:7-1.7(d)1 mandates that separate locker room and shower facilities be provided upon the basis of gender. The commenters posed following questions to the Department:

- What is the intention of this language?
- Does it mean “biological gender,” “gender based on sex as listed in N.J.A.C. 6A:7-1.7(d)2,” or “gender identity”? The commenters stated that if it is based upon gender identity, it should be revised. The commenters claimed that policies like this have resulted in sexual assault, including two high-profile sexual assault cases in Loudoun County, Virginia, that the commenters stated many have tried to downplay. The commenters asserted that it is criminal to push through policies without consideration for the safety of all students simply to support an agenda.

(642, 643, and 648)

Response: N.J.A.C. 6A:7-1.7(d)1, as proposed for amendment, is intended to comply with both New Jersey and Federal law. If students are provided separate restroom, locker room, and shower facilities, it must be done in accordance with State and Federal law. As explained, that means that the provision of separate facilities must be done based upon the student's expressed gender identity. Permitting school districts to provide separate facilities based upon sex assigned at birth or biological sex without regard to their expressed gender identity would not be consistent with State law. 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.

Providing them separate facilities 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 LGBTQIA+ 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 amendments at N.J.A.C. 6A:7-1.7(b)2i and (d)1 are both consistent with and required by State and Federal law.

The proposed amendments at N.J.A.C. 6A:7 are the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. The Department's objective is to ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. The Department is not aware of any increase in sexual assaults that are the result of policies designed to prevent discriminatory behavior.

95. **Comment:** The commenters asserted that learning loss as mentioned in previous comments is within the scope of this rulemaking. The commenters asserted that the Department's duty is to educate and it is clear that some individuals in the Department no longer care if children learn, but only if they are indoctrinated. **(98, 100, 685, and 686)**
Response: The Department disagrees with the commenters and their classification of the Department's role. The role of the Department is to support schools, educators, and school districts to ensure all of New Jersey's 1.4 million public school students have equitable access to high-quality education and achieve academic excellence.

The Department disagrees with the commenters regarding indoctrination. The comments regarding learning loss are outside the scope of this rulemaking, which concerns the readoption of N.J.A.C. 6A:7.

96. **Comment:** The commenter objected to the deletion of the employment provisions at N.J.A.C. 6A:7-1.8 because it will negatively affect teacher requirements. **(49)**
Response: The Department disagrees with the commenter's position. The section's elements are subject to Federal and state Law regarding employment practices; therefore, the proposed deletion will have no impact on teacher requirements or any other provision related to employment. The existing section is unnecessary and duplicative.

97. **Comment:** The commenter requested that the Department not discriminate against sincerely held religious beliefs based upon the Holy Scriptures that God created man and woman. The commenter claimed that the Department's agenda is an overreach. **(687)**
Response: The Department maintains that nothing in the proposed amendments abrogates the protections set forth in N.J. Const. Art. I, ¶ 4, and U.S. Const. amend. I, as applied through U.S. Const. amend XIV, the Department cannot adopt any policy, rule, or regulation that establishes a preference for any religious sect or belief.

98. **Comment:** The commenter asserted opposition to S-588, which is legislation regarding the NJSLS for information literacy and was recently passed by the New Jersey Legislature and signed by the Governor. Further, the commenter opposed what the commenter asserted is the removal of State Board members by the Governor. The commenter further asserted that the State Board has outlived its usefulness and should be abolished. The commenter opposed the readoption of N.J.A.C. 6A:7, stating that it is overly broad, and discretion should be left to district boards of education and parents. **(688)**
Response: The Department is unable to respond to the commenter's concerns regarding N.J.A.C. 6A:7 as the commenter has failed to provide rationale for the comments. The remainder of the commenter's assertions are outside the scope of this rulemaking, which concerns the readoption of N.J.A.C. 6A:7.

99. **Comment:** The commenter opposed N.J.A.C. 6A:7 and objected to the Department not addressing learning loss due to the COVID-19 pandemic. **(690)**
Response: The commenter’s assertions regarding learning loss are outside the scope of this rulemaking.
100. **Comment:** The commenter asserted “Let the kids be kids! Teach not indoctrinate.” **(692)**
Response: The Department disagrees with the commenter’s assertion. N.J.A.C. 6A:7, as proposed for readoption with amendments, will ensure equity in education, prevent discriminatory behavior, 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, in addition to any protected category set forth at N.J.S.A. 10:5-1 et seq. Ensuring these safeguards for student’s does not result in indoctrination but rather an equity educational experience for all students.
101. **Comment:** The commenter requested that the Department stop trying to eliminate racial injustices from school curriculum. The commenter asserted that changing the language does not change or eradicate the problem. **(693)**
Response: The comment is outside the scope of this rulemaking, which concerns the readoption of N.J.A.C. 6A:7, not the changes to amendments of any of the curriculum standards as set forth in the NJSLS.



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

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

Proposal Level
March 1, 2023

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 ensure school districts provide for students’ 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 (NJLAD), 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 NJSLS.

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. 6A7-1.5(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 NJSLS 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 re-adoption 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 re-adoption and the proposed amendments and repeals follow (additions indicated as boldface **thus**; deletions indicated in brackets [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;
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 NJSLS are taught, including any curriculum developed concerning any of the protected categories listed at N.J.A.C. 6A:7-1.1(a) or curriculum developed by any commissions constituted for the development of curriculum concerning any of the protected categories listed at N.J.A.C. 6A:7-1.1(a).**

(c) 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.]