



**NEW JERSEY DEPARTMENT OF
LAW & PUBLIC SAFETY**

Matthew J. Platkin,
Attorney General



**NEW JERSEY DEPARTMENT OF
EDUCATION**

Dr. Angelica Allen-McMillan,
Acting Commissioner

**AG Platkin and Acting Commissioner Allen-McMillan Announce Joint Statement from
Division on Civil Rights and Department of Education on School-Based Anti-Bias
Initiatives and the Law Against Discrimination**

Attorney General Matthew J. Platkin and Acting Department of Education (DOE) Commissioner Dr. Angelica Allen-McMillan today announced that the New Jersey Division on Civil Rights (DCR) and DOE have issued the joint statement below to offer guidance to students, parents, schools, school boards, educators, and the public:

To address the rising tide of bias and hate, many schools across our State have adopted anti-bias initiatives, policies, and curricula that recognize and value the identities and experiences of students from historically excluded communities.¹ In general, these measures are consistent with the goals of the New Jersey Law Against Discrimination (LAD)—to prevent and eliminate discrimination.² To that end, DCR and DOE encourage all New Jersey schools, school boards, and administrators to continue to develop and implement initiatives to counter bias; to continue to display inclusive markers, flags, and symbols in and around their buildings; to continue to ensure students have access to books representing a diversity of experiences and identities; and to continue to implement and comply with the state’s anti-bias curricula requirements regarding race, gender, LGBTQIA+, disability, and diversity.³ It is consistent with the LAD, for example, for classroom curricula to intentionally highlight Black history, for a teacher to display a LGBTQIA+ (lesbian, gay, bisexual, transgender, queer, intersex, and asexual) safe zone sticker, or for a school library to include books and other materials that reflect the experiences and identities of children and families of all races, sexual orientations, and gender identities.

Despite the LAD’s anti-discrimination principles, however, some school boards and legislators have recently introduced proposals in New Jersey and across the country to restrict classroom discussions and staff training about race, racism, gender, gender identity, gender expression, and sexual orientation;⁴ to remove symbols or signs that express support for, or oppose bullying of, members of certain historically excluded groups;⁵ and to ban books by and about people of color and LGBTQIA+ people.⁶ At times, school board members have also opposed efforts to comply with state curricular requirements that



students be taught certain topics related to race, gender, or sexual orientation, and have opposed efforts by individual teachers to instruct students on these required materials.

In New Jersey, the law is clear. The LAD prohibits schools from adopting policies or practices that discriminate against students or staff based on their race, gender, sexual orientation, gender identity, gender expression, or other protected characteristics,⁷ whether or not motivated by discriminatory intent.⁸ The LAD also prohibits policies or practices that create a hostile environment based on any protected characteristic.⁹

School policies or practices violate the LAD when they expressly discriminate on the basis of a protected characteristic. For example, the removal of books or symbols—such as posters, flags, and stickers—merely because they represent or reflect a specific historically excluded group could itself give rise to a discrimination or hostile educational environment claim.¹⁰

School policies and practices may also violate the LAD even when they are cloaked in the language of neutrality. Thus, a policy that bans all flags and symbolic speech may be discriminatory if adopted with the purpose of sending a message of opposition to or exclusion of Black students, other students of color, the LGBTQIA+ community, or any other member of a protected class. A school district may also violate the LAD if it applies a facially neutral policy in a discriminatory manner. For example, a school district may violate the LAD if it applies a policy banning flags to remove posters supporting the LGBTQIA+ community from school grounds but not to remove other types of posters.

DCR and DOE encourage students, caretakers, community members, staff, and school board members to report evidence of discrimination, bias-based harassment, or retaliation to DCR immediately. To alert DCR to a district that has or is considering a discriminatory policy, please email us at schooldiscrimination@njcivilrights.gov. To find out more or to file a complaint, please go to NJCivilRights.gov or call 1.833.NJDCR4U. DCR enforces the LAD, which protects all people from discrimination in New Jersey. No one can retaliate against you for reporting LAD violations, filing a discrimination complaint, or exercising other rights under the LAD.



¹ See “New Jersey Interagency Task Force to Combat Youth Bias, *An Anti-Bias Vision for the Next Generation: Report & Recommendations of the New Jersey Interagency Task Force to Combat Youth Bias* (Youth Bias Task Force) (2020), <https://www.nj.gov/oag/dcr/downloads/2020-ybtf-report.pdf> at 19-21, 42-42; N.J. Office of the Attorney General, *Bias Incident Report 2020*, at 2-3 (2022), https://www.njoag.gov/wp-content/uploads/2022/04/2020_Bias-Incident_Report_031722a.pdf.

² See *Cedeno v. Montclair State Univ.*, 163 N.J. 473, 478 (2000) (LAD’s purpose is to “protect society from the vestiges of discrimination”).

³ See Youth Bias Task Force, *supra* note 1, at 97 (2020); see also N.J. Department of Education & N.J. Division on Civil Rights, *Addressing Bias in K-12 Schools* (2023), <https://www.njoag.gov/wp-content/uploads/2023/05/Addressing-Bias-in-K-12-Schools.pdf>.

⁴ Eesha Pendharkar, “Bills Targeting Classroom Talk on Race and Gender Identity Ballooned this Year,” Education Week (August 18, 2022), <https://www.edweek.org/leadership/bills-targeting-classroom-talk-on-race-and-gender-identity-ballooned-this-year/2022/08> (summarizing Pen America report); see also, e.g., A-783, 220th Leg. (N.J. 2022); S-598, 220th Leg. (N.J. 2022); S-2685, 220th Leg. (N.J. 2022).

⁵ See Brianna Kudisch, “School took down pride sign, N.J. students say. They’re asking district to change its policy,” NJ Advance Media (June 6, 2023) <https://www.nj.com/bergen/2023/06/school-took-down-pride-sign-nj-students-say-theyre-asking-district-to-change-its-policy.html>; Richard Cowen, “Students Want to Fly LGBTQ Pride Flag, but New N.J. School Policy Disallows it,” NJ Advance Media (March, 15, 2022), <https://www.nj.com/news/2022/03/students-want-to-fly-lgbtq-pride-flag-but-new-nj-school-policy-disallows-it.html>; Chelsey Johnstone, “Parents Speak Out Against the Removal of LGBTQ Safe Space Stickers,” Out in Jersey (February 13, 2023), <https://outinjersey.net/parents-speak-out-against-the-removal-of-lgbtq-safe-space-stickers/>; Christine Rousselle, “New Jersey middle school removes rainbow-themed signs after parents complain of favoritism,” Fox News (February 2, 2023), <https://www.foxnews.com/lifestyle/new-jersey-middle-school-removes-rainbow-themed-signs-parents-complain-favoritism>; Tina Kelley, “Rainbow Signs to be Replaced in N.J. Middle School,” NJ.Com (January 19, 2023), <https://www.nj.com/education/2023/01/rainbow-signs-to-be-replaced-in-nj-middle-school.html>.

⁶ See Eric Kiefer, “Proposed Book Ban Shot Down In Glen Ridge; LGBTQ Advocates Cheer,” Montclair Patch (Feb. 9, 2023), <https://patch.com/new-jersey/montclair/proposed-book-ban-shot-down-glen-ridge-lgbtq-advocates-cheer>; Melanie Burney, “A South Jersey School District Has Pulled Toni Morrison’s ‘Bluest Eye’ From Its Curriculum,” Philadelphia Inquirer (Feb. 11, 2023), <https://www.inquirer.com/news/book-ban-washington-township-toni-morrison-bluest-eye-20230211.html>.

⁷ See N.J.S.A. § 10:5-12(f).

⁸ *Id.*; see also *Lehman v. Toys ‘R’ Us, Inc.*, 132 N.J. 587, 604-605 (N.J. 1993) (“The LAD is not a fault- or intent-based statute. . . . The purpose of the LAD is to eradicate discrimination, whether intentional or unintentional. Although unintentional discrimination is perhaps less morally blameworthy than intentional discrimination, it is not necessarily less harmful in its effects, and it is at the *effects* of discrimination that the LAD is aimed.”); *Dickerson v. Wallkill Valley Regional High School Bd. of Educ.*, Civ. No. 19-CV-08450(KSH)(CLW), 2020 WL 2847757, at *11 (D.N.J. June 1, 2020) (“The elements required . . . to bring a public accommodation claim under N.J.S.A. 10:5-12(f) are that ‘(1) defendant operates a place of public accommodation; (2) the plaintiff is a member of a protected class’ and (3) he or she was denied equal treatment on the basis of his or her membership in a protected class.”); C.f. *State v. Andujar*, 247 NJ 275, 303 (2021) (“[I]mplicit bias is no less real and no less problematic than intentional bias. The effects of both can be the same: a jury selection process that is tainted by discrimination.”).

⁹ N.J.S.A. § 10:5-12(f).; see *L.W. ex rel. L.G. v. Toms River Reg’l Sch. Bd. of Educ.*, 189 N.J. 381 (2007).

¹⁰ See N.J.S.A. § 10:5-12(f).