

**CHAPTER 32. EQUAL EDUCATION OPPORTUNITY**

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**Authority**

The provisions of this Chapter 32 issued under section 408.1 of The Administrative Code of 1929 (71 P. S. § 118.1) (Repealed), unless otherwise noted.

**Source**

The provisions of this Chapter 32 adopted March 28, 1975, effective March 29, 1975, 5 Pa.B. 625; amended through June 6, 1975, effective June 7, 1975, 5 Pa.B. 1453, unless otherwise noted.

**Cross References**

This chapter cited in 22 Pa. Code § 44.1 (relating to scope and purpose).

**§ 32.1. General authority and purpose.**

(a) The Board, by virtue of its authority and duty to prescribe standards and qualifications for colleges and universities under section 1 of the act of May 7, 1937 (P. L. 585, No. 150) (24 P. S. § 2421), to adopt broad policies and principles governing the educational programs of the Commonwealth, to require submission of long-range plans from public and private institutions of higher education, and to adopt and periodically review and revise a master plan for higher education under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B), adopted May 10, 1974, a resolution endorsing the principle of equal educational and employment opportunity at institutions of higher education receiving Commonwealth funding. This chapter implements that resolution, in furtherance of the Commonwealth's strong public policy of equal employment and educational opportunity, as expressed in PA. CONST. art. I, §§ 26 and 28 and various State statutes.

(b) The purpose of this chapter is to encourage and affirm, and when necessary, apply impetus and sanctions to, institutional efforts to provide equal opportunity in admissions and treatment of students, in educational programs for students, in employment opportunities and in governance, to the end that the educational needs of the diverse citizenry of this Commonwealth are served by the Commonwealth's rich array of higher education institutions in keeping with their individual missions and charters.

**Source**

The provisions of this § 32.1 amended July 17, 1992, effective July 18, 1992, 22 Pa. B. 3739. Immediately preceding text appears at serial pages (167653).

**§ 32.2. Applicability.**

This chapter is applicable to all institutions in this Commonwealth receiving direct or indirect State appropriations.

**Source**

The provisions of this § 32.2 amended May 23, 1986, effective May 24, 1986, 16 Pa.B. 1808; amended July 17, 1992, effective July 18, 1992, 22 Pa. B. 3739. Immediately preceding text appears at serial page (167654).

**Cross References**

This section cited in 22 Pa. Code § 32.3 (relating to assurances).

**§ 32.3. Assurances.**

Institutions under § 32.2 (relating to applicability) shall provide the following assurances in writing to the Department:

(1) Assurances concerning employment containing the following:

(i) The institution may not discriminate against an employe or applicant for employment or another person because of race, color, religious creed, ancestry, national origin, handicap or disability, age or sex, except an institution with a religious affiliation may be required by its charter to consider the religious affiliations of persons employed in a position for which religion qualifies as a bona fide occupational qualification under 16 Pa. Code §§ 41.71—41.73 (relating to bona fide occupational qualifications).

(ii) The institution shall take affirmative action to ensure that applicants are employed without discrimination based on race, color, religious creed, ancestry, national origin, disability, age or sex. The institution shall take affirmative action to ensure that employes are treated during employment without discrimination based on race, color, religious creed, ancestry, national origin, handicap or disability, age or sex.

(iii) The institution shall furnish to the Department upon request duplicates of information and reports required by the Human Relations Commission, the Federal Equal Employment Opportunity Commission and the United States Department of Education, and will permit access to its books and records by the Department for purposes of investigation to ascertain compliance with this chapter.

(2) Assurances concerning students containing the following:

(i) The institution may not subject students to unlawful discrimination in the admission process on the basis of race, color, religious creed, ancestry, national origin, handicap or disability, age or sex, except an institution not

listed in section 9 of the Pennsylvania Fair Educational Opportunities Act (24 P. S. § 5009) and not a community college may be required by its charter to admit students of one sex.

(ii) The institution may not take an action, direct or indirect, to segregate students in a classroom or course on the basis of race, color, religious creed, ancestry, national origin, handicap or disability, age or sex, except separation by sex is permissible within physical education classes or activities during participation in contact sports, if substantial equality of opportunity and resources are provided for participation by both men and women in contact sports.

(iii) The institution may not subject students to different or separate treatment in, nor restrict the enjoyment by a student of, a service, facility, activity or program on the basis of race, color, religious creed, ancestry, national origin, handicap or disability, age or sex, except that the following facilities may be segregated on the basis of sex: dormitories, bathrooms and locker rooms. This exception will be strictly construed so that the right to privacy is not used as a facade for denying equal facilities to members of both sexes.

(3) Assurances concerning governance containing the following:

(i) The institution may not discriminate in the employment of administrators on the basis of race, color, religious creed, ancestry, national origin, handicap or disability, age or sex, except an institution with a religious affiliation may be required by its charter to consider the religious affiliations of certain administrators employed in positions for which religion qualifies as a bona fide occupational qualification under 16 Pa. Code §§ 14.71—14.73.

(ii) The institution shall take affirmative action to assure that the governance structure includes diverse membership broadly representative of the public interest, as currently required by § 31.52 (relating to accreditation).

(iii) The institution is in compliance with the Pennsylvania Human Relations Act (43 P. S. §§ 951—962.2) and the Pennsylvania Fair Educational Opportunities Act (24 P.S. §§ 5001—5009).

#### Source

The provisions of this § 32.3 amended July 17, 1992, effective July 18, 1992, 22 Pa. B. 3739. Immediately preceding text appears at serial pages (167654) and (108451).

#### Cross References

This section cited in 22 Pa. Code § 32.4 (relating to duties of the Department); and 22 Pa. Code § 32.5 (relating to compliance review).

**§ 32.4. Duties of the Department**

(a) The Department will collect and review the statements of assurance under § 32.3 (relating to assurances) and other information and data as it might require to determine compliance with this chapter and may publish summaries of the data it deems appropriate.

(b) In designing assurance forms and other data collection instruments, the Department will, whenever possible, rely upon copies of existing documents submitted by institutions. When copies of existing documents do not suffice, the Department will design data collection instruments to assure minimal duplication of data collection effort on the part of institutions.

(c) From time to time, the Secretary or a designee will publish and disseminate information about successful efforts by institutions of higher education to provide equal opportunity in admissions and treatment of students, in educational programs for students, in employment opportunities, and in governance.

(d) The Department will conduct compliance reviews necessitated by an institution's failure to comply with this chapter, allegations of failure to comply, or Federal or State court order, under § 32.5 (relating to compliance review).

(e) The Secretary or a designee will, prior to implementing an enforcement action under § 32.6 (relating to enforcement) or invoking sanctions under § 32.7 (relating to sanctions), intercede with institutions which are not in compliance with this chapter through conciliation, persuasion and negotiation and shall take further enforcement action or impose sanctions only when efforts under this subsection have failed.

**Source**

The provisions of this § 32.4 amended August 8, 1975, effective August 9, 1975, 5 Pa. B. 2027; amended July 17, 1992, effective July 18, 1992, 22 Pa. B. 3739. Immediately preceding text appears at serial pages (108451) to (108452).

**§ 32.5. Compliance review.**

(a) The Department will, from time to time, conduct a compliance review. The compliance review will be conducted as appears warranted by the Secretary based upon an institution's failure to comply with this chapter or allegations of an institution's failure to comply, or, at intervals which may be required by State or Federal court order.

(b) The purpose of the review shall be to determine whether the assurances submitted in accordance with § 32.3 (relating to assurances), are being honored in good faith.

(c) If, within 12 months of the Department's compliance review, the Human Relations Commission or the United States Department of Education has, after a comprehensive review, determined that an institution is in compliance with applicable State and Federal antidiscrimination laws, or has imposed an affirmative

action program on the institution to correct existing deficiencies, the Department will take no further action with respect to each issue thus determined at that institution.

(d) In other cases, the Department will obtain and consider relevant data and make a determination of compliance or noncompliance in accordance with 16 Pa. Code § 49.36 (relating to compliance review).

(e) After review, the Department will notify the institution whether or not it has been found to be in compliance. If deficiencies are found to exist as a result of a compliance review, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before an institution may be found to be in compliance with this chapter, it shall make a specific commitment in writing to correct the deficiencies. The commitment may include preparation and implementation of an affirmative action program prepared in accordance with 16 Pa. Code §§ 49.51 and 49.52 (relating to purpose; and content).

(f) The commitment shall include the precise action to be taken and dates for completion. Specific numerical goals and timetables shall be included where appropriate. The time period allotted may be no longer than the minimum period foreseeably necessary to effect the change.

(g) Upon approval by the Department, an institution should be considered in compliance if it makes every good faith effort to keep its commitments. An institution's compliance status shall be judged in part by whether or not it reaches its goals or meets its timetables and in part by reviewing the contents of its program and the extent of its adherence to the program and its good faith efforts to make the program work toward realization of goals within the timetables set for completion.

#### Source

The provisions of this § 32.5 amended July 17, 1992, effective July 18, 1992, 22 Pa. B. 3739. Immediately preceding text appears at serial pages (108451) to (108452).

#### Cross References

This section cited in 22 Pa. Code § 32.4 (relating to duties of the Department); and 22 Pa. Code § 32.6 (relating to enforcement).

### § 32.6. Enforcement.

(a) If efforts to secure compliance with this chapter through conciliation and persuasion have failed or if the Department finds that the institution has not made the requisite good faith effort to meet its commitments made under § 32.5 (relating to compliance review), the Department will issue a notice of noncompliance to the institution on giving it 30 days after receipt of that notice to show cause why the imposition of sanctions under this chapter should not be instituted. The notice shall set forth the particulars which constitute the basis of the asserted noncompliance.

(b) During the show-cause period of 30 days, the Department will continue, through conciliation, mediation and persuasion, to resolve the deficiencies which led to the determination of noncompliance.

(c) If the institution is unable to show good cause for its failure to resolve the deficiencies, the Department will issue a notice of proposed imposition of sanctions. The notice shall constitute an order to show cause within the meaning of 1 Pa. Code § 35.14 (relating to orders to show cause). The institution shall be entitled to all of the rights provided by 2 Pa.C.S. § 103 (relating to Administrative Agency Law) and the regulations promulgated thereunder with respect to hearing and appeals. If a request for hearing is not made within the time provided by law, the sanctions described in the notice will be immediately imposed, unless compliance is obtained by agreement.

#### Source

The provisions of this § 32.6 amended February 2, 1979, effective February 3, 1979, 9 Pa. B. 394; amended July 17, 1992, effective July 18, 1992, 22 Pa. B. 3739. Immediately preceding text appears at serial page (108452).

#### Cross References

This section cited in 22 Pa. Code § 32.4 (relating to duties of the Department); and 22 Pa. Code § 32.7 (relating to sanctions).

### § 32.7. Sanctions.

Upon completion of reviews under § 32.6 (relating to enforcement), the Department will report cases of noncompliance to the Board. The Board may implement the following in accordance with this chapter or standards promulgated in this chapter.

- (1) Withhold Board approval for actions that require Board approval under section 2603-B of the Public School Code of 1949 (24 P. S. § 26-2603-B).
- (2) Require the Department to publish information about the institution's failure to comply with this chapter.
- (3) Refer the matter of noncompliance to the Human Relations Commission and request that the Commission file a complaint against the institution.

#### Source

The provisions of this § 32.7 adopted July 17, 1992, effective July 18, 1992, 22 Pa. B. 3739.

#### Cross References

This section cited in 22 Pa. Code § 32.4 (relating to duties of the Department).

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