

PENNSYLVANIA FAIR EDUCATIONAL OPPORTUNITIES ACT

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PENNSYLVANIA FAIR EDUCATIONAL OPPORTUNITIES ACT

**Act of July 17, 1961, P.L. 776, as amended December 22, 1992
by Act 187 of 1992 24 P.S. §§ 5001-5010**

Declaring the policy of the Commonwealth with regard to discriminatory practices in educational institutions based upon race, religion, color, ancestry, national origin or sex; prohibiting such discriminatory practices; providing for procedure and enforcement; providing for judicial review; providing for administration by the Pennsylvania Human Relations Commission in the Department of Labor and Industry, and defining its functions, powers and duties hereunder, prohibiting discrimination against persons with handicaps or disabilities.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. Short Title

This act may be cited as the "Pennsylvania Fair Educational Opportunities Act".

SECTION 2. Findings and Declaration of Policy

(a) It is hereby declared to be the policy of this Commonwealth that all persons shall have equal opportunities for education regardless of their race, religion, color, ancestry, national origin, sex, handicap or disability.

(b) Equality of educational opportunities requires that students, otherwise qualified, be admitted to certain educational institutions without regard to race, religion, color, ancestry, national origin, sex, handicap or disability.

(c) It is recognized that there is a fundamental American right for members of various religious faiths to establish and maintain educational institutions exclusively or primarily for students of their own religious faith. In such institutions students, otherwise qualified, should have equal opportunity to attend therein without discrimination because of race, color, ancestry, national origin, handicap or disability or, except as provided in Section 9, sex.

(d) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the Commonwealth of Pennsylvania.

SECTION 3. Definitions

As used in this act -

(1) "**Educational institution**" means any institution of post-secondary grade and any secretarial, business, vocational or trade school of secondary or post-secondary grade, which is subject to the

visitation, examination or inspection of, or is, or may be licensed by the Department of Education, including any post-secondary school, college or university incorporated or chartered under any general law or special act of the General Assembly, except any religious or denominational educational institution as defined in this act.

(2) **"Religious or denominational educational institution"** means an educational institution which is operated, supervised, controlled or sustained primarily by a religious or denominational organization, or is one which is stated by the parent church body to be and is, in fact, officially related to that church by being represented on the board of the institution, and by providing substantial financial assistance and which has certified, in writing, to the Commission that it is a religious or denominational educational institution.

(3) **"Discriminate"** includes "segregate."

(4) **"Commission"** means the Pennsylvania Human Relations Commission in the Governor's Office.

(5) **"Student"** means a person seeking admission to, or in attendance at, a school or educational institution, as the case may be.

(6) **"Person"** includes one or more individuals, partnerships, associations, organizations or corporations.

(7) **"Handicap or disability"** with respect to a person, means -

(i) a physical or mental impairment which substantially limits one or more of the person's major life activities;

(ii) a record of having such an impairment; or

(iii) being regarded as having such an impairment, but does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 84 Stat. 1242).

(8) **"Accessible"** means being in compliance with the applicable standards set forth in the following -

(i) the Fair Housing Act (Public Law 90-284, 42 U.S.C. § 3601 *et seq.*);

(ii) the Americans with Disabilities Act of 1990 (Public Law 101-336, 42 U.S.C. § 12101 *et seq.*); and

(iii) the act of September 1, 1965 (P.L. 459, No. 235), entitled, as amended, "An act requiring that certain buildings and facilities adhere to certain principles, standards and specifications to make the same accessible to and usable by persons with physical handicaps, and providing for enforcement."

SECTION 4. Unfair Educational Practices

(a) Except as provided in section 9, it shall be an unfair educational practice for an educational institution -

(1) To exclude or limit, or otherwise discriminate, because of race, religion, color, ancestry, national origin, sex, handicap or disability, against any student or students seeking admission as students to such institutions: Provided, That it shall not be unfair educational practice for any educational institution to use criteria other than race, religion, color, ancestry, national origin, sex, handicap or disability in the admission of students.

(2) To make any written or oral inquiry prior to admission concerning or designed to elicit information as to the race, religion, color, ancestry, national origin, sex, handicap or disability of a student seeking admission to such institution.

(3) To expel, suspend, punish, deny facilities or otherwise discriminate against any student because of race, religion, color, ancestry, national origin, sex, handicap or disability.

(4) To penalize or discriminate against any individual because he has initiated, testified, participated or assisted in any proceedings under this act.

(5) To fail to preserve for a period of three years any records, documents and data dealing with, or pertaining to, the admission, rejection, expulsion or suspension of students, or to refuse to make such records, documents and data available at all times for the inspection of the Commission.

(6) To construct, operate or otherwise make available facilities and services which are not accessible.

(7) To exclude, limit or otherwise discriminate against any student or applicant because of the handicap or disability of an individual with whom the student or applicant is known to have a relationship or association.

(8) To deny an individual with a handicap or disability equal opportunities for education because of uninsurability or increased cost of insurance.

(a.1) Except as provided in section 9, it shall be an unfair educational practice for a religious educational institution -

(1) To exclude or limit, or otherwise discriminate, because of race, color, ancestry, national origin, sex, handicap or disability, against any student or students seeking admission as students to such institutions: Provided, That it shall not be unfair educational practice for any religious educational institution to use criteria other than race, color, ancestry, national origin, sex, handicap or disability in the admission of students.

(2) To make any written or oral inquiry prior to admission concerning or designed to elicit information as to the race, color, ancestry, national origin, sex, handicap or disability of a student seeking admission to such institution.

(3) To expel, suspend, punish, deny facilities or otherwise discriminate against any student because of race, color, ancestry, national origin, sex, handicap or disability.

(4) To penalize or discriminate against any individual because such person has initiated, testified, participated or assisted in any proceedings under this act.

(5) To construct, operate or otherwise make available facilities and services which are not accessible.

(6) To exclude, limit or otherwise discriminate against any student or applicant because of the handicap or disability of an individual with whom the student or applicant is known to have a relationship or association.

(7) To deny an individual with a handicap or disability equal opportunities for education because of uninsurability or increased cost of insurance.

(b) It shall be an unfair educational practice for any person to aide, abet, incite, compel or coerce the doing of any act declared by this section to be an unlawful educational practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful educational practice.

(c) Nothing in this section shall be deemed to affect in any way the right of religious or denominational educational institutions to select its students exclusively or primarily from members of such religion or denomination, or from giving preference in such selection to such members.

(d) Nothing in this section shall prohibit any educational institution from accepting and administering any inter-vivos or testamentary gift upon such terms and conditions as may be prescribed by the donor.

SECTION 5. Administration

The Pennsylvania Human Relations Commission, created by the act of October 27, 1955 (P.L. 744), as amended by the act of February 28, 1961 (P.L. 47), known as the "Pennsylvania Human Relations Act", is hereby vested with authority to administer this act.

SECTION 6. Powers and Duties of the Commission

Without in anywise detracting from, or in derogation or diminution of the duties of the Commission as set forth in the act of October 27, 1955 (P.L. 744), known as the "Pennsylvania Human Relations Act," said Commission is hereby vested with the following powers and duties -

(1) To make visits when deemed advisable to each of the educational institutions, except religious or denominational institutions, within the Commonwealth for the purpose of examining and studying the procedures and practices used in the selection of students.

(2) To make studies of the various forms and uses of transcript of record employed by educational institutions, except religious or denominational institutions, and of the standards, procedures, practices and criteria used by same with respect to recommending and approving students for further education in said educational institutions.

(3) To make whatever studies may be necessary to aid it in carrying out its functions, including studies to determine factually the total number of students applying each year to educational institutions, except religious or denominational institutions, within the Commonwealth, the number of them finally accepted and the basic factors which determine whether an applicant will be accepted or rejected by such institutions.

(4) To formulate, recommend and carry out a comprehensive program designed to eliminate and prevent prejudice and discrimination in educational institutions, based upon race, religion, color, ancestry, national origin, sex, handicap or disability except religious discrimination in religious or denominational institutions and except, as to sex, as provided in section 9.

(5) To formulate policies to carry out the purposes of this act and to make recommendations to any or all of the educational institutions included under the provisions of this act to effectuate such policies.

(6) To adopt, amend, modify or rescind such rules and regulations as may be necessary to carry out the functions of the Commission and to effectuate the purposes and provisions of this act.

(7) To initiate, receive and investigate and seek to adjust all complaints of unfair educational practices forbidden by this act.

(8) Whenever the Commission in its sole discretion determines that informal methods of conference, conciliation and persuasion have failed to induce the elimination of unfair educational practices to hold hearings, subpoena witnesses, administer oaths or affirmations, take the testimony of any person under oath or affirmation and require the production for examination of any books or papers relating to any matter under investigation or any question properly before the Commission.

(9) To issue orders requiring any educational institution of the Commonwealth included under the provisions of this act to cease and desist from any unfair educational practice and to secure enforcement of the order of the Commission or other appropriate relief.

(10) From time to time, but not less than once a year, to render to the Governor and Legislature, a written report of its activities and recommendations.

SECTION 7. Procedure

The procedure for processing any complaint and the remedies available shall be in accordance with sections 9, 9.2 and 11 of the act of October 27, 1955 (P.L. 744, No. 222), known as the "Pennsylvania Human Relations Act."

SECTION 7.1. Right of Action

(a) In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this act, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If, within one year after the filing of a complaint with the Commission, the Commission dismisses the complaint or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such a notice, the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this act.

(b) An action under this section shall be filed within two years after the date of notice from the Commission closing the complaint. Any complaint so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement.

(c) If the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but not be limited to, reinstatement, admitting students, reimbursement of tuition or fees, or any other legal or equitable relief as the court deems appropriate.

(d) The court shall serve upon the Commission any final order issued in any action brought under this section.

(e) If, after a trial held pursuant to subsection (a), the court of common pleas finds that a defendant engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing plaintiff.

(f) If, after a trial held pursuant to subsection (a), the court of common pleas finds that a defendant has not engaged in or is not engaging in any unlawful discriminatory practice as defined in this act, the court may award attorney fees and costs to the prevailing defendant if the defendant proves that the complaint was brought in bad faith.

(g) The time limits for filing any complaint or other pleading under this act shall be subject to waiver, estoppel and equitable tolling.

(h) Nothing in this act shall be construed as superseding any provision of the act of October 15, 1980 (P.L. 950, No. 164), known as the "Commonwealth Attorneys Act". All court actions commenced by or against the Commission shall be subject to the provisions of that act.

SECTION 8.1. Judicial Review

Enforcement and judicial review shall be in accordance with section 10 of the act of October 27, 1955 (P.L. 744, No. 222), known as the "Pennsylvania Human Relations Act."

SECTION 9. Construction

(a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof and any law inconsistent with any provisions hereof shall not apply. Nothing contained in this act shall be deemed to repeal any of the provisions of any law of this Commonwealth relating to discrimination because of race, religion, color, ancestry, national origin, sex, handicap or disability. This act shall not be construed to prohibit any educational institution which is neither State-owned nor State-related, nor State-aided, from drawing its enrollment entirely from members of one sex or from the sexes in any proportion, nor shall anything herein contained prevent any educational institution which State-owned, State-related or State-aided from requiring each applicant for admission to state in the application for admission such applicant's sex to supplement and implement the institution's facts for planning purposes but only for such planning purposes and not for any discriminatory purposes. For the purpose of this section the term "State-owned" institution means the institutions comprising the State System of Higher Education; the term "State-related" institutions means the University of Pittsburgh, Temple University, Lincoln University and the Pennsylvania State University; the term "State-aided" institution means the Delaware Valley College of Science and Agriculture, Drexel University, Hahnemann University, Thomas Jefferson University, the Medical College of Pennsylvania, University of Pennsylvania,

Pennsylvania College of Podiatric Medicine, Pennsylvania College of Optometry, Philadelphia College of Osteopathic Medicine, Philadelphia College of Textiles and Science, and University of the Arts.

(b) When considering any matter brought before it with respect to any alleged unfair educational practice based on sex, the Commission shall take into consideration the educational programs offered by the institution and the number of admissions necessary to maintain programs and departments at educationally and economically feasible levels.

(c) Except as provided in Section 7.1, nothing contained in this act shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this Commonwealth relating to discrimination because of race, color, ancestry, age, sex, religion, national origin or handicap or disability. As to acts declared unlawful by section 4, the procedure provided in section 7.1 shall, when invoked, be exclusive. Any final determination under section 7.1 shall exclude any other action, civil or criminal, based on the same grievance without resorting to the procedure provided in this act, and such complainant may not subsequently resort to the procedure in this act. In the event of a conflict between the interpretation of a provision of this act and the interpretation of a similar provision contained in any municipal ordinance, the interpretation of the provision in this act shall apply to the municipal ordinance.

SECTION 10. Separability

If any clause, sentence, paragraph or part of this act, or the application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act nor the application of such clause, sentence, paragraph or part to other persons or circumstance but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this act would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage.

Note: The Pennsylvania Fair Educational Opportunities Act has been amended four times since its adoption in 1961. The changes have been incorporated into the text of the Act as set forth in this publication. For the assistance of persons referring to the Act, the subject and the date of the amendments are listed below:

- Unfair practices by a religious education institution. Act of December 27, 1965, P.L. 1255.
- Prohibition of discrimination because of sex. Act of December 29, 1972, P.L. 1682.
- Deletion of institution from list of "state-aided" institutions. Act of August 5, 1977, P.L. 174.
- Prohibition of discrimination because of handicap or disability; changes in procedures and other matters to be consistent with the Pennsylvania Human Relations Act. Act 187 of December 22, 1992, Act 1992-187.

* As affected by the Judiciary Act Repealer Act, Act No. 53 of 1978, P.L. 202.