

REGULATIONS OF THE RHODE ISLAND BOARD OF REGENTS

TITLE A

ORGANIZATION, STRUCTURE, AND PROCEDURE OF THE BOARD OF
REGENTS FOR ELEMENTARY AND SECONDARY EDUCATION

CHAPTER 1

BOARD ORGANIZATION AND MEETINGS

SECTION.

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A-1-1. Number of officers. — The officers of the Board shall consist of a Chair, who shall be appointed by the Governor, Vice-Chair, and Secretary and who shall be elected from among members of the Board annually at the first meeting in February following appointment and qualification of members to full three (3) year terms. Additionally, such other offices may from time to time be established with such powers as determined by the Board, and the persons named to such offices shall serve at the pleasure of the Board. All officers shall hold office until their respective successors are elected and qualified. Should a vacancy arise in any office prior to expiration of a term, the Board shall elect a successor.

A-1-2. Chair. — The Chair shall preside at meetings of the Board, exercise the powers and perform the duties set forth in these bylaws and such other duties as usually devolve upon the presiding officer of a deliberative body; unless otherwise ordered, the Chair shall appoint all special committees. The Chair shall execute all contracts and documents on behalf of the Board unless otherwise ordered by the Board.

A-1-3. Vice-Chair. — In the absence of the Chair, the Vice-Chair shall perform the duties of the Chair. In the absence of both the Chair and the Vice-Chair, a Chair pro tempore shall be elected from among members of the Board.

A-1-4. Secretary. — The records of all business transacted at each meeting shall be kept under the direction and supervision of the Secretary. The secretary shall also, when so requested, issue notices of meetings of the Board and transmit to each member of the Board and to such other persons, as the Board shall direct copies of the minutes of the meetings of the Board.

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A-1-5. Quorum. — Five members of the Board shall constitute a quorum, but less than a quorum may adjourn any meeting.

A-1-6. Time and Place of Regular Meetings. -- Regular meetings shall be held at least twice in each quarter of each calendar year at the call of the Chair, at the same time and place within the State of Rhode Island specified in the notice of the meeting. The Board shall also convene those meetings required by R.I.G.L.16-60-5 (b).

A-1-7. Special Meetings. — Special meetings of the Board may be called by the Chair and shall be called by the Chair upon the written request of three (3) members of the Board, such meeting shall held within one (1) week after the receipt of such request.

A-1-8. Notice. – (a) In addition to providing notice of meetings as required by law, written notice of regular meetings and the agenda thereof, or in lieu of an agenda a written statement of the substance of the business to be transacted, shall be sent to each member of the Board at least one (1) week prior to the date of the meeting, except for emergency meetings convened as permitted by the Rhode Island Open Meetings Act

(b) Notice of special meetings shall specify the date and place where such meetings are to be held within the State of Rhode Island and the substance of the business to be transacted at such meeting, and shall be given by written notice mailed to each member not less than three (3) days prior to such meetings, or by an appropriate means of electronic communication addressed to each member not less than twenty-four (24) hours prior to such meeting, or, in lieu of such letter or electronic communication, by personal notice given to and actually received by each member of the Board not less than twelve (12) hours prior to such meeting. No special meetings shall be held without such notice unless waived as hereinafter provided, nor shall any business be transacted at any special meeting except that specified in such notice. Nothing herein shall be construed to prevent the Board of Regents from convening an emergency meeting as permitted by the Rhode Island Open Meetings Act.

A-1-9. Waiver of notice. — Any member may waive notice of any regular or special meeting by instrument in writing signed by him or her prior to or after such meeting, and the presence of a member at a meeting shall in any event constitute a waiver of notice as to that member.

A-1-10. Agenda of Regular Meetings. — The agenda of regular meetings of the Board shall be as follows:

1. Public Remarks and Communications
2. Remarks from the Board of Regent’s Chair
3. Approval of the Minutes of the Prior Meeting
4. Approval Items
5. Unfinished business
6. New business
7. Discussion Items
8. Regents’ Committee Reports
9. Executive Agenda
10. Report on Actions Taken During Executive Session
11. Agenda for Future Meetings

A-1-11. Preparation of Agenda. — The preparation of the agenda for each regular meeting of the Board shall be the joint responsibility of the Chair and the Commissioner, provided, however,

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that there shall be included in the agenda any matter that the Board has at a prior meeting voted to include in such agenda and provided, further, that any item requested by any four (4) members of the Board in writing delivered to the Commissioner or the Chair not less than seven (7) days prior to the date of a meeting shall be placed upon the agenda of such meeting. No matter that is not on the agenda of a meeting may be considered if there is objection of two (2) members present.

A-1-12. Conduct of Meetings. – (a) The affirmative vote of three (3) members, or of a majority of members present and voting, whichever is greater, shall be required for the adoption of any resolution. The presiding officer shall have the right, as other members present, to offer resolutions, discuss questions, and ~~to~~ vote. The Chair shall declare all votes. If any member doubts the vote, the Chair shall require a division. A roll call vote shall be taken upon the demand of any member present. When a Commissioner of Education is to be appointed, the affirmative vote of a majority of all of the members of the Board, including the Governor, shall be required.

(b) Any member desiring to speak shall address the Chair and after the members right to speak has been recognized, the member shall confine his or her remarks to the question under debate. Other than a member of the Board or staff member, no person shall speak at or address a meeting unless he or she shall have been invited by the Chair prior to the meeting or shall have filed a written request in the Office of the Commissioner at least twenty-four (24) hours prior to the time of the meeting setting forth the agenda item or items on which he wishes to speak. The length of time allotted to persons filing written requests to be heard will be determined by the Chair, taking into consideration the number of requests that have been received and the number of items on the agenda.

A-1-13. Meetings to be Open. -- All meetings of the Board shall be open to the public, provided that executive sessions may be held as provided by law.

A-1-14. Minutes of Meetings. — Minutes of open meetings shall be deemed public records. Minutes of executive sessions shall be confidential, but final action taken in executive session shall be reported by the Chair either in a return to the regular meeting or no later than the next regular meeting of the Board, and shall be recorded as part of the minutes of such open meeting, provided, however, a vote taken in an executive session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation, or investigation as specified in R.I.G.L.42-46-5.

A-1-15. Press and Public Relations. — The Chair shall be the chief spokesperson for the Board, and the members shall, to the extent possible and consistent with the proper discharge of their individual responsibilities, refer all inquiries that concern interpretation of Board action and policy to the Chair.

A-1-16. Indemnification. — Any Board member who at any time is threatened to be or is made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Board of Regents) by reason of the fact that he or she is, or was, a member of the Board of Regents shall be indemnified against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with any such action, suit, or proceeding if the Board determines he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Board and with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that no indemnification shall be made in respect to any criminal action or proceeding as to which such person shall have been adjudged to be guilty, unless and only to the

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extent that the court in which such action or proceeding was brought shall determine upon application that, despite the adjudication of guilt, in view of all the circumstances of the case, such person is entitled to indemnity for such expenses or fines that the court shall deem proper. Determination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that a person did not act in good faith in a manner that he reasonably believed to be in or not opposed to the best interest of the Board of Regents and with respect to any criminal action or proceeding had reasonable cause to believe that his conduct was unlawful.

A-1-17. Indemnification notice. — This indemnification shall be conditioned on due written notice of any such claims being given to the Board and the Board shall be entitled to be represented at all hearings, proceedings, and negotiations relative to such claims.

A-1-18. Indemnification miscellaneous. — The Provisions of this article shall in no way be exclusive of any other rights of indemnification to which such person shall be entitled; shall continue as to a person who has ceased to be a member, officer, employee, or agent of the Board, and shall inure to the benefit of the heirs, executors, and administrators of such a person.

A-1-19. Additional committees. — Such committees, standing or special, shall be appointed by the Chair from time to time as deemed necessary to carry on the work of the Board. The Chair shall be an ex-officio member of all committees.

A-1-20. Appeals committee. — An Appeals Committee composed of four members and two alternate members shall be appointed by the Chair of the Board. Members shall be appointed annually by the Chair at the first meeting of the Board in each year. The Chair of the Board shall designate the Committee Chair. It shall be the duty of the Appeals Committee to consider appeals to the Board from decisions of the Commissioner, to submit its recommendations for decisions on appeals to the Board, and to exercise such other functions as are assigned to it in the Procedural Rules for Approvals from Decisions of the Commissioner. Oral arguments on appeals will be heard before the committee on the second Tuesday of October, January, April, and July and on such other dates as may be directed by the Committee.

A-1-21. Seal — The seal of the Board of Regents shall be in the form of a circle with the words “Board of Regents for Elementary and Secondary Education for the State of Rhode Island and Providence Plantations -- 1981.” The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

A-1-22. Parliamentary procedure -- Robert’s Rules of Order Newly Revised shall govern on all parliamentary matters not covered by the laws of the State of Rhode Island and these bylaws.

A-1-23. Adoption of policies. — (a) The Board of Regents will, from time to time, be expressing its philosophical beliefs and general principles or purposes by which it will be guided in fulfillment of its responsibilities. The formulation and adoption of these statements shall constitute the policies of the Board of Regents.

(b) Proposed Board of Regents policies or amendments or repeal thereto will be listed in the agendas as “Adoption of Policy” or “Amendment to Policy” or “Repeal of Policy.” Said proposals will be developed through review and recommendation of the appropriate committees, with referral to the full Board of Regents for adoption. If a proposed policy is not exclusive to any one Board (e.g., Affirmative Action), the matter shall be considered at a regular meeting of the Board of Regents and for action at the next regular meeting of the Board. Only those policies so

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adopted and o recorded shall be regarded as official Board policy.

New or amended policies shall take effect in accordance with the time lines established by the Rhode Island Administrative Procedures Act.

The Department of Education shall keep a permanent register of the policies open to public inspection. Compilations adopted by the Board of Regents shall be supplemented or revised as often as is necessary.

A-1-24. Adoption of Regulations. – (a) The Board of Regents will establish, from time to time, rules and regulations, and standards to implement Board legal requirement, Board policy, and/or recommendations of the Commissioner of Education. These rules, regulations, and standards must be consistent with law and with the policies of the Board of Regents.

(b) Board of Regents’ proposed regulations or amendment or repeal of regulations will be listed in the agendas as “Adoption of Regulations” or “Amendment to Regulations” or “Repeal of Regulation.” Said proposals will be developed through review and recommendation of the appropriate committee with referral to the full Board of Regents for adoption. Only those rules, regulations, and standards so established and so recorded shall be regarded as mandates of the Board of Regents. New or amended regulations shall take effect in accordance with the time lines established by the Rhode Administrative procedures Act. (R.I.G.L.42-35-4.) These will be filed in the Board of Regents Policy/Regulation Manual and disseminated to appropriate agencies.-

(c) The Commissioner of Education will establish, from time to time, rules and regulations in accordance with the Rhode Island Administrative Procedures Act when specific state law requires the establishment of such regulations by the Commissioner. The Commissioner of Education shall obtain the advice and consent of the Board through the process set forth in A-1-24 (b) before initiating the making of any regulation.

A-1-25. Regent’s request for information. – The Commissioner of Education is directed to answer in a timely fashion, and when feasible, Board members’ requests for information. Should the Commissioner object to a request and the Board member feels that the objection is without merit, the matter shall be referred to the Chair of the Board of Regents.

A-1-26 Nepotism prohibited. — For purposes of this regulation the term “family” shall mean and include parents, spouse (if not estranged), children and their spouses, siblings and their spouses and children.

- (1) No member of the same family as the Commissioner, Deputy Commissioner, or Assistant Commissioners of Education shall be employed in any capacity under the board’s jurisdiction.
- (2) No two persons of the same family may hold positions under the board’s jurisdiction in which one of them is directly or indirectly responsible for recommendations or decisions involving the other in such matters as initial appointment, retention, promotion, salary, leave of absence, or any other job-related function of a supervisory nature.
- (3) The prohibitions contained in subsection 2 and 3 of this section shall not apply to those instances of family-member employment which arise from the formation of the family after such employment has begun.
- (4) The prohibitions contained in subsection 2 and 3 of this section shall not apply to the

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employment of students who are members of an employee's family, provided that such student employment is of a type generally made available to students.

- (5) In those cases where two or more family members are employed because of the exceptions provided in subsections 3 or 4 of this section and where one family member is directly responsible for recommendations or decisions involving another in such matters as initial appointment, retention, promotion, salary, leave of absence, or any other job-related function of a supervisory nature, the affected family members and the employing institution or agency shall, to the extent reasonably practicable, resolve a means for the evaluation to be accomplished by a non-family member.
- (6) In those instances where an institution or agency can show to the satisfaction of the Board that the agency will suffer a genuine hardship in the pursuit of its purposes by reason of the application of the provisions of this section, such institution or agency may apply to the Board for a special exemption and the Board may grant the same subject to such conditions as it shall deem proper.



CHAPTER 2

OPEN RECORDS

SECTION

- A-2-1. Purpose and Scope.
- A-2-2. Declaration of Policy.
- A-2-3. Request for Records.
- A-2-4. Inspection, Copying, Fees.



A-2-1. Purpose and Scope. — These rules implement the Board of Regents and Department of Education's responsibilities under Chapter 38-2 of the General Laws of Rhode Island, 1956, as amended. The regulations establish the procedures under which the public may obtain information, documents, records and other materials from the Department.

A-2-2. Declaration of Policy. — All records of the Board of Regents and Department of Education are available for public inspection and copying except those records exempt from required disclosure under R.I.G.L.38-2-2, those prohibited from disclosure by Federal law and those prohibited from disclosure by an order from a court of competent jurisdiction. Department personnel shall not disclose records that are exempt from required disclosure under R.I.G.L.38-2-2.

A-2-3. Request for Records — (a) Except as otherwise provided for in R.I.G.L.38-2-3 requests for records shall be made in writing and shall be directed to the Commissioner of Education for Elementary and Secondary Education, 255 Westminster Street, Providence, Rhode Island 02903. The envelope and letter shall be clearly marked "REQUEST FOR PUBLIC RECORDS." The Commissioner may prepare an optional form to be used to make a request for records. The Commissioner may also establish protocols for electronically receiving and responding to requests for records and shall post these protocols on the Department's website.

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(b) Each request shall reasonably describe the records sought in a manner that will permit their identification and location by the Department. References to dates, subject matter, author, and the like are helpful and often essential. The Department will notify the sender if additional information is needed to identify the records requested and will make every reasonable effort to assist the sender in the identification of the records sought.

(c) Any request for records not marked or addressed as specified in subparagraph (a) above will be so marked by Department personnel as soon as it is properly identified, and it will be forwarded to the Commissioner's office. A request improperly addressed will not be deemed to have been received for purposes of R.I.G.L.38-2-7 until received by the Office of the Commissioner.

(d) Upon receipt of any request, the Public Information Officer will determine within 10 business days (for good cause, the period may be extended to 30 business days) whether the records sought are "public records" as defined in Chapter 38-2. If the request is denied in whole or in part, written notification will be given and will include a notice that the denial may be appealed to the Commissioner of Education or his designee. Appeals must be taken within 30 days of receipt of the denial. Appeals must be addressed to the Commissioner of Education, 255 Westminster Street, Providence, Rhode Island and marked "PUBLIC RECORD APPEAL." The Commissioner or his designee will act on each appeal within 10 business days of receipt. Judicial review of a decision of the Commissioner denying access to the records may be sought under R.I.G.L.38-29.

(e) If a request is submitted to the Department to make available public records that are the primary responsibility of another public body, the Department will refer the request to that public body for appropriate action. The requestor will be advised by the Department of the same.

A-2-4. Inspection, Copying, Fees. – (a) When a request for information has been approved under Section (d) above, the requestor may make either an appointment to inspect the materials requested during regular business hours of the Department with the Public Information Officer or arrange to have copies forwarded to the requestor. When a request for information has been approved under Section 3 above, the requestor may make either an appointment to inspect the materials requested during regular business hours of the Department with the Public Information Officer or arrange to have copies forwarded to the requestor.. A fee covering the direct costs associated with the identification, location, and reproduction of the public records requested will be charged.

(b) Determination to waive or reduce fees shall be at the discretion of the Public Information Officer and reviewable by the Commissioner or his or her designee.

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CHAPTER 3

EDUCATION BUDGET

SECTION

A-3-1. Education Budget.

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A-3-1. Education Budget. -- The Board of Regents hereby declares that it has a duty and obligation with the Commissioner of Education to the taxpayers of this state, their duly elected representatives, and the Governor to ensure that the process by which educational resources are requested by means of the budget request process and the means by which such resources are subsequently allocated by this Board shall incorporate the most equitable, systematic, and expeditious methods available to this Board. These methods shall clearly identify educational needs in their proper perspective such that optimum identification of resources is made to meet such needs.

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CHAPTER 4

PROCEDURES FOR APPEALS TO AND HEARINGS BEFORE
THE COMMISSIONER OF EDUCATION

SECTION

A-4-1. How to File an Appeal.

A-4-2. Appeal Schedule.

A-4-3. Decisions of the Commissioner.

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A-4-1. How to File an Appeal. — Appeals must be sent to the Commissioner of Education by mail or by fax. The person filing the appeal must provide the following information:

- A. Name, telephone number, and address of the person filing the appeal.
- B. A brief statement of the facts describing the nature of the appeal.
- C. A statement of the relief being requested.

A-4-2. Appeal Schedule. -- The Commissioner shall schedule appeals as promptly as possible. For good cause shown an expedited hearing may be requested. Interim Order Hearings shall be scheduled as required by law.

A-4-3. Decisions of the commissioner. -- It is the policy of the Commissioner that decisions will be promptly rendered. Consistent with that policy, all hearing officers appointed to hear and recommend decisions on appeals under R.I.G.L.16-39 shall complete and transmit to the Commissioner their written recommended decisions no later than forty-five (45) working days following the completion of the appeal record. An appeal record shall be deemed to be complete when the hearing officer has in his/her possession the official transcript of the hearing and written legal briefs (when applicable) from the parties to the dispute. The Commissioner may grant an

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extension when both parties to the appeal request an extension or for other reasons he/she deems appropriate.



CHAPTER 5

PROCEDURAL RULES
FOR APPEALS FROM DECISIONS OF THE COMMISSIONER

SECTION

- A-5-1. Who may appeal.
- A-5-2. Time and Manner of Taking an Appeal.
- A-5-3. Record on Appeal
- A-5-4. Brief.s
- A-5-5. Oral argument.
- A-5-6. Determination by the Board.
- A-5-7. Decision.



A-5-1. Who may appeal. -- Any party aggrieved by a final decision of the Commissioner of Education made pursuant to the provisions of the General Laws of Rhode Island, 1956, as amended (1973 Reenactment) Sections 16-60-6(h) and 16-13-4, may appeal to the Board of Regents, who shall decide, and determine said appeal. Additionally, said Board of Regents may in its discretion decide and determine such other matters as it shall deem appropriate.

A-5-2. Time and manner of taking an Appeal. -- Appeal to the Board shall be instituted by filing a Notice of Appeal with the Board within (30) thirty days after the Commissioner of Education mails notice of the decision to the parties or their attorneys at their last known address, unless the time is extended by the Commissioner for good cause. The Notice of Appeal shall specify the party taking the appeal and shall designate the decision or part thereof appealed from. Copies of said Notice of Appeal shall be mailed by the aggrieved party to the Commissioner of Education and all other parties of record (or if represented by counsel, to their attorneys) at their last known address.

A-5-3. Record on Appeal to the Board. — The record compiled by the Commissioner of Education shall constitute the record on appeal in all cases, and it shall be transmitted to the Board by the Commissioner, upon written notice to the parties of record or their attorneys, seven (7) days after the filing of the notice of appeal unless the time is extended by the Commissioner for good cause. The record shall include those items required by the Rhode Island Administrative Procedures Act (R.I.G.L. 45-32-1, et seq.) The Appeal shall be decided upon the basis of the record transmitted to the Board and the briefs filed as hereinafter provided.

A-5-4. Briefs. — Within twenty (20) days after the date on which the record is transmitted to the Board, the aggrieved party shall file with the Board a printed or typewritten brief signed by counsel or the aggrieved party.-The brief shall contain:

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- (1) A brief and concise statement of the case;
- (2) The specific questions raised, duly numbered
- (3) The points made together with any authorities relied on in support thereof, and
- (4) If relying on evidence in the record, a reference to where said evidence may be found.

Within ten (10) days after the briefs of the aggrieved party have been filed, the adverse party shall file, in the Board's offices, a brief in like form except that no statement of the case need be made beyond what may be deemed necessary to correct any inaccuracy or omission in the statement of the other party. The aggrieved party may file reply briefs within five (5) days after filing of the briefs of the adverse party.

A copy of any brief filed pursuant to these rules shall be delivered to the opposing party or his attorney either by delivering a copy to him or by mailing it to him at his last known address, A certificate of compliance with this paragraph signed by either the party or his attorney shall accompany the briefs filed with the Board.

The Chair of the Appeals Subcommittee may extend the time for the filing of any brief due by up to thirty (30). Any further extension of time shall be granted only on a showing of good cause. The denial or the granting of an extension of time may be appealed to Appeals Subcommittee for a decision.

A-5-5. Oral argument. — The Appeals Committee shall consider the Appeal and submit its recommendation for decision on the Appeal to the Board based upon the briefs and record submitted to the Board, provided, however that if at least two (2) members of the Appeals Committee so request, the Appeal shall be assigned for oral argument before it, at a time and place to be determined by the Committee. Said oral argument shall be undertaken to emphasize and clarify the written argument appearing in the briefs heretofore filed. The aggrieved party shall be entitled to open the arguments. Arguments shall be limited to twenty (20) minutes on each side.

A-5-6. Determination by the Board. — The Board shall decide and determine the Appeal based upon the briefs and record submitted to the Board and the recommendation or the Committee.

A-5-7. Decision. -- The Board may affirm, modify, reverse, or remand the decision of the Commissioner.

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CHAPTER 6

EQUAL EMPLOYMENT
OPPORTUNITY AND NON-DISCRIMINATION POLICY

SECTION

A-6-1. Policy statement on equal employment opportunity.



A-6-1. Policy statement on equal employment opportunity.— (a) It is the belief and the policy of the State of Rhode Island that the race, color, religion, sex, sexual orientation, national origin, , disability, or age of an individual, should not serve as a barrier to his or her equal opportunity for employment. The Rhode Island Board of Regents for Elementary and Secondary Education fully endorses this basic policy of nondiscrimination.

(b) State and federal laws and regulations bar discrimination in employment.

(c) Several Executive Orders direct each state agency to make non-discrimination the policy of the agency and to rigorously take affirmative action steps to ensure equality of employment opportunity.

(d) The Board of Regents for Elementary and Secondary Education recognizes that the mere elimination of discriminatory barriers to employment is often not in itself sufficient to provide equal opportunities. Consciously or unconsciously, practices or conditions may exist that adversely affect the employment opportunities of entire groups of people, most notably women and members of minority groups and individuals with disabilities. The Board, therefore, directs the Rhode Island Department of Education and local school districts to pursue affirmative action through positive and aggressive measures designed to support and fulfill the Board's commitment to equal employment opportunity.

(e) In support of this commitment, the Board of Regents shall require the creation of programs of affirmative action that will insure nondiscrimination in employment and that include remedies to overcome the effect of any past exclusion.

(f) To provide such opportunity, more than passive neutrality is needed. Positive actions are required if employment opportunities are to be open to all. The most proper means for meeting the state's commitment and the Board's responsibility is through the creation and implementation of affirmative action plans.

(g) The Board of Regents furthermore accepts its responsibility to provide leadership in promoting nondiscrimination and equal employment opportunity and shall require other private institutions and local education agencies involved in the education of the people of Rhode Island to actively and aggressively pursue programs and activities designed to remove any existing barriers to the provision of equal employment opportunity.

(h) The Board of Regents will commit and utilize a variety of resources in support of its policies and will make available to education agencies all possible assistance and resources in the

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provision of equal employment opportunity and affirmative action.

(i) The Commissioner of Education is charged with ensuring that the personnel policies and practices of the Board of Regents, the Department of Education, and the local education agencies adhere to both federal and state laws and regulations and the policy and regulations of the Regents regarding affirmative action and equal employment opportunity.

(j)The Commissioner is responsible for the development and promulgation of any additional regulations and guidelines necessary to achieving the purposes of the foregoing policy and to impose appropriate sanctions or penalties, where necessary, subject to the approval of the Board of Regents.

(k) There shall be an annual review of these regulations by the Commissioner of Education to determine if they are sufficient to achieve the purpose of the Regents Policy on Equal Employment Opportunity. Recommendations for changes when warranted, will be made by the Commissioner to the Board of Regents.



CHAPTER 7

REGULATIONS FOR THE IMPLEMENTATION OF THE REGENTS' POLICY ON EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

SECTION

- A-7-1. Regulations for implementation.
- A-7-2. Dissemination and notification of policy.
- A-7-3. Duties and responsibilities.
- A-7-4. Equal employment opportunity task force.
- A-7-5. Membership.
- A-7-6. Personal practices and procedures.
- A-7-7. Recruitment.
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- A-7-15. Data collection.
- A-7-16. Goals and timetables.
- A-7-17. Training and education.
- A-7-18. Community contract.
- A-7-19. Monitoring for compliance.
- A-7-20. Enforcement.



A-7-1. Regulations for the implementation of the Regents' policy on equal employment opportunity. — (a) The Department of Education shall adopt an affirmative action plan that shall include:

1. A copy of the Regents' Policy Statement on Equal Employment Opportunity,
2. A Department policy statement on equal employment opportunities which contains but is not limited to the following:
 - a) The intent of the plan

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- b) The objectives of the plan
- c) The responsibility for implementation of the plan.

(b) The policy statement should also provide readers with information relative to other important purposes of the proposed affirmative action program and shall be signed by the Commissioner of Education.

(c) The Department's affirmative action policy shall be reviewed at least annually to assure conformance.

A-7-2. Dissemination and notification of policy. — (a) The Department shall implement specific and continuing steps to notify applicants for employment, students, parents, employees, sources of referral of applicants for employment, and all unions or professional organizations holding collective bargaining or professional agreements within the state that it does not discriminate in its employment practices and that it is taking affirmative action to alleviate identifiable sources of discrimination. Notification shall contain specific information pertaining to policies on equal employment opportunity and affirmative action and apprise persons of the protections against discrimination assured them by the policy. The name, title, address, and phone number of the person coordinating the equal employment opportunity and affirmative action program shall be included for persons inquiring about unit policy, as well as the address of the State Equal Employment Opportunity Unit and the Director, Office of Civil Rights, State Department of Education.

(b) The Department shall prominently include a statement of policy in each announcement, bulletin, catalogue, or application form which it makes available to any applicant for employment, employee, student, parent, member of a union or professional organization or citizen within the state. A statement of policy shall also be included in material utilized for recruitment of employees.

(c) The Department shall not use or distribute publications that suggest by stereotype an illustration that the unit permits discrimination against employees or applicants for employment.

(d) The Department shall distribute without discrimination publications described in this section. The Department shall also apprise each of its employment recruitment representatives of the nondiscrimination policy and take steps as necessary to assure that such representatives adhere to such policy.

A-7-3. Duties and responsibilities. — (a) It is the responsibility of the Department to adopt an affirmative action plan that will bring about equal employment opportunity. The Department shall specify an individual to take responsibility for effective implementation of unit policy. Responsibility includes: (1) development of a management strategy that clearly designates officials who are responsible for ensuring equal employment opportunity in the Department; (2) development of a continuous monitoring system that accurately reflects the unit's employment opportunities; (3) administration and adequate financing of the affirmative action plan; and (4) an implementation strategy that indicates objectives and goals and how and when they are to be accomplished. Those individuals with responsibility must be clearly identified.

(b) The Commissioner has primary responsibility for all employment within the Department. The Commissioner shall be accountable to the Board of Regents to assure that all personnel actions are consistent with affirmative action policies. The Commissioner must designate an individual to coordinate the Department's affirmative action plan. The individual shall be known as the Equity and Access Officer.

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(c) Equity and Access Officer reports directly to the Commissioner on civil rights issues and has responsibility within the Department to direct monitoring, administration, management, and implementation of the Department's affirmative action plan. The specific duties of the Equity and Access Officer shall be clearly delineated by the Commissioner.

A-7-4. Equal employment opportunity task force. -- The Department shall establish an Equity and Access committee. This committee shall have clearly articulated responsibilities, functions, and roles. The committee shall issue a program report in writing at least semiannually to the Commissioner. Provision shall be made for the committee to have direct access to the Commissioner on a regular basis. Committee duties may include:

- a. Overseeing the Department's efforts toward equal employment opportunities/ affirmative action.
- b. Maintaining essential two-way communication between the committee and Department staff.
- c. Evaluating programs for broadening educational and employment opportunities for minority groups and women and recommending programs to strengthen the actions of the Department in areas of Civil Rights and human relations.
- d. Reporting annually to the Commissioner in writing.
- e. Recommending affirmative action policies and programs to the Commissioner.
- f. Reviewing monthly progress reports and projections of the Equity and Access Officer.
- g. Developing with the Equity and Access Officer short-term and intermediate range plans
 - (1) For effecting recommendations promulgated by governmental agencies;
 - (2) For effecting recommendations developed by the committee.

A-7-5. Membership. -- Membership shall encompass a broad spectrum of the community, including women, minorities and individuals with disabilities. The committee should include representatives from all levels of staff, including administration, professional staff, clerical and support staff, and may include any identifiable group that has a direct interest in the Department's affirmative action plan. Members shall be appointed by the Commissioner. Of the total membership of the committee on Equity and Access majority representation must be provided to the combination of minorities, women, and individuals with disabilities.

A-7-6. Personnel Practices and Procedures. — (a) Each affirmative action plan shall document present personnel practices and indicate how they conform with equal employment opportunity and affirmative action policy. A systematic review of each of the following is to be included in such a plan:

1. Recruitment procedures
2. Employee-selection procedures
3. Employee-retention procedures
4. Opportunity for upward mobility
5. Wage and salary structure
6. Benefits and conditions of employment
7. Procedures for layoff, recall, termination, promotion, involuntary transfer, disciplinary

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- action, and the
- 8. Provision of supplementary education tests and performance measures utilized
- 9. Parental leave

(b) Personnel practices and procedures shall be consistent with objectives and goals of the affirmative action plan.

A-7-7. Recruitment. — The Department shall not discriminate in the recruitment and hiring of employees. The Department shall take steps to actively recruit members of groups not reasonably represented in the existing work force. The Department shall actively recruit through the posting of job notices, special interest organizations and other suitable means to reach a wide and varied applicant pool. A means of evaluating the effectiveness of recruitment activities shall be articulated

A-7-8. Selection. -- The employee selection process shall demonstrate equality for all persons. The Department shall insure that its selection process is clearly understood by all employees. Criteria used in the selection of employees must be free from personal feelings or prejudice, be based on facts, and be bias free in implementation. Tests shall not be administered which have a disproportionately adverse effect on one particular class of persons. Procedures shall include designation of one person responsible for employee selection. A screening committee may be used, a committee structure being desirable in equal employment opportunity. Applications shall be screened on objective criteria only, and the person or committee screening the applicants must be able to specify the evaluation criteria. If possible, a minimum of three to five candidates should be interviewed. Every effort shall be made to include women and minorities in the final applicant pool. Interviews for all candidates shall follow a consistent format. No questions shall be asked of an applicant unless they have a direct rationale for performance in the unfilled position. Only qualified candidates are to be recommended for hiring. When two candidates are considered equal in qualification, then preference should be given to the applicant from the most disenfranchised area of the work force (male, female, black, white, Hispanic, person with a disability, etc.) so that a better balance is achieved in the work force.

A-7-9. Wage and salary structure. — The Department shall adopt a wage and salary structure which does not contain discriminatory distinctions or rates of pay based upon age, sex, race, color, creed, religion, disability, etc. The Department shall insure a fair policy and practice so employees who perform equal work in jobs that require equal skill effort and responsibility and which are performed under similar working conditions receive equal compensation. The continuation of any discrimination in salary or wage consideration will be inconsistent with policy. Classification and salary structures must be based upon bona fide occupational qualification only.

A-7-10. Benefits and conditions of employment. — The Department shall ensure that benefits and conditions of employment are equitable for all employees. The Department shall examine the hours worked, job descriptions, medical and health insurance coverage and other benefits and conditions of employment. Practice and procedures for benefits and conditions of employment should not adversely affect any one particular class of persons more so than any other class of persons. Special benefits accruing from contractual agreements are permitted. However, contractual agreements shall not be used to discriminate.

A-7-11. Employment procedures. — The Department shall examine or establish procedures for layoffs, recall from layoff, termination, promotion, involuntary transfer, disciplinary action and the provision of supplementary education that treat employees equitably. Procedures for each of

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these matters shall be clearly specified and shall not disenfranchise any class of persons. The unit shall make provisions to inform its employees of the procedures involved. The unit shall also ensure that the procedures are practiced in an unbiased manner.

A-7-12. Test and performance measures. — The Department shall insure that any tests or performance measures utilized in evaluation of employees are valid and reliable measures. Evaluation measures shall be clear and objective and be equally applied to all employees. If discriminatory evaluative measures are identified, the unit shall take steps to correct deficiencies

A-7-13. Parenting — The Department must establish a policy on parental (maternity, paternity, pregnancy, adoption, abortion, or miscarriage) leave. All conditions of employment relating to parental leave must also be applied equally in compliance with the unit's affirmative action plan. If there is a childrearing leave policy for childcare purposes, such policy must be applied and be available to male and female employees on an equitable basis.

A-7-14. Grievance procedure. — (a) The Department shall adopt and publish in appropriate publications grievance procedures providing for prompt and equitable resolution of employee discrimination complaints alleging any action which is prohibited law, regulation, or policy.

(b) The Department shall, as part of its Personal Policy Manual, develop and maintain an internal grievance procedure for prompt and equitable resolution of employee complaints of discrimination. The organization and structure of the grievance procedure are left to the discretion of the Department. Criteria which may influence decisions regarding the grievance shall be explicated by the Department. The grievance procedure must assure due process to all parties concerned and take into consideration promptness of handling, ease of accessibility, simplicity of procedures, and confidentiality.

(c) Individuals with responsibility for the investigation of grievances shall have sufficient access to authority to ensure the correction of identified noncompliance.

(d) A record of all complaints and their resolutions shall be maintained.

(e) Regardless of their organization, grievance procedures for employees shall be published and distributed. Efforts should be made to ensure ongoing publication and notification of grievance procedures.

A-7-15. Data collection. — Each plan shall include an analysis of its existing work force which indicates:

1. A listing of each job classification as it appears in applicable collective bargaining agreement or payroll records (no job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervisors
2. Such analysis shall be enlarged to include comparative analysis of salary levels, types and terms of employment. Data must also be collected relative to:
 - (a) The number and percentage of each minority group and women in the relevant labor pool.
 - (b) The number and percentage of minority groups in the unit's recruitment area(s)
 - (c) An analysis of applicant flow as compared to hiring rates
3. The relevant labor pool and recruitment area(s) described in numbers one and two above and identified in affirmative action plans shall be subject to the approval of the Department of Education.

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4. In order to effect a more complete analysis of its work force, each unit shall prepare and include in its affirmative action plan the above information.

5. One of the major goals of an affirmative action plan is to insure the reasonable representation of minorities, women, and the handicapped in a unit's work force. That reasonable representation shall be evaluated relative to the number of qualified protected groups available for service in the unit, and relative to other factors, including but not limited to the composition of the population participating in programs and activities operated by the unit.

6. Goals and activities of plans shall be directed toward overcoming discrepancies between the number of persons available for employment and the number actually employed.

A-7-16. Goals and timetables. — Each plan shall contain employment goals and a time schedule for the achievement of those stated goals. Each plan shall establish goals and a time schedule for the purpose of attaining a numerical increase in minority and female employment by job classification. Goals, unlike quotas, are self-imposed, result-oriented procedures. However, should a unit fail to reach its goals, it must be prepared to demonstrate specifically and in detail why good-faith efforts failed to produce the desired results. Units shall set both intermediate (3 years +) and short-term goals (1 year or less) for the employment of protected groups. Goals and timetables shall be set for each classification by units and departments as well as for the total work force of the unit. Goals shall be set in the most specific terms possible. Goals should be measurable and attainable. Goals drawn should be based on information provided through the examination of the work force analysis, based on the anticipated number of openings in the unit's work force over a period of time and based on other relevant data and information such as the ability of the unit to undertake and fully implement actions proposed in the unit's AA plan.

A-7-17. Training and education. — Each unit plan shall include a description of the training and educational programs the unit will undertake to support its affirmative action commitment. Such training should be based upon the needs of the organization and shall be directed towards meeting the needs of the unit and the community. Training experiences must be made available on a non-discriminatory basis for employees within job categories. In-service training experiences designed to assist both employees and other interested persons in understanding and meeting affirmative action responsibilities shall be designed and implemented.

A-7-18. Community contact. — Each plan shall make provisions for the development and implementation of activities that strengthen the ties between the unit and community agencies that support the affirmative action commitment of the unit. Such activities may include making available expertise, personnel, and resources to community based agencies which assist those agencies in gaining an awareness of the EEC commitment of the unit and which strengthens the community agency's ability to respond to the unit's request for assistance.

A-7-19. Monitoring for compliance. — Each plan shall contain the procedures the unit shall utilize to enforce compliance with its policies on equal employment opportunity. Such procedures shall, at a minimum, include:

(1) Provisions for the internal and external monitoring of employment practices of contractors, vendors, and others doing business with or receiving resources from the unit.

(2) Procedures for the termination of unit assistance that include timelines for such

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terminations.

- (3) Procedures for identifying noncompliance, notifying recipient organizations of noncompliance, and negotiating corrective actions to relieve noncompliance.

A-7-20. Enforcement. — (a) All recipients of state financial assistance, including local education agencies not in compliance with the provisions of these regulations in the administration of its policies and practices, shall be subjected to appropriate sanctions and disciplinary actions imposed by the Commissioner of Education, and consistent with the legal authority of the Board of Regents for Elementary and Secondary Education.

(b) The Board of Regents, through the Commissioner of Education, shall have ultimate responsibility for enforcing and monitoring the implementation of these regulations and for ensuring compliance with these regulations.

(c) Each unit receiving state financial assistance and resources, shall as a condition to its receipt of such assistance and resources, provide an assurance that it shall comply with the requirements of these regulations in the development of Affirmative Action plans required by the Commissioner of Education.

(d) Prior to the approval of financial assistance or resources to recipient organizations and agencies, the Department shall determine the compliance status of the recipient with regard to these regulations.

(e) The basis for such determination shall be the submission of an appropriate assurance of compliance. When a determination cannot be made, additional information may be required.

(f) All recipient organizations and agencies shall submit, on a date designated by the Commissioner, but not less than annually, reports or other documentation required to insure compliance with these regulations. The Department of Education shall periodically, but not less than once every two years, conduct a field review of each recipient organization or agency to determine compliance with the implementation of these regulations.

(g) In cases of such non-compliance, if the Commissioner is unable to resolve the matter informally, the Commissioner shall undertake all necessary steps to effect compliance. Such steps shall be undertaken only after:

- (1) The Commissioner has determined that compliance cannot be informally secured,
- (2) The recipient has been notified in writing of its failure to comply, and
- (3) The recipient has been informed of the proposed actions to be taken to enforce compliance.

(h) If an investigation indicates that no action is necessary, the Commissioner or his or her designee will so inform the recipient.

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(i) If there appears to be a failure or threatened failure to comply with these regulations, and if the non-compliance cannot be corrected informally, compliance with these regulations may be effected by the imposition of penalties and sanctions including the withholding of state financial assistance to the recipient.

(j) Such other means for effecting compliance may include but are not limited to:

- (1) A reference to the Attorney General's Office, or
- (2) Any applicable proceeding under State law.

(k) Any final decision of the Commissioner that provides for the imposition of penalties, sanctions, and other disciplinary actions, shall be promptly transmitted to the Board of Regents who may approve the decision, vacate the decision or mitigate sanctions, penalties, or disciplinary actions imposed.

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