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New Jersey Division on Civil Rights

Rules Pertaining to Disparate Impact Discrimination

N.J.A.C. 13:16

N.J.A.C. 13:16

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 57 No. 24, December 15, 2025

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 16. DISPARATE IMPACT DISCRIMINATION

Title 13, Chapter 16 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 10:5-8](#), 10:5-12, and 10:5-18.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2025 d.150, effective December 15, 2025.

See: [56 N.J.R. 969\(a\)](#), [56 N.J.R. 2218\(a\)](#), [57 N.J.R. 2840\(b\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 16, Disparate Impact Discrimination, was adopted as new rules by R.2025 d.150, effective December 15, 2025. See: Source and Effective Date.

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N.J.A.C. 13:16-1.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 57 No. 24, December 15, 2025

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 16. DISPARATE IMPACT DISCRIMINATION > SUBCHAPTER 1. PURPOSE, CONSTRUCTION, AND DEFINITIONS

§ 13:16-1.1 Purpose

This chapter is designed to implement the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq. (the Act), as it pertains specifically to disparate impact liability.

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N.J.A.C. 13:16-1.2

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§ 13:16-1.2 Construction

- (a)** Consistent with the public policy underlying the Act and with firmly established principles for the interpretation of such remedial legislation, the remedial provisions of the statute will be given a broad construction and its exceptions construed narrowly.
- (b)** The provisions of this chapter are severable. If any provision or the application of any provisions of this chapter to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

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N.J.A.C. 13:16-1.3

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§ 13:16-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" shall mean the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq.

"Attorney General" shall have the same meaning as in the Act.

"Automated employment decision tools" are any software, system, or process that aims to automate, aid, or replace human decision-making relevant to employment. "Automated employment decision tools" include tools that analyze datasets to generate scores, rankings, predictions, classifications, or some recommended action(s) that are used by employers to make decisions regarding employees, contractors, and job candidates, or potential job candidates, including decisions related to advertising, recruiting, screening, interviewing, hiring, placement, promotion, and compensation, or any other term, condition, or privilege of employment.

"Complainant" means any person filing a complaint alleging unlawful discrimination pursuant to the Act.

"Consumer credit history" means an individual's creditworthiness, credit standing, credit capacity, and borrowing or payment history, as indicated by, but not limited to:

1. A consumer report, including any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living;
2. A credit score; or
3. Information provided by an individual regarding:
 - i. Credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit, or prior credit report inquiries; or
 - ii. Bankruptcies, judgments, or liens.

"County correctional facility" means any prison or other secure facility managed and operated by any county of this State in which adult offenders are incarcerated and includes, but is not limited to, a county prison, jail, penitentiary, or workhouse.

"Covered entity" means an employer; labor organization; employment agency; housing provider; real estate broker, agent, or salesperson; lending institution; place of public accommodation; or person who is required to comply with [N.J.S.A. 10:5-12](#).

"Criminal record" shall have the same meaning as in the Fair Chance in Housing Act, P.L. 2021, c. 110.

"Director" shall have the same meaning as in the Act.

"Disability" shall have the same meaning as in the Act.

§ 13:16-1.3 Definitions

"Division" shall have the same meaning as in the Act.

"Employer" shall have the same meaning as in the Act.

"Employment agency" shall have the same meaning as in the Act.

"Exclusionary discipline" describes expulsion, out-of-school suspension, in-school suspension, or any other type of punitive school disciplinary action, whether or not labeled as such, that limits, removes, or excludes a student from their usual educational setting or usual educational programming. "Exclusionary discipline" does not include evidence-based restorative justice practices.

"Gender identity or expression" shall have the same meaning as in the Act.

"Housing provider" means any person who is required to comply with [N.J.S.A. 10:5-12](#).g or h.

"Isolated confinement" means confinement of an incarcerated person in a State correctional facility, county correctional facility, or municipal jail pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other incarcerated persons, for approximately 20 hours or more per day in a State correctional facility or 22 hours or more per day in a county correctional facility or municipal jail, with severely restricted activity, movement, and social interaction. "Isolated confinement" shall not include confinement due to a facility-wide or unit-wide lockdown that is required to ensure the safety of incarcerated persons and staff.

"Labor organization" shall have the same meaning as in the Act.

"Law enforcement agency" means a department, division, bureau, commission, board, or other authority of the State or of any political subdivision thereof that has, by statute or ordinance, the responsibility of detecting and enforcing the general criminal laws of this State.

"Legitimate interest" means that a justification for a challenged practice or policy is genuine and not false or pretextual.

"Municipal jail" means a municipal jail, lockup, police station, or other place maintained by a municipality for the detention of suspects or offenders.

"Nondiscriminatory interest" means that a justification for a challenged practice or policy does not itself discriminate based on a protected characteristic.

"Person" shall have the same meaning as in the Act.

"Place of accommodation" shall have the same meaning as in the Act.

"Protected characteristics" include race, creed, color, national origin, nationality, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy (including childbirth, breastfeeding or chestfeeding, and pregnancy-related medical conditions), sex, gender identity or expression, disability or atypical hereditary cellular or blood trait of any individual, or liability for service in the armed forces, and any other characteristics protected pursuant to the Act.

"Publicly assisted housing accommodation" shall have the same meaning as in the Act.

"Race" shall have the same meaning as in the Act.

"Real estate" means an identified parcel or tract of land, including improvements thereon, if any.

"Real estate broker" shall have the same meaning as in the Act.

"Real estate salesperson" shall have the same meaning as in the Act.

"Real property" shall have the same meaning as in the Act.

"Respondent" means any party charged with unlawful discrimination pursuant to the Act.

"Restorative justice practices" means practices based on a system of dispute resolution tools that allow all parties to a dispute to be involved in defining the harm and devising remedies while giving the necessary attention to community safety, victims' needs, and the need for accountability for harm. "Restorative justice practices" include, but need not be limited to, student or community court, restorative circles, mediation, and conferencing.

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"Source of lawful income" means any source of income lawfully obtained or any source of rental or mortgage payment lawfully obtained, including, but not limited to, any Federal, State, or local public assistance or housing assistance voucher or funds, including Section 8 housing choice vouchers, temporary rental assistance programs, or State rental assistance programs; rental assistance funds provided by a nonprofit organization; Federal, State, or local benefits, including disability benefits, unemployment benefits, and veterans' benefits; court-ordered payments, including, but not limited to, child support, alimony, or damages; and any form of lawful currency tendered, without regard to whether such currency is tendered in the form of cash, check, money order, or other lawful means.

"State correctional facility" means a State prison or other penal institution or a State-contracted halfway house.

"Substantial interest" means a core interest of the entity that has a direct relationship to the function of that entity.

"Unlawful discrimination" shall have the same meaning as in the Act.

"Unlawful employment practice" shall have the same meaning as in the Act.

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N.J.A.C. 13:16-2.1

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 16. DISPARATE IMPACT DISCRIMINATION > SUBCHAPTER 2. DISPARATE IMPACT DISCRIMINATION

§ 13:16-2.1 Disparate impact liability pursuant to the Act

- (a)** Practices and policies that have a disparate impact, as defined at (b) below, on members of a protected class, even if these practices and policies are not discriminatory on their face (that is, facially neutral) and are not motivated by discriminatory intent, will be considered discriminatory and a violation of the Act, unless it is shown that such practices and policies are necessary to achieve a substantial, legitimate, nondiscriminatory interest and there is no less discriminatory alternative that would achieve the same interest.
- (b)** A practice or policy has a disparate impact where it actually or predictably results in a disproportionately negative effect on members of a protected class. A practice or policy predictably can have a disparate impact when there is evidence that the practice or policy will have a disparate impact even though the practice or policy has not yet been implemented, if the practice or policy has been approved, announced, or otherwise finalized. However, a practice or policy that is simply being debated or deliberated internally by a covered entity cannot be challenged pursuant to this chapter before it is implemented, approved, announced, or otherwise finalized.
- (c)** Any person claiming to be aggrieved by an unlawful employment practice or an unlawful discrimination, the Attorney General, the Director of the Division, the Commissioner of the Department of Labor and Workforce Development, or the Commissioner of the Department of Education, or any other person or organization authorized by the Division's Rules of Practice and Procedure, [N.J.A.C. 13:4](#), or the LAD, may bring a complaint of discrimination based on disparate impact liability pursuant to the Act to the Division or initiate suit in Superior Court.
- (d)** The practices and policies, as well as the specific protected characteristics discussed in relation to them in this chapter are only examples and are not meant to limit the application of the chapter to those practices and policies or the specific protected characteristics discussed in relation to them.

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N.J.A.C. 13:16-2.2

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§ 13:16-2.2 Burdens of proof for disparate impact discrimination claims in employment, public accommodations, and contracting

- (a)** A complainant challenging a practice or policy of a covered entity must show the practice or policy challenged has a disparate impact on members of a protected class.
- (b)** In the employment, public accommodations, and contracting contexts, if the complainant meets the burden of proof at (a) above, the respondent has the burden of showing that the challenged practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest. In the employment context, whether a practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest is equivalent to whether the practice or policy is job related and consistent with a legitimate business necessity. A practice or policy is job related when it bears a demonstrable relationship to successful performance of the job and measures the person's fitness for the specific job.
- (c)** In the employment, public accommodations, and contracting contexts, if the respondent meets the burden at (b) above, the complainant has the burden of showing that there is a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest.
- (d)** To meet its burden of proof at (a), (b), or (c) above, a party must provide empirical evidence, meaning evidence that is not hypothetical or speculative, to support its allegations. For example, a complainant would not meet its burden to show an employment policy has a disparate impact on job applicants based on gender by speculating that the policy harms women more than men, but could meet its burden by providing empirical evidence, which could include applicant files or data or applicant selection rates by gender. Anecdotal evidence, while not sufficient on its own, may be introduced along with empirical evidence. For example, a complainant would not meet its burden to show an employment policy has a disparate impact on job applicants based on gender by solely providing that they know women who applied and did not receive a position but men who did. However, a complainant could introduce anecdotal evidence along with empirical evidence, such as applicant selection rates by gender.
- (e)** The opposing party may rebut whether the party with the burden of proof at (a), (b), or (c) above has met its burden.
- (f)** Additional proof may be required when challenging or defending particular practices or policies. Such requirements are noted in this chapter, where relevant.

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§ 13:16-2.2 Burdens of proof for disparate impact discrimination claims in employment, public accommodations, and contracting

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§ 13:16-2.3 Burdens of proof for disparate impact claims in housing and housing financial assistance

- (a)** A complainant challenging a practice or policy of a covered entity must show that the practice or policy challenged has a disparate impact on members of a protected class.
- (b)** In the housing and housing financial assistance contexts, if the complainant meets the burden of proof at (a) above, the respondent has the burden of showing that the challenged practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest and that there is not a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest. To meet its burden of showing that there is not a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest, the respondent can identify what policy or practice options it considered and how and why it decided to select the policy or practice it chose.
- (c)** To meet its burden of proof at (a) or (b) above, a party must provide empirical evidence, meaning evidence that is not hypothetical or speculative, to support its allegations. For example, a complainant would not meet its burden to show a policy has a disparate impact on housing applicants based on gender by speculating that the policy harms women more than men, but could meet its burden by providing empirical evidence, which could include applicant files or data or applicant selection rates by gender. Anecdotal evidence, while not sufficient on its own, may be introduced, along with empirical evidence. For example, a complainant would not meet its burden to show a policy has a disparate impact on housing applicants based on gender by solely providing that they know women who applied and did not receive housing but men who did receive housing. However, a complainant could introduce anecdotal evidence along with empirical evidence, such as applicant selection rates by gender.
- (d)** The opposing party may rebut whether the party with the burden of proof at (a) or (b) above has met its burden.
- (e)** Additional proof may be required when challenging or defending particular practices or policies. Such requirements are noted in this chapter, where relevant.

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N.J.A.C. 13:16-2.4

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§ 13:16-2.4 Evidence for disparate impact claims

(a) Types of evidence that, depending on the facts of the case, may be relevant to establish or to rebut the existence of disparate impact include, but are not limited to:

1. National, State, and local statistics;
2. Applicant or employee files or data;
3. Applicant or employee selection, suspension, pay setting, and termination rates by race, gender, and other protected characteristics;
4. Tenant/resident files or data;
5. Criminal justice system data, including:
 - i. Incarcerated person and correctional staff incident reports created by a correctional facility;
 - ii. Records regarding correctional disciplinary referrals;
 - iii. Correctional decisions and actions, including placing an incarcerated person in solitary confinement;
 - iv. Records regarding placement in a correctional facility;
 - v. Requests for accommodation in a correctional facility;
 - vi. Law enforcement officer incident reports;
 - vii. Citations by law enforcement officers; and
 - viii. Complaints made by the public about the conduct of law enforcement officers;
6. Demographic or census data;
7. Local agency data or records;
8. Police records and court records, including eviction data;
9. Survey data;
10. Labor market data;
11. School disciplinary data;
12. School referrals to law enforcement and school-based arrests;
13. School attendance data;
14. Home school instruction data;
15. Demographic data regarding classification and placement for special education services;

§ 13:16-2.4 Evidence for disparate impact claims

16. Demographic data regarding academic placement, including placement in remedial courses, honors courses, advanced placement (AP) courses, and gifted and talented programs; and

17. Other relevant data.

(b) To establish that a challenged practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest, a respondent must establish that:

1. The practice or policy is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests, where "substantial interest" means a core interest of the entity that has a direct relationship to the function of that entity, "legitimate" means that a justification is genuine and not false or pretextual, and "nondiscriminatory" means that the justification for a challenged practice or policy does not itself discriminate based on a protected characteristic; and

2. The practice or policy effectively carries out the identified interest.

(c) The determination of whether an interest is substantial, legitimate, and nondiscriminatory requires a case-specific, fact-based inquiry. An interest in achieving diversity or increasing access for underrepresented or underserved members of a protected class may constitute a substantial, legitimate, nondiscriminatory interest.

(d) The determination of whether there is a less discriminatory alternative means of achieving a substantial, legitimate, nondiscriminatory interest requires a case-specific, fact-based inquiry.

(e) If a respondent's practice or policy that results in a disparate impact based on a protected characteristic relies on conduct, standards, products, procedures, or systems of an outside person or vendor, the respondent must take reasonable steps to ensure that the outside person or vendor's conduct, standards, products, procedures, or systems are consistent with the Act and this chapter.

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N.J.A.C. 13:16-3.1

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 16. DISPARATE IMPACT DISCRIMINATION > SUBCHAPTER 3. EMPLOYMENT

§ 13:16-3.1 Disparate impact discrimination in employment

- (a)** Employment practices and policies may be unlawful if they have a disparate impact on members of a protected class. An employment practice or policy that has a disparate impact is prohibited unless, in accordance with [N.J.A.C. 13:16-2.2](#), a respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Whether an employment practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest is equivalent to whether the practice or policy is job related and consistent with a legitimate business necessity. An employment practice or policy may still be prohibited if necessary to achieve a substantial, legitimate, nondiscriminatory interest if a complainant shows there is a less discriminatory alternative that would achieve the same interest.
- (b)** Nothing in this subchapter shall preclude affirmative efforts to utilize recruitment practices to attract an individual who is a member of an underrepresented or underserved member of a protected class covered by the Act.
- (c)** This subchapter applies to the practices and policies of employers, labor organizations, employment agencies, and other covered entities.

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§ 13:16-3.2 Pre-employment practices

(a) Job recruitment, advertising, and solicitation practices are as follows:

1. All employers, labor organizations, and employment agencies should conduct advertising and recruitment efforts, including job vacancy, membership recruitment, and employment referral programs, in such a manner as to ensure that all persons, including members of protected classes, are given fair, adequate, and equivalent notice of job vacancies, membership opportunities, and employment referral opportunities; that those advertising and recruitment efforts should guard against perpetuating any historical patterns of segregation or discrimination in their respective industry; and that those advertising and recruitment efforts do not rely on the use of stereotypes regarding members of a protected class:
 - i. Employers and labor organizations are encouraged to post notices or advertisements relating to employment, or to membership in a labor organization, in a way that will maximize visibility in the relevant labor market; and
 - ii. Employers should encourage their referral sources to seek and refer all qualified individuals, without regard to individuals' identities or protected characteristics; and
2. An employer's reliance on word-of-mouth recruitment may be a prohibited recruitment practice or policy if its use actually or predictably results in a disproportionately negative effect on potential applicants who are members of a protected class unless the employer can satisfy its burden of showing that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest and the complaining party cannot show that there is a less discriminatory alternative.
 - i. For example, an employer's practice or policy of relying on word-of-mouth recruitment by its mostly Hispanic work force may violate the Act if the result is that almost all new hires are Hispanic. This is because the employer's reliance on word-of-mouth recruitment may have resulted in limiting recruitment to the networks or communities of current employees, resulting in a disparate impact on members of one or more protected classes, including people who do not identify as Hispanic.

(b) Pre-employment screening and interviews. Pre-employment screening and interviews may have a disparate impact on members of a protected class. Notwithstanding any internal safeguards taken to secure a discrimination-free atmosphere in interviews, the entire screening and interview process is subject to review for disparate impact on individuals of a protected class. By way of example, but not limitation, a practice of only interviewing on Saturdays or only on Sundays may result in a disparate impact for people whose religions prohibit them from engaging in work on those days of the week.

(c) Automated employment decision technology practices are as follows:

1. The use of automated employment decision tools to make employment decisions, including, but not limited to, decisions related to advertising, recruiting, screening, interviewing, hiring, and compensation, or any other terms, conditions, or privileges of employment, may have a disparate impact on applicants and employees based on their race, national origin, gender, disability, religion, and other protected characteristics. By way of example, but not limitation, an automated employment decision tool that uses

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data on a company's current employees to inform a search for candidates may have a disparate impact on members of protected classes that are not well represented in that company or industry. If most current employees at a computer science company are white, cisgender men, an automated employment decision tool that assesses applicants based on that pool may score women applicants lower because their resumes list "women's field hockey" rather than "football," or score Black applicants lower because their resumes list "Black Student Alliance," an organization in which the company's current employees are less likely to have been involved;

2. The use of an automated employment decision tool that limits or screens out applicants based on their schedule may have a disparate impact on applicants based on their religion, disability, or medical condition and must include a mechanism for applicants to request a reasonable accommodation. By way of example, but not limitation, an application asking if an applicant is available to work a proposed schedule of Monday through Saturday may screen out applicants who answer the question in the negative due to religious practices they engage in on Saturdays; and
3. An employer's use of an automated employment decision tool that has not been adequately tested and shown to not adversely affect people in a protected class before its use may have a disparate impact on members of that protected class. By way of example, but not limitation, an employer's use of facial analysis technology to detect personality traits during virtual interviews is likely to result in lower scores for interviewees whose facial expressions the tools have not been tested on and designed to read. If the technology was tested exclusively or predominantly on white people with no disabilities, then use of the technology may disproportionately impact interviewees with darker skin or interviewees with disabilities because the technology cannot match their facial expressions to those programmed into the tool and may not account for interviewees who cannot make certain facial expressions.
 - i. The use of facial analysis technology may disproportionately impact interviewees wearing religious headwear or maintaining religiously mandated facial hair if the technology has not been tested on people with similar religious practices.

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§ 13:16-3.3 Employee selection procedures

The guidelines set forth in the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607 (1978), which are incorporated herein by reference, are applied to all protected characteristics listed in the Act. Where there is a conflict between such guidelines and this chapter, the rules in this chapter shall control. Upon request, the Division will make the guidelines available for public inspection and make available a printed copy of the guidelines.

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§ 13:16-3.4 Employment practices

(a) The following employment practices and policies may have a disparate impact on members of a protected class and, if so, would be prohibited, unless a respondent shows a specific practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even with a showing of a substantial, legitimate, nondiscriminatory interest, it is still unlawful if the complainant can show that there is a less discriminatory alternative that would achieve the same interest.

1. Language restrictions. The adoption or enforcement of a policy that limits or prohibits the use of any language in the workplace, including, but not limited to, an English-only rule, may have a disparate impact on employees based on national origin or ancestry.

i. To prove the language restriction is necessary to achieve a substantial, legitimate, nondiscriminatory interest, it is not sufficient to demonstrate that it promotes business convenience or is due to customer or co-worker preference. Instead, the restriction must be necessary for the employee to be able to effectively perform the job duties in question. In addition, if the employer is able to show the language restriction is necessary to achieve a substantial, legitimate, nondiscriminatory interest, it must effectively notify its employees of the circumstances and time when the language restriction must be observed and of the consequence for violating the language restriction. Applying language restrictions, including English-only rules, during conversations that are not essential to the performance of a job, such as co-worker small-talk, or during an employee's non-work time, including breaks, lunch, and unpaid employer sponsored events, is generally not necessary to achieve a substantial, legitimate, nondiscriminatory interest.

ii. The adoption or enforcement of a policy regarding English proficiency may have a disparate impact based on national origin or ancestry. In order to show that such a requirement is necessary to achieve a substantial, legitimate, nondiscriminatory interest, the employer would be required to show that the level of proficiency required is necessary to effectively fulfill the job duties of the position. In determining necessity in this context, relevant factors include, but are not limited to, the type of proficiency required (for example, spoken, written, aural, and/or reading comprehension), the degree of proficiency required, and the nature and job duties of the position.

iii. It is not unlawful for an employer to request from an applicant or employee, information regarding their ability to speak, read, write, or understand any language, including languages other than English.

2. Citizenship requirements. Citizenship requirements may have a disparate impact on applicants or employees based on national origin or ancestry. Citizenship requirements that are required or expressly permitted by Federal or State law, rule, or regulation are not unlawful employment practices pursuant to this paragraph.

3. Height and/or weight requirements. Height and/or weight requirements may have a disparate impact on applicants or employees based on gender, national origin, ancestry, or disability.

4. Health or physical ability requirements. Health or physical ability requirements may have a disparate impact on applicants or employees based on gender, age, or disability. By way of example, but not

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limitation, a requirement that an applicant have the ability to lift 20 pounds that has a disparate impact on members of a protected class would be unlawful, unless the employer can show that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest, meaning that it must be job related and consistent with a legitimate business necessity. The employer would have to show that lifting 20 pounds is necessary to the successful performance of the job. Even then, it would still be unlawful if the complainant can show that there is a less discriminatory alternative that would achieve the same interest.

5. Dress and/or appearance requirements. Dress and/or appearance requirements may have a disparate impact based on religion. By way of example, but not limitation, a prohibition on hats or head coverings may have a disparate impact based on religion for those who wear yarmulkes, hijabs, turbans, or other religious articles or articles of faith or maintain religiously mandated unshorn hair/beards. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious beliefs and either granting the request or engaging in an interactive process with the employee.

i. A policy prohibiting employees who are men from having hair past "ear length" or requiring employees who are men to have "clean groomed" hair may have a disparate impact based on religion for those who maintain natural or longer hair in conformance with their religious mandates. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious beliefs and either granting the request or engaging in an interactive process with the employee.

6. Dress requirements that do not allow employees to dress in a way that affirms their gender identity or allows them to express their gender identity may have a disparate impact based on gender identity or expression. For example, a dress code that allows employees to wear a tie with a pantsuit but not with a skirt suit may have a disparate impact on an employee based on gender expression if they would like to express their gender identity by wearing a tie with a skirt suit.

7. Driver's license requirements. A requirement to possess a driver's license may have a disparate impact on applicants or employees based on disability or national origin. In order to show that such a requirement is necessary to achieve a substantial, legitimate, nondiscriminatory interest, the employer would be required to show it is job related and consistent with a legitimate business necessity, such as where the employee driving is necessary for successful performance of the job.

8. Pregnancy (including childbirth, breastfeeding or chestfeeding, and pregnancy-related medical conditions). Certain employment practices or policies may have a disparate impact based on pregnancy, including childbirth, breastfeeding or chestfeeding, and pregnancy-related medical conditions. By way of example, but not limitation, a policy requiring employees to wear high heels may have a disparate impact on employees or applicants based on pregnancy. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on pregnancy and either granting the request or engaging in an interactive process with the employee.

i. A practice of not allowing employees to take breaks during work hours or a policy prohibiting employees from plugging in personal refrigerators in their work area may have a disparate impact on employees who are breastfeeding or chestfeeding. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on breastfeeding or chestfeeding and either granting the request or engaging in an interactive process with the employee.

(b) Criminal history. An employment practice or policy of excluding from consideration an applicant based on criminal history information may have a disparate impact based on race (particularly for Black applicants), national origin (particularly for Latinx/e applicants), or ancestry. Such a practice or policy that results in a disparate impact would, therefore, be unlawful unless it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, the practice or policy would still be unlawful if the complainant can show that there is a less discriminatory alternative that would achieve the same interest.

§ 13:16-3.4 Employment practices

1. A practice or policy that contains an individualized assessment of the facts and circumstances of the applicant's criminal record and other mitigating information is likely to be a less discriminatory alternative to a practice or policy that excludes individuals from employment or the application process based on criminal history information without conducting an individualized assessment. The following factors, among others, may be relevant to such an assessment, although the lack of information relating to any one of these factors shall not be considered a negative factor when conducting an individualized assessment:
 - i. The nature and severity of the offense and the facts and circumstances of the conduct underlying it;
 - ii. The specific duties and responsibilities of the position sought or held by the person;
 - iii. The bearing, if any, that the criminal offense has on the person's fitness or ability to perform one or more such duties or responsibilities;
 - iv. The time that has passed since the criminal offense;
 - v. The age of the individual at the time of the occurrence of the offense;
 - vi. Whether an offer or continuation of employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public; and
 - vii. Any evidence of rehabilitation that the applicant or others may choose to provide, including good conduct in a correctional or detention facility or in the community, counseling or psychiatric treatment received, academic or vocational schooling, successful participation in work-release programs, or the recommendation of persons who know the applicant's character.
2. Nothing in this subsection shall be construed to prohibit any practice that is otherwise required by Federal or State law, rule, or regulation.
3. Nothing in this subsection shall be construed in such a way as to interfere with the protections afforded job applicants pursuant to the Opportunity to Compete Act, [N.J.S.A. 34:6B-11](#) et seq., or the rules promulgated by the New Jersey Department of Labor and Workforce Development to implement the Opportunity to Compete Act.

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N.J.A.C. 13:16-4.1

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 57 No. 24, December 15, 2025

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§ 13:16-4.1 Disparate impact discrimination in the sale or rental of real property

- (a)** Housing and real estate practices and policies may be unlawful if they have a disparate impact on members of a protected class. A housing or real estate practice or policy that has a disparate impact is prohibited unless, in accordance with [N.J.A.C. 13:16-2.3](#), a respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest and that there is not a less discriminatory alternative that would achieve the same interest.
- (b)** This subchapter applies to the practices and policies of housing providers and real estate brokers, agents, salespersons, and other covered entities.

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N.J.A.C. 13:16-4.2

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 57 No. 24, December 15, 2025

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§ 13:16-4.2 Sale or rental advertising

- (a)** All housing providers and real estate brokers, agents, and salespersons are encouraged to make efforts to ensure that their advertising does not perpetuate historical patterns of housing segregation or discrimination in their respective localities, is not based solely on the characteristics of current or former residents, and does not rely on stereotypes about the characteristics predominantly found among residents of specific localities.
- (b)** All housing providers and real estate brokers, agents, and salespersons are encouraged, in a manner consistent with other requirements of State or Federal law, to conduct all sale and rental searches, listings, and advertisements, including referral programs, in such a manner as to ensure that all persons, including members of protected classes, are given fair, adequate, and equivalent notice of residential vacancies and referral programs and opportunities.
 1. Housing providers and real estate brokers, agents, and salespersons are encouraged to advertise and provide notice of vacancies in a way that will ensure equal or equivalent visibility across the relevant housing market.
 2. Housing providers should encourage their referral sources to seek and refer all qualified individuals, without regard to individuals' identities or membership in a protected class.
 3. A housing provider's reliance on word-of-mouth referrals may be a prohibited housing practice or policy, based on actual or potential disparate impact, if its use discriminates against potential residents based on a protected characteristic. By way of example, but not limitation, a housing provider's practice or policy of relying on word-of-mouth referrals by its mostly white residents may violate the Act if the result is that almost all new applicants or residents are white. This is because the housing provider's reliance on word-of-mouth referrals may have resulted in limiting referrals to the networks or communities of current residents, resulting in a disparate impact on members of one or more protected classes, including people who do not identify as white.
- (c)** Nothing in this section shall preclude owners or operators of special needs and supportive housing, age-restricted housing, or affordable housing, including affordable housing developments that provide priority to veterans, from targeting advertising practices to the specific populations served; however, any practices and policies that have a disparate impact on members of protected classes other than those the housing is intended to serve may still violate this section. For example, a housing provider's practice or policy of advertising veteran housing by posting flyers in a veterans' organization's facilities only in majority white communities may violate the Act if the result is that almost all new applicants or residents are white. This is because the housing provider's advertisement may have resulted in limiting applicants to the communities the flyers were posted within, resulting in a disparate impact on members of one or more protected classes, including veterans who are not white.

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§ 13:16-4.3 Sale or rental practices

(a) Minimum income, financial standard, or income standard. A housing provider's minimum income requirement, financial standard, or income standard may have a disparate impact based on source of lawful income, including, but not limited to, for people who seek to pay rent with forms of government rental assistance that are available only to people with low incomes. Such governmental rental assistance includes, but is not limited to, Section 8 housing choice vouchers, COVID-19 Emergency Rental Assistance Program (CVERAP), State Rental Assistance Program (SRAP), and temporary rental assistance (TRA). If such a policy has a disparate impact, it would only be necessary to achieve a substantial, legitimate, nondiscriminatory interest if the housing provider applied the minimum income requirement, financial standard, or income standard proportionally only to the portion of the rent to be paid by the tenant, rather than the entire rental amount.

(b) Criminal history. A housing provider's practice or policy of excluding from consideration, housing applicants based on criminal history information may have a disparate impact based on race (particularly for Black applicants), national origin (particularly for Latinx/e applicants), or ancestry. Such a practice or policy that results in a disparate impact would, therefore, be unlawful, unless the housing provider could show it is necessary to achieve a substantial, legitimate, nondiscriminatory interest and there is not a less discriminatory alternative that would achieve the same interest.

1. Whether a particular housing practice or policy has a disparate impact pursuant to the Act is not the same as whether a particular housing practice or policy is consistent with the Fair Chance in Housing Act, P.L. 2021, c. 110.

2. Examples of practices or policies that are likely not necessary to achieve a substantial, legitimate, nondiscriminatory interest in protecting other residents or property include:

i. A practice or policy of excluding individuals from housing because of one or more prior arrests or charges that have not resulted in conviction;

ii. A practice or policy of excluding individuals from housing based on conviction records that have been erased through executive pardon, vacated, and otherwise legally nullified, expunged, or sealed;

iii. A practice or policy of excluding individuals from housing based on juvenile adjudications of delinquency; or

iv. A blanket practice or policy of excluding from housing all persons with any prior conviction record, without regard to when the conviction occurred, what the underlying conduct entailed, or any evidence of rehabilitation.

3. A practice or policy that contains an individualized assessment of the facts and circumstances of the housing applicant's criminal record and other mitigating information is likely to be a less discriminatory alternative to a practice or policy that excludes individuals from housing based on criminal history information without conducting an individualized assessment. The following factors, among others, may

§ 13:16-4.3 Sale or rental practices

be relevant to such an assessment, although the lack of information relating to any one of these factors shall not be considered a negative factor when conducting an individualized assessment:

- i. The nature and severity of the offense, and the facts and circumstances of the conduct underlying it;
 - ii. The time that has passed since the offense;
 - iii. The age of the individual at the time of the occurrence of the offense;
 - iv. The degree to which the criminal offense, if it reoccurred, would negatively impact the safety of the housing provider's other tenants or property;
 - v. Whether the criminal offense occurred on, or was connected to, property that was rented or leased by the applicant; and
 - vi. Any evidence of rehabilitation that the applicant or others may choose to provide, including good conduct in a correctional or detention facility or in the community, counseling or psychiatric treatment received, academic or vocational schooling, successful participation in work-release programs, or the recommendation of persons who know the applicant's character.
 4. Nothing in this subsection shall be construed to prohibit any practice that is otherwise required by Federal or State law, rule, or regulation.
- (c) Credit score. Due to widespread historical disparities in credit and wealth, a practice or policy that excludes housing rental applicants from housing because of information associated with their consumer credit history may have a disparate impact based on race or national origin, particularly against Black, Hispanic, and Latinx/e applicants.
1. If a rental housing applicant shows that a particular practice or policy related to consumer credit history results in a disparate impact based on race or national origin, a housing provider would then have the burden to show that the policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest, for example, an interest in collecting rent on time, and that there is not a less discriminatory alternative that would achieve the same interest. For purposes of this subsection, a housing practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest when it is required by Federal or State law, rule, or regulation.
 - i. Examples of practices or policies for which a housing provider may not be able to satisfy its burden of showing that the practice or policy achieves a substantial, legitimate, nondiscriminatory interest and that there is not a less discriminatory alternative that would achieve the same interest include, but are not limited to, a practice or policy of automatically refusing all rental housing applicants who have:
 - (1) No credit score; or
 - (2) A credit score below a minimum threshold.
 - ii. A practice or policy that contains an individualized assessment of the facts and circumstances of the rental housing applicant's consumer credit history or credit score, along with other information bearing on the rental housing applicant's ability to reliably pay their rent, is likely to be a less discriminatory alternative to a blanket practice or policy that automatically excludes individuals from rental housing based on a lack of credit history or a credit score below a minimum threshold without conducting an individualized assessment. The following factors, among others, may be relevant to such an assessment, although the lack of information relating to any one of these factors shall not be considered a negative factor when conducting an individualized assessment:
 - (1) The nature of the items identified in a credit report, and whether those items actually bear on the rental housing applicant's ability to provide timely payment of rent;
 - (2) The time that has elapsed since the items were identified in a credit report;

§ 13:16-4.3 Sale or rental practices

- (3) Evidence presented by the rental housing applicant challenging the credibility or accuracy of the items identified in a credit report;
 - (4) In cases where an applicant is relying on government or other assistance to pay rent, the portion of the rent that will be paid by the rental housing applicant, versus the portion that will be paid by the government or other entity;
 - (5) Whether the rental housing applicant has taken any measures to improve their credit score or credit history since incurring any debts or obligations; and
 - (6) Whether the rental housing applicant has presented any other evidence tending to show ability to pay rent, such as evidence of income or evidence of on-time, complete rental payments over the course of the preceding 12 months.
2. Nothing in this subsection shall be construed to prohibit any practice that is otherwise required by Federal or State law, rule, or regulation.
 3. Nothing in this subsection shall be construed to prohibit any practice or policy related to the sale of housing.
- (d) Refusal to rent or sell to a person who requests a reasonable religious accommodation. A housing provider's practice or policy of refusing to rent or sell housing to a person because the person requests a religious accommodation pursuant to [N.J.A.C. 13:16-4.5](#) is a violation of the Act.

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N.J.A.C. 13:16-4.4

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§ 13:16-4.4 Real estate-related practices or policies

(a) Real estate-related practices or policies may have a disparate impact on members of a protected class. A residential real estate-related practice or policy that has a disparate impact on members of a protected class is prohibited, unless the respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest and that there is not a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest. The practice or policy may involve: making available, or unavailable, a real estate-related transaction; establishing the price or other terms or conditions of a real estate-related transaction; providing, or refusing to provide, information regarding a real estate-related transaction; and the creation, dissemination, or application of criteria, requirements, procedures, or standards for the review and approval of a real estate-related transaction.

(b) This section applies to the practices and policies of real estate brokers, agents, salespersons, and other covered entities.

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N.J.A.C. 13:16-4.5

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§ 13:16-4.5 Residential property management practices

- (a)** Housing providers' residential property management practices and policies may have a disparate impact on members of a protected class. A housing provider's residential property management practice or policy that has a disparate impact on members of a protected class is prohibited, unless the respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest and that there is not a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest.
- (b)** A housing provider's residential property management practice or policy may have a disparate impact on prospective or current residents based on religion, if it requires the person to violate or forgo a sincerely held religious practice or religious observance as a term or condition of obtaining or retaining residence.

1. By way of example, but not limitation:

- i. A residential community that does not provide a non-electronic means of entering or exiting the premises may result in a disparate impact for Jewish residents who do not use electricity while observing their Sabbath, who may not be able to enter or exit the premises on their Sabbath. Such terms and conditions may interfere with the rights and privileges associated with the property for an owner or tenant who needs a reasonable accommodation for religious observances, practices, or beliefs. Such a practice or policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious observances, practices, or beliefs and either granting the request or engaging in the interactive process with residents who request reasonable accommodations; and
- ii. An apartment building policy that prohibits residents from affixing items to the outside of their doors or doorframes may have a disparate impact based on religion for residents whose religious beliefs require them to affix certain religious items, such as crucifixes, mezuzahs, or deity idols, to the outside of their doors or doorframes. Such terms and conditions may interfere with the rights and privileges associated with the property for an owner or tenant who needs a reasonable accommodation for religious observances, practices, or beliefs. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious observances, practices, or beliefs and either granting the request or engaging in an interactive process with the resident.

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N.J.A.C. 13:16-4.6

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§ 13:16-4.6 Housing financial assistance practices

- (a)** Housing financial assistance practices and policies may have a disparate impact on members of a protected class. A housing financial assistance practice or policy that has a disparate impact on members of a protected class is prohibited, unless the respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest and that there is not a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest. The practice or policy may involve: making available, making unavailable, or discouraging the provision of housing financial assistance; establishing the terms or conditions of housing financial assistance; providing, or refusing to provide, information regarding housing financial assistance; determining the type of housing financial assistance to be provided; servicing of housing financial assistance; and the creation and application of criteria requirements, procedures, or standards for the review and approval of a real estate-related transaction.
- (b)** Nothing in this section shall preclude a housing provider from evaluating the consumer credit history of an applicant where such evaluation is required for a Federal loan product or formula or enforces Federal guidelines, including those requiring minimum credit scores for Federal Housing Administration loans.
- (c)** This section applies to the practices and policies of lending institutions and other covered entities that provide housing financial assistance.

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N.J.A.C. 13:16-5.1

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§ 13:16-5.1 Disparate impact discrimination in public accommodations

Practices and policies of places of public accommodation may have a disparate impact on members of a protected class. A practice or policy of a place of public accommodation that has a disparate impact on members of a protected class is prohibited unless, in accordance with [N.J.A.C. 13:16-2.2](#), a respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, a practice or policy of a place of public accommodation may still be prohibited if a complainant shows there is a less discriminatory alternative that would achieve the same interest.

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N.J.A.C. 13:16-5.2

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§ 13:16-5.2 Practices or policies related to religious garb or articles of faith

- (a)** A place of public accommodation's entrance policy may have a disparate impact on patrons or prospective patrons based on religion, if such a practice or policy requires a patron or prospective patron to violate or forgo a sincerely held religious practice or religious observance as a term or condition of obtaining the accommodation. By way of example, but not limitation, a restaurant, bar, theater, or sporting facility policy prohibiting hats or head coverings may have a disparate impact based on religion for patrons or prospective patrons who wear yarmulkes, hijabs, turbans, or other religious articles or articles of faith. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious beliefs and either granting the request or engaging in an interactive process with the patron or prospective patron.
- (b)** A requirement that all patrons wear particular clothing in order to participate in an activity may have a disparate impact based on religion for patrons or prospective patrons who cannot wear the required clothing for religious reasons. By way of example, but not limitation, a community sports team's requirement that all players wear shorts while participating in an athletic competition may have a disparate impact based on religion for a person who could not wear shorts for religious reasons. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious beliefs and either granting the request or engaging in an interactive process with the player or prospective player.
- (c)** A prohibition on weapons may have a disparate impact based on religion for a Sikh patron or prospective patron who wears a kirpan. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious beliefs, for example, allowing a kirpan but imposing a size restriction and ensuring that the kirpan was dull and sewn inside a sheath so it could not be removed, and either granting the request or engaging in an interactive process with the patron or prospective patron.

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N.J.A.C. 13:16-5.3

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§ 13:16-5.3 Educational practices or policies

- (a)** Educational practices or policies may have a disparate impact on members of a protected class. An educational practice or policy that has a disparate impact on members of a protected class is prohibited, unless it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, an educational practice or policy may still be prohibited if a complainant shows there is a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest.
- (b)** This section applies to the practices and policies of any educational institution that operates as a place of public accommodation and other covered entities.
- (c)** Student discipline. An educational institution's disciplinary practice or policy may have a disparate impact on members of a protected class. If a complainant shows that a particular practice or policy related to student discipline results in a disparate impact based on membership in a protected class, a school would then have the burden to show that the policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest, for example, in creating a safe learning environment for all students or teachers. A complainant would then have the opportunity to show that a less discriminatory alternative exists that would achieve the same interest, for example, non-exclusionary disciplinary measures that have been shown to be effective at addressing minor or subjective infractions.

1. By way of example, but not limitation:

- i. The use of zero tolerance policies or other disciplinary policies that exclusively or predominantly rely on exclusionary discipline for minor or subjective infractions, such as "insubordination," "disrespect," "misbehavior," etc., may have a disparate impact based on race and other protected characteristics.
- ii. Except where other provisions of State law require immediate suspension, expulsion, or removal of a student, an educational institution's practice or policy of imposing suspensions, expulsions, or removals to an alternative school or alternative educational program without first meeting with the student's parent or guardian to review all relevant information about the incident to determine whether the conduct in question or the school's decision to impose exclusionary discipline for it was influenced by the student's protected characteristic may have a disparate impact based on disability, race, national origin, or other protected characteristics.

- (d)** Religious garb, religious diet, or articles of faith. A practice or policy of an educational institution may have a disparate impact on students based on religion if such a practice or policy requires a student to violate or forgo a religious practice or religious observance as a term or condition of participating in the educational program or activity. By way of example, but not limitation:

1. A prohibition on hats or head coverings may have a disparate impact based on religion for students who wear yarmulkes, hijabs, turbans, or other religious articles or articles of faith. Similarly, a grooming requirement may have a disparate impact based on religion for students who wear religiously mandated unshorn hair/beards. A requirement that all student athletes wear shorts while participating in an athletic competition may have a disparate impact on a student who could not wear shorts for religious reasons. In all such examples, a policy could avoid a disparate impact by explicitly allowing

§ 13:16-5.3 Educational practices or policies

requests for reasonable accommodations based on religious beliefs and either granting the request or engaging in an interactive process with the student;

2. A prohibition on bringing outside food into the school building may have a disparate impact on a student who must bring in food required for a religious diet. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious beliefs and either granting the request or engaging in an interactive process with the student; and
3. A prohibition on weapons may have a disparate impact based on religion for a Sikh student who wears a kirpan. Such a policy could avoid a disparate impact by explicitly allowing requests for reasonable accommodations based on religious beliefs, for example, a policy allowing a kirpan, but imposing a size restriction and ensuring that the kirpan was dull and sewn inside a sheath so it could not be removed, and either granting the request or engaging in an interactive process with the student.

- (e)** Language use and restrictions. A practice or policy of an educational institution that limits or prohibits the use of any particular language or dialect by students, parents, or others who are not employees, including, but not limited to, an English-only rule, may have a disparate impact on students, parents, and others based on national origin or ancestry. Similarly, a practice or policy of providing notices to students or parents only in English without making available the notices in any other languages spoken by students or parents may have a disparate impact on students and their parents based on national origin or ancestry.

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§ 13:16-5.4 Law enforcement practices and policies

- (a)** Law enforcement practices or policies may have a disparate impact on members of a protected class. A law enforcement practice or policy that has a disparate impact on members of a protected class is prohibited, unless it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, a law enforcement practice or policy may still be prohibited if a complainant shows there is a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest.
- (b)** This section applies to the practices and policies of State and local law enforcement agencies.
- (c)** Practices and policies based on location. A law enforcement agency's practices or policies to patrol or conduct checkpoints in specific geographic areas may have a disparate impact on members of a protected class who reside, work, or frequent those geographic areas.
- (d)** Practices and policies regarding the use of force. A law enforcement practice or policy that is out of compliance with the Office of the Attorney General's Use of Force Policy regarding the use of force against a person who does not comply with a law enforcement officer's verbal directions may also have a disparate impact on members of a protected class.

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§ 13:16-5.5 State and county correctional facility and municipal jail practices and policies

- (a)** State correctional facility, county correctional facility, and municipal jail practices or policies may have a disparate impact on members of a protected class. A State or county correctional facility or municipal jail practice or policy that has a disparate impact on members of a protected class is prohibited, unless it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, a State or county correctional facility or municipal jail practice or policy may still be prohibited if a complainant shows there is a less discriminatory alternative means of achieving the substantial, legitimate, nondiscriminatory interest.
- (b)** This section applies to the practices and policies of State correctional facilities, county correctional facilities, and municipal jails.
- (c)** Incarcerated person disciplinary practices and policies. Disciplinary practices and policies used by a State correctional facility, county correctional facility, or municipal jail for disciplining incarcerated persons may have a disparate impact on members of a protected class. By way of example, but not limitation, the practice or policy of using isolated confinement where not explicitly required by applicable statute, rule, or regulation may have a disparate impact based on race.
- (d)** Language assistance practices or policies. A State correctional facility, county correctional facility, or municipal jail's language assistance practices or policies may have a disparate impact on incarcerated persons based on national origin. By way of example, but not limitation, a State correctional facility, county correctional facility, or municipal jail's lack of a language assistance policy may have a disparate impact on incarcerated persons who do not speak English based on their national origin. For example, a State correctional facility's lack of a policy to ensure incarcerated persons who do not speak English have equal access to the facility's services may have a disparate impact on Hispanic or Latinx/e incarcerated persons who have limited English proficiency.

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N.J.A.C. 13:16-6.1

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§ 13:16-6.1 Disparate impact discrimination in contracting

- (a)** Contracting practices and policies may have a disparate impact on members of a protected class. A contracting practice or policy that has a disparate impact on members of a protected class is prohibited, unless, in accordance with [N.J.A.C. 13:16-2.2](#), a respondent shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even then, a contracting practice or policy may still be prohibited if a complainant shows there is a less discriminatory alternative that would achieve the same interest.
- (b)** This section applies to the practices and policies of any person who is required to comply with [N.J.S.A. 10:5-12](#) and other covered entities.

Annotations

Notes

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N.J.A.C. 13:16-6.2

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§ 13:16-6.2 Contract bid selection and recruitment

(a) A contractor's use of bid selection procedures or selection criteria may have a disparate impact on members of a protected class. It is an unlawful contracting practice for any contractor to make use of any bid selection procedure or selection criteria that has the effect of screening out members of a protected class, unless the contractor shows it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Whether a practice or policy of using a bid selection procedure or selection criteria is necessary to achieve a substantial, legitimate, nondiscriminatory interest is equivalent to whether the practice or policy is job related and consistent with a legitimate business necessity. A bid selection procedure or selection criteria may still be prohibited if necessary to achieve a substantial, legitimate, nondiscriminatory interest if a complainant shows there is a less discriminatory alternative that would achieve the same interest. An alternative selection procedure is less discriminatory where it does not screen out, or screens out fewer, members of the protected class. For example, a contractor's practice of refusing bids from people who live in a city or geographic area where the majority of residents are people of color may have a disparate impact by screening out people of color with whom they could contract, and therefore, having the effect of excluding people on the basis of race or national origin. The use of geographic location as selection criterion that resulted in a disparate impact would be unlawful unless necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even if the contractor could show it was necessary to achieve a substantial, legitimate, nondiscriminatory interest, the bid selection criterion may still be prohibited if a complainant could show that alternative job-related tests or criteria that do not screen out, or screen out fewer, members of the protected class are available. The guidelines set forth in the Uniform Guidelines on Employee Selection Procedures, 29 CFR 1607 (1978), are incorporated herein by reference, and applied to all protected characteristics listed in the Act. Where there is a conflict between such guidelines and this chapter, the rules in this chapter shall control. Upon request, the Division will make the guidelines available for public inspection and make available a printed copy of the guidelines.

(b) A contractor's reliance on word-of-mouth recruitment for bids during a bidding process may be a prohibited recruitment practice or policy if its use actually or predictably results in a disproportionately negative effect on persons placing bids who are members of a protected class. For example, a contractor's practice or policy of relying on word-of-mouth recruitment for bids by the mostly white subcontractors it works with may violate the Act if the result is that almost all new subcontractors are white. This is because the contractor's reliance on word-of-mouth recruitment for bids may have resulted in limiting recruitment to the networks or communities of current subcontractors, resulting in a disparate impact on members of one or more protected classes, including people who do not identify as white.

Annotations

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