

PENNSYLVANIA FAIR EDUCATIONAL OPPORTUNITIES ACT - AMEND
DISCRIMINATION

Act of Dec. 22, 1992, P.L. 1688, No. 187

Cl. 24

Session of 1992

No. 1992-187

SB 1794

AN ACT

Amending the act of July 17, 1961 (P.L.776, No.341), entitled, as amended, "An act declaring the policy of the Commonwealth with regard to discriminatory practices in educational institutions based upon race, religion, color, ancestry, national origin or sex; prohibiting such discriminatory practices; providing for procedure and enforcement; providing for judicial review; providing for administration by the Pennsylvania Human Relations Commission in the Department of Labor and Industry; and defining its functions, powers and duties hereunder," prohibiting discrimination against persons with handicaps or disabilities.

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

Section 1. Section 2 of the act of July 17, 1961 (P.L.776, No.341), known as the Pennsylvania Fair Educational Opportunities Act, amended December 29, 1972 (P.L.1682, No.360), is amended to read:

Section 2. Findings and Declaration of Policy.--(a) It is hereby declared to be the policy of this Commonwealth that all persons shall have equal opportunities for education regardless of their race, religion, color, ancestry, national origin [or], sex[.], **handicap or disability**.

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

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

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

Section 2. Section 3(4) of the act is amended and the section is amended by adding clauses to read:

Section 3. Definitions.--As used in this act--

* * *

(4) "Commission" means the Pennsylvania Human Relations Commission in the [Department of Labor and Industry.] **Governor's Office.**

* * *

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

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

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

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

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

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

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

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

Section 3. Sections 4(a) and (aa), 6(4) and 7 of the act, amended December 29, 1972 (P.L.1682, No.360), are amended to read:

Section 4. Unfair Educational Practices.--(a) Except as provided in section 9, it shall be an unfair educational practice for an educational institution--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Section 6. Powers and Duties of the Commission.--Without in anywise detracting from, or in derogation or diminution of the duties of the commission as set forth in the act of October 27, 1955 (P.L.744), known as the "Pennsylvania Human Relations Act," said commission is hereby vested with the following powers and duties--

* * *

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

* * *

[Section 7. Procedure.--Any aggrieved person or anyone representing the aggrieved person may make, sign and file with the commission a verified complaint within six months after an unfair educational practice is alleged to have been committed, which shall set forth the particulars thereof and contain such other information as may be required by the commission. The commission upon its own initiative or the Attorney General may in like manner make, sign and file such complaint.

The procedure for the processing of any complaint shall be in accordance with the provisions of the act of April 9, 1929 (P.L.177), known as "The Administrative Code of 1929," with the rules and regulations promulgated by the commission.

Until the commission shall determine that a cease and desist order shall be issued, it shall not disclose what takes place during informal efforts at persuasion, conciliation or mediation, nor shall it offer in evidence in any proceedings the facts adduced in such informal efforts, nor shall publicity be given to any proceedings before the commission and the identity of the educational institution shall not be disclosed, except in cases of public hearings: Provided, That the commission may publish the terms of conciliation when a complaint has been adjusted, and the results of surveys or studies conducted by the commission which pertain to matters of race, religion, color, ancestry, national origin or sex.]

Section 7. Procedure.--The procedure for processing any complaint and the remedies available shall be in accordance with sections 9, 9.2 and 11 of the act of October 27, 1955 (P.L.744, No.222) , known as the "Pennsylvania Human Relations Act."

Section 4. The act is amended by adding a section to read:

Section 7.1. Right of Action.--(a) In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this act, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If, within one year after the filing of a complaint with the commission, the commission dismisses the complaint or has not entered into a conciliation agreement to which the complainant is a party, the commission must so notify the complainant. On receipt of such a notice, the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this act.

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

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

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

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

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

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

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

Section 5. Section 8 of the act is repealed.

Section 6. The act is amended by adding a section to read:

Section 8.1. Judicial Review.--Enforcement and judicial review shall be in accordance with section 10 of the act of October 27, 1955 (P.L.744, No.222), known as the "Pennsylvania Human Relations Act."

Section 7. Section 9 of the act, amended August 5, 1977 (P.L.174, No.43), is amended to read:

Section 9. Construction.--(a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof and any law inconsistent with any provisions hereof shall not apply. Nothing contained in this act shall be deemed to repeal any of the provisions of any law of this Commonwealth relating to discrimination because of race, religion, color, ancestry, national origin [or], sex[.], **handicap or disability**. This act shall not be construed to prohibit any educational institution which is neither State-owned nor State-related, nor State-aided, from drawing its

enrollment entirely from members of one sex or from the sexes in any proportion, nor shall anything herein contained prevent any educational institution which is State-owned, State-related or State-aided from requiring each applicant for admission to state in the application for admission such applicant's sex to supplement and implement the institution's facts for planning purposes but only for such planning purposes and not for any discriminatory purposes. For the purpose of this section the term "State-owned" institution means the [thirteen State colleges and Indiana University of Pennsylvania] **institutions comprising the State System of Higher Education**; the term "State-related" institutions means the University of Pittsburgh, Temple University, **Lincoln University** and the Pennsylvania State University; the term "State-aided" institution means the Delaware Valley College of Science and Agriculture, [Dickinson Law School, Drexel Institute of Technology, Hahnemann Medical College] **Drexel University, Hahnemann University**, Thomas Jefferson University, [College of Lincoln University,] the Medical College of Pennsylvania, University of Pennsylvania, Pennsylvania College of Podiatric Medicine, Pennsylvania College of Optometry, [Philadelphia College of Art,] Philadelphia College of Osteopathic Medicine, Philadelphia College of Textiles and Science, and [Philadelphia Musical Academy.] **University of the Arts.**

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

[This section shall not apply until July 1, 1978 in the case of a school of medicine which has begun the process of changing from being an institution which admits only female students to being an institution which admits students of both sexes but only if it is carrying out a plan for such a change which complies with applicable Federal law.]

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

Section 8. This act shall take effect in 60 days.

APPROVED--The 22th day of December, A. D. 1992.

ROBERT P. CASEY