§ 313. Unfair educational practices. (1) Declaration of policy. (a) It is hereby declared to be the policy of the state that the American ideal of equality of opportunity requires that students, otherwise qualified, be admitted to educational institutions and be given access to all the educational programs and courses operated or provided by such institutions without regard to race, color, sex, religion, creed, marital status, age, sexual orientation as defined in section two hundred ninety-two of the executive law, gender identity or expression as defined in section two hundred ninety-two of the executive law, or national origin, except that, with regard to religious or denominational educational institutions, students, otherwise qualified, shall have the equal opportunity to attend therein without discrimination because of race, color, sex, marital status, age, sexual orientation as defined in section two hundred ninety-two of the executive law, gender identity or expression as defined in section two hundred ninety-two of the executive law, or national origin. It 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 or to effectuate the religious principles in furtherance of which they are maintained. Nothing herein contained shall impair or abridge that right.

(b) It is hereby further declared to be the policy of the state that individuals who withdraw from postsecondary educational institutions in order to serve on active duty in the armed forces of the United States in time of war and who seek to return to such educational institutions shall be allowed to do so without the imposition of any penalty, academic or financial, for their withdrawal, and that any express or implied contractual provision which imposes any such penalty shall be void and unenforceable as against public policy.

(2) Definitions. (a) Educational institution means any educational institution of post-secondary grade subject to the visitation, examination or inspection by the state board of regents or the state commissioner of education and any business or trade school in the state.

(b) Religious or denominational educational institution means an educational institution which is operated, supervised or controlled by a religious or denominational organization and which has certified to the state commissioner of education that it is a religious or denominational

educational institution.

(3) Unfair educational practices. It shall be an unfair educational practice for an educational institution after September fifteenth, nineteen hundred forty-eight:

(a) To exclude or limit or otherwise discriminate against any person or persons seeking admission as students to such institution or to any educational program or course operated or provided by such institution because of race, religion, creed, sex, color, marital status, age, sexual orientation as defined in section two hundred ninety-two of the executive law, gender identity or expression as defined in section two hundred ninety-two of the executive law, or national origin; except that nothing in this section shall be deemed to affect, in any way, the right of a religious or denominational educational institution to select its students exclusively or primarily from members of such religion or denomination or from giving preference in such selection to such members or to make such selection of its students as is calculated by such institution to promote the religious principles for which it is established or maintained. Nothing herein contained shall impair or abridge the right of an independent institution, which establishes or maintains a policy of educating persons of one sex exclusively, to admit students of only one sex.

(b) To penalize any individual because he or she has initiated, testified, participated or assisted in any proceedings under this section.

(c) To accept any endowment or gift of money or property conditioned upon teaching the doctrine of supremacy of any particular race.

(d) With respect to any individual who withdraws from attendance to serve on active duty in the armed forces of the United States in time of war, including any individual who withdrew from attendance on or after August second, nineteen hundred ninety to serve on active duty in the armed forces of the United States in the Persian Gulf conflict: (i) to deny or limit the readmission of such individual to such institution or to any educational program or course operated or provided by such institution because of such withdrawal from attendance or because of the failure to complete any educational program or course due to such withdrawal; (ii) to impose any academic penalty on such person because of such withdrawal or because of the failure to complete any educational

program or course due to such withdrawal; (iii) to reduce or eliminate any financial aid award granted to such individual which could not be used, in whole or part, because of such withdrawal or because of the failure to complete any educational program or course due to such withdrawal; or (iv) to fail to provide a credit or refund of tuition and fees paid by such individual for any semester, term or quarter not completed because of such withdrawal or because of the failure to complete any program or course due to such withdrawal.

(e) It shall not be an unfair educational practice for any educational institution to use criteria other than race, religion, creed, sex, color, marital status, age, sexual orientation as defined in section two hundred ninety-two of the executive law, gender identity or expression as defined in section two hundred ninety-two of the executive law, or national origin in the admission of students to such institution or to any of the educational programs and courses operated or provided by such institution.

(f) No educational institution shall require an individual to provide a copy of his or her criminal history record that he or she obtained pursuant to the rules and regulations of the division of criminal justice services.

(4) Certification of religious and denominational institutions. An educational institution operated, supervised or controlled by a religious or denominational organization may, through its chief executive officer, certify in writing to the commissioner that it is so operated, controlled or supervised, and that it elects to be considered a religious or denominational educational institution, and it thereupon shall be deemed such an institution for the purposes of this section.

(5) Procedure. (a) Any person seeking admission as a student who claims to be aggrieved by an alleged unfair educational practice, hereinafter referred to as the petitioner, may himself, or by his parent or guardian, make, sign and file with the commissioner of education a verified petition which shall set forth the particulars thereof and contain such other information as may be required by the commissioner. The commissioner shall thereupon cause an investigation to be made in connection therewith; and after such investigation if he shall determine that probable cause exists for crediting the allegations of the petition, he shall attempt by informal methods of persuasion,

conciliation or mediation to induce the elimination of such alleged unfair educational practice.

(b) Where the commissioner has reason to believe that an applicant or applicants have been discriminated against, except that preferential selection by religious or denominational institutions of students of their own religion or denomination shall not be considered an act of discrimination, he may initiate an investigation on his own motion.

(c) The commissioner shall not disclose what takes place during such informal efforts at persuasion, conciliation or mediation nor shall he offer in evidence in any proceeding the facts adduced in such informal efforts.

(d) A petition pursuant to this section must be filed with the commissioner within one year after the alleged unfair educational practice was committed.

(e) If such informal methods fail to induce the elimination of the alleged unfair educational practice, the commissioner shall have power to refer the matter to the board of regents which shall issue and cause to be served upon such institution, hereinafter called the respondent, a complaint setting forth the alleged unfair educational practice charged and a notice of hearing before the board of regents, at a place therein fixed to be held not less than twenty days after the service of said complaint.

Any complaint issued pursuant to this section must be issued within two years after the alleged unfair educational practice was committed.

(f) The respondent shall have the right to answer the original and any amended complaint and to appear at such hearing by counsel, present evidence and examine and cross-examine witnesses.

(g) The commissioner and the board of regents shall have the power to subpoena witnesses, compel their attendance, administer oaths, take testimony under oath and require the production of evidence relating to the matter in question before it or them. The testimony taken at the hearing, which shall be public shall be under oath and shall be reduced to writing and filed with the board of regents.

(h) After the hearing is completed the board of regents shall file an intermediate report which shall contain its findings of fact and conclusions upon the issues in the proceeding. A copy of such report

shall be served on the parties to the proceeding. Any such party within twenty days thereafter, may file with the regents exceptions to the findings of fact and conclusions, with a brief in support thereof, or may file a brief in support of such findings of fact and conclusions.

(i) If, upon all the evidence, the regents shall determine that the respondent has engaged in an unfair educational practice, the regents shall state their findings of fact and conclusions and shall issue and cause to be served upon such respondent a copy of such findings and conclusions and an order requiring the respondent to cease and desist from such unfair educational practice, or such other order as they deem just and proper.

(j) If, upon all the evidence, the regents shall find that a respondent has not engaged in any unfair educational practice, the regents shall state their findings of fact and conclusions and shall issue and cause to be served on the petitioner and respondent, a copy of such findings and conclusions, and an order dismissing the complaint as to such respondent.

(6) Judicial review and enforcement. (a) Whenever the board of regents has issued an order as provided in this section it may apply to the supreme court for the enforcement of such order by a proceeding brought in the supreme court within the third judicial district. The board of regents shall file with the court a transcript of the record of its hearing, and the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to make an order annulling or confirming, wholly or in part, or modifying the determination reviewed. The order of the supreme court shall be subject to review by the appellate division of the supreme court and the court of appeals, upon the appeal of any party to the proceeding, in the same manner and with the same effect as provided on an appeal from a final judgment made by the court without a jury.

(b) Any party to the proceeding, aggrieved by a final order of the board of regents, may obtain a judicial review thereof by a proceeding under article seventy-eight of the civil practice law and rules, which shall be brought in the appellate division of the supreme court for the third judicial department.

(7) Regents empowered to promulgate rules and regulations. The regents from time to time may adopt, promulgate, amend or rescind rules and

regulations to effectuate the purposes and provisions of this section.

(8) The commissioner shall include in his annual report to the legislature (1) a resume of the nature and substance of the cases disposed of through public hearings, and (2) recommendations for further action to eliminate discrimination in education if such is needed.