



TEXAS TECH UNIVERSITY SYSTEM
Office of the General Counsel™

MEMORANDUM

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FROM: Eric Bentley, Vice Chancellor and General Counsel

SUBJECT: 88th Legislature—Senate Bill 17 Prohibition on Diversity, Equity and Inclusion Offices, Divisions, and Units

DATE: June 8, 2023

Governor Abbott is expected to sign Senate Bill 17 into law effective January 1, 2024. Senate Bill 17 amends the Texas Education Code by adding Section 51.5325, which will prohibit Texas public institutions of higher education from establishing or maintaining diversity, equity, and inclusion (DEI) offices, divisions, or other units performing or requiring the training or programs provided below. The bill further requires institutions to adopt policies and procedures disciplining employees or contractors who engage in prohibited DEI activity. The purpose of this memo is to inform you of your respective institution’s responsibilities and requirements under this new law.

Effective January 1, 2024, all DEI offices, divisions, or other units will need to be closed or risk loss of state appropriated funding. Any DEI programs or practices conducted by DEI offices, divisions, or other units will be in violation of Section 51.3525 and potentially subject the institution to loss of funding as funds may not be expended for the design, implementation, or

administration of DEI practices or programs that do not comply with Sections 3¹ and 3a², Article I, of the Texas Constitution. This prohibition includes, without limitation, the hiring and supervision of employees, mandatory or recommended training, or programmed activities.

Section 51.3525 **prohibits** institutions from:

- Establishing or maintaining a DEI office,³ which is defined by Section 51.3525(a) as an office, division, or other unit of an institution of higher education established for the purpose of:
 - influencing hiring or employment practices at the institution with respect to race, sex, color or ethnicity, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;
 - promoting differential treatment of or providing special benefits to individuals on the basis of race, color, or ethnicity;
 - promoting policies or procedures designed or implemented in reference to race, color, or ethnicity, other than policies or procedures approved in writing by the institution's general counsel and the Texas Higher Education Coordinating Board for the *sole purpose* of ensuring compliance with any applicable court order or state or federal law (emphasis added); or
 - conducting trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation, other than trainings, programs or activities, developed by an attorney and approved in writing by the institution's general counsel and the Texas Higher Education Coordinating Board for the *sole purpose* of ensuring compliance with any applicable court order or state or federal law (emphasis added).

Additionally, universities are prohibited from:

- Hiring or assigning an employee of the institution or contracting with a third party to perform the duties of a DEI office;⁴
- Compelling, requiring, inducing, or soliciting any person to provide a DEI statement or giving preferential consideration to any person based on the provision of a DEI statement;⁵
- Giving preference on the basis of race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any function of the institution;⁶
- Requiring, as a condition of enrollment or performing any institution function, any person to participate in DEI training which (1) is designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation, and (2) does not include training developed by an attorney and approved in writing by the institution's general counsel and

¹ Article 1, Section 3 of the Texas Constitution provides that: All freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

² Article 1, Section 3a of the Texas Constitution provides in pertinent part that: Equality under the law shall not be denied or abridged because of she, race, color, creed, or national origin...

³ Tex. Educ. Code § 51.3525(b)(1)(A)

⁴ Tex. Educ. Code § 51.3525(b)(1)(B)

⁵ Tex. Educ. Code § 51.3525(b)(1)(C)

⁶ Tex. Educ. Code § 51.3525(b)(1)(D)

the Texas Higher Education Coordinating Board for the *sole purpose* of ensuring compliance with any applicable court order or state or federal law (emphasis added).⁷

Senate Bill 17 also requires the governing board of a public institution of higher education to adopt policies and procedures for appropriately disciplining, including by termination, an employee or contractor of the institution who engages in conduct in violation of such prohibitions.⁸

The requirements set forth under Section 51.3525 do not apply to:

- Academic course instruction;⁹
- Scholarly research or a creative work by an institution of higher education's students, faculty, or other research personnel or the dissemination of that research or work;¹⁰
- An activity of a student organization registered with or recognized by an institution of higher education;¹¹
- Guest speakers or performers on short-term engagements;¹²
- A policy, practice, procedure, program, or activity to enhance student academic achievement or postgraduate outcomes that is designed and implemented without regard to race, sex, color, or ethnicity;¹³
- Data collection;¹⁴
- Student recruitment or admissions.¹⁵

The bill also does not limit or prohibit an institution from, for purposes of applying for a grant or complying with the terms of accreditation by an accrediting agency, submitting to the grantor or accrediting agency a statement that:

- (1) highlights the institution's work in supporting:
 - (A) first-generation college students;
 - (B) low-income students; or
 - (C) underserved student populations; or
- (2) certifies compliance with state and federal antidiscrimination laws.¹⁶

Senate Bill 17 further prevents institutions from spending appropriated funds for a state fiscal year until the institution's governing board submits to the legislature and the Texas Higher Education Coordinating Board a report certifying the governing board's compliance with the bill provisions.¹⁷ Senate Bill 17 requires the governing board or board's designee, in the interim between each regular session of the legislature, to testify before the standing legislative committees with primary jurisdiction over higher education at a public hearing of the committee regarding the board's compliance with the bill provisions.¹⁸ Additionally, Senate Bill 17 provides for periodic state audits to ensure compliance and assess whether an institution has spent state money in

⁷ Tex. Educ. Code § 51.3525(b)(1)(E)

⁸ Tex. Educ. Code § 51.325(b)(2)

⁹ Tex. Educ. Code § 51.3525(d)(1)

¹⁰ Tex. Educ. Code § 51.3525(d)(2)

¹¹ Tex. Educ. Code § 51.3525(d)(3)

¹² Tex. Educ. Code § 51.3525(d)(4)

¹³ Tex. Educ. Code § 51.3525(d)(5)

¹⁴ Tex. Educ. Code § 51.3525(d)(6)

¹⁵ Tex. Educ. Code § 51.3525(d)(7)

¹⁶ Tex. Educ. Code § 51.3525(c)

¹⁷ Tex. Educ. Code § 51.325(e)

¹⁸ Tex. Educ. Code § 51.325(f)

violation of the bill.¹⁹ Finally, Senate Bill 17 allows a student or employee who is required to participate in training in violation of the law to bring an action against the institution for injunctive or declaratory relief.²⁰

The full text of Senate Bill 17 can be found at the following web address:

<https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB00017F.pdf>

Recommendation and Next Steps

In accordance with this new law, our office is working with the TTUS Office of Equal Opportunity and the TTUS Office of Governmental Relations to identify any trainings or programs where universities are required to have such trainings or programs due to applicable court order, or federal or state law (e.g., an Affirmative Action Program in accordance with Executive Order 11246). If there are any mandated trainings or programs that you are aware of, please let us know as soon as possible so that we can review and submit to the Texas Higher Education Coordinating Board.

Even though Senate Bill 17 does not take effect until January 1, 2024, it is our recommendation that each institution promptly begin to review its current practices, to include winding down all DEI offices as defined above and related prohibited activities to ensure compliance with the bill's provisions.

We ask that you appoint individuals at your respective institutions to review and determine if there are any trainings, programs, or activities they believe fall into a gray area under the new law. Then, by July 1, 2023, we ask that you reach out to our office and we will set up a meeting with individuals in the TTUS Office of General Counsel, TTUS Office of Equal Opportunity, and the TTUS Office of Governmental Relations to review the items with you for you to make a determination of the best course of action going forward.

Finally, our office is reviewing the requirement from this bill that the Board will adopt a policy for appropriately disciplining an employee or contractor of the institution who engages in conduct in violation of the bill. We will have a recommended course of action following our review.

If you have any questions, please do not hesitate to contact the Office of General Counsel.

¹⁹ Tex. Educ. Code § 51.3525(g)

²⁰ Tex. Educ. Code § 51.3525(i)