



## **Guidance for Implementation of Senate Bill 17/Texas Education Code §51.3525 regarding Diversity, Equity and Inclusion (DEI)**

Senate Bill 17 (SB 17) was passed by the 88<sup>th</sup> Texas Legislature and signed into law on June 14, 2023, with an effective date of January 1, 2024. Codified in § 51.3525 of the Texas Education Code (“Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives”), SB 17 prohibits institutions of higher education from establishing or maintaining Diversity, Equity, and Inclusion (DEI) offices and engaging in certain DEI functions.

This document provides a basic explanation of SB 17’s provisions and includes a Q&A section to assist with its implementation.

This document is not intended to offer guidance covering all possible applications of SB 17. Issues implicating SB 17 often require fact-specific analysis and implementation advice. You are encouraged to contact the Texas State University System (TSUS) Office of General Counsel (OGC) with any specific legal questions regarding implementation of this important statute.

This document may be subject to revision as additional information regarding SB 17 implementation becomes available.

### **SB 17 Overview**

#### **I. What institutional functions and activities does SB 17 prohibit?**

SB 17 prohibits institutions of higher education from:

1. Establishing or maintaining a DEI office;
2. Hiring or assigning an employee or contracting with a third party to perform duties of a DEI office;
3. Compelling diversity statements or giving preferential consideration to anyone based on a diversity statement;

4. 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; or
5. Requiring anyone who seeks to enroll at the institution or perform any institution function to undergo DEI training which includes a training, program or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.

## **II. What is a Diversity, Equity and Inclusion (DEI) office?**

A DEI office, as defined by SB 17, means an office established for one or more of the following purposes:

1. Influencing hiring or employment practices with respect to race, sex, color, or ethnicity other than through the use of color blind and sex-neutral hiring processes;
2. Promoting differential treatment of or providing special benefits to individuals on the basis of race, color, or ethnicity;
3. Promoting policies or procedures designed or implemented in reference to race, color, or ethnicity, other than policies or procedures approved in writing by TSUS Office of General Counsel and the Texas Higher Education Coordinating Board for the sole purpose of ensuring compliance with a court order or state or federal law; or
4. Conducting trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation, other than those trainings, programs, or activities developed by TSUS Office of General Counsel and approved by the Texas Higher Education Coordinating Board for the sole purpose of ensuring compliance with a court order or state or federal law.

## **III. What are the exceptions to SB 17's restrictions?**

The restrictions of SB 17 do **not** apply to:

1. Academic course instruction;
2. Scholarly research or a creative work by students, faculty, or other research personnel, or the dissemination of that research or work;
3. Registered or recognized student organizations;
4. Guest speakers or performers on short-term engagements;

5. A policy, practice, procedure, program, or activity to enhance student academic achievement or postgraduate outcomes that is designed or implemented without regard to race, sex, color, or ethnicity;
6. Data collection;
7. Student recruitment or admissions; or
8. Trainings, programs or activities developed and approved by TSUS Office of General Counsel and the Texas Higher Education Coordinating Board for the sole purpose of ensuring compliance with a court order or state/federal law.

## **SB 17 Questions & Answers**

The following Q&A is general, broad guidance. You are encouraged to direct specific legal questions regarding SB 17 implementation to the Texas State University System Office of General Counsel.

### **Employee Recruitment & Hiring**

**1. May legally protected characteristics, such as race or gender, be considered when hiring?**

**A.** No. Hiring practices must comply with state and federal law and university policy, which do not permit consideration of protected characteristics in hiring decisions. In addition, SB 17 expressly prohibits giving a preference to a particular applicant based on race, sex, color, ethnicity, or national origin.

**2. May Components engage in employee recruiting efforts aimed at increasing the number of minority applicants for a position, such as advertising job postings in non-traditional outlets focused on specific groups?**

**A.** Yes. SB 17 does not prohibit efforts to recruit a broad pool of applicants from which to select the best qualified person for the position.

**3. May Components ask job applicants to submit a diversity statement as part of an application for employment?**

**A.** No. SB 17 prohibits the solicitation or consideration of any diversity, equity, and inclusion (DEI) statement in reviewing applications for employment. Job postings may not require submission of a DEI statement, and hiring managers and search committees may not consider an applicant's DEI statement if a candidate voluntarily provides one.

### **Student Success and Student Services**

**1. May information about DEI or DEI-related resources appear on Component websites or social media pages?**

**A.** No. Components may not provide DEI information or related resources on their websites. Links to formerly established diversity offices or to programs that exclude a portion of the student population based on race, color, ethnicity, gender, or sexual orientation must be removed. However, advertisements and social media accounts should continue to include any EEO statement(s) required under federal law.

**2. Does SB 17 affect programs focused on student academic achievement and post-graduate outcomes?**

**A.** No. SB 17 exempts programs that support the academic achievement of students, so long as such programs are not closed to certain groups of students based on protected characteristics such as race, color, ethnicity, sex, and national origin. Nothing in SB 17 prevents Components from training staff to identify common barriers for at-risk students. SB 17 does not apply to programs for first generation, low-income, or underserved student populations, as long as such programs are designed and implemented without regard to participants' race, sex, color, or ethnicity. These programs can continue, as can programs for veterans and students with disabilities.

**3. May a Component career center assist students with obtaining fellowships or internships that focus on DEI?**

**A.** Yes, provided the career center's services are available to all students. A policy, practice, procedure, program, or activity to enhance student academic achievement or postgraduate outcomes that is designed and implemented for all students is permitted under SB 17. SB 17 also does not prohibit faculty or staff from writing letters of recommendation for students applying to work or intern for external organizations focused on race, sex, national origin, sexual orientation, or gender identity.

**4. May Components host or sponsor events or programs that recognize or celebrate racial or cultural groups (e.g., MLK Day, Hispanic Heritage Month, Women's History Month, Indigenous People's Day, etc.)?**

**A.** Yes. Components may host such events or programs provided they are open to everyone who wants to participate and attendance by students and employees is voluntary. The event or program may not promote differential treatment of or provide special benefits to any one group over another.

**5. May Components announce or recognize multicultural holidays, celebrations, or events (e.g., Black History Month, etc.) through the Component's email services or other campus communications?**

**A.** Yes, but the communication may not promote differential treatment of individuals or groups on the basis of race, color, or ethnicity. Campus leadership may recognize the existence, history, and/or importance of multicultural events and celebrations. As with all messages communicated by or on behalf of Components, such communications should be vetted through the appropriate approval process established by the Component.

- 6. May Components host or sponsor events or programs focused on specific identity groups within the Component's community (e.g., Women in STEM, Asian American Art Bazaar, community mixers for Hispanic or Black students)?**

**A.** Yes. Components may host or sponsor such events or programs provided they are open to all who desire to participate and attendance by students and employees is voluntary. The event or program may not promote differential treatment or provide special benefits to individuals of any one group over another.

### **Employee Relations & Academic Affairs**

- 7. May a Component offer courses or degree programs relating to DEI or the study of particular groups (e.g., a degree in Women's Studies or African-American Studies; courses exploring issues of diversity or race-relations or the history of a particular ethnic group)?**

**A.** Yes. Component activities related to academic course instruction are exempt from SB 17. Components do not have to revise curricula or degree program names or content in order to comply with SB 17. However, all course and degree offerings must be approved by the Component in accordance with TSUS and Component policy and meet applicable accreditation and state standards.

- 8. May Component employees continue to attend academic or professional conferences where DEI is a covered topic (e.g., National Conference on Race and Ethnicity)?**

**A.** Yes, provided attendance at the conference is on a voluntary basis and not required by the Component. An employee's request to attend any conference should be reviewed and processed in accordance with the Component's applicable policies and procedures for attendance at academic or professional conferences. In addition, Components may provide financial support for employees attending or presenting scholarly papers at an academic conference where DEI is a covered topic. However, the Component must have a neutral basis for providing financial support that does not consider DEI as a factor in providing the funds.

- 9. May a faculty member discuss race, ethnicity, sex, gender, gender identity, sexual orientation, or related topics in his/her course instruction?**

**A.** Yes. SB 17 does not apply to academic course instruction, scholarly research, or creative work by a Component's students, faculty, or other research personnel. TSUS policy recognizes a faculty member's academic freedom in the classroom provided that comments are appropriate for the classroom subject and are subject to the faculty member's responsibility to maintain and exhibit professional

competence in the classroom, demonstrate professionalism, and show respect for students.

**10. May students, faculty, and other research personnel research topics related to DEI or issues of race, color, ethnicity, sex, gender identity, or sexual orientation?**

**A.** Yes. SB 17 does not apply to scholarly research or creative work by Component students, faculty, or other research personnel or the dissemination of that research or creative work.

**11. May researchers use race, ethnicity, color, or sex in gathering data for research?**

**A.** Yes. SB 17 specifically exempts research and data collection, including identifying characteristics of students, applicants, or employees. Such research may be funded with appropriated or local funds.

**12. May a faculty member speak at a conference focused on DEI?**

**A.** Yes, provided the activity is part of the faculty member's research activity. SB 17 provides an exception for scholarly research and does not limit the ability of faculty members to speak or perform at conferences unaffiliated with their institution.

**13. May Components host academic or research colloquia focusing on DEI issues?**

**A.** Yes, provided that such events are expositions or discussions of academic research or creative work by faculty, students, or third parties. SB 17 provides an exception for scholarly research and creative work. SB 17 also specifically exempts guest speakers on a particular topic.

**14. May Component employees conduct independent DEI work outside the university, such as work as a consultant or trainer?**

**A.** Yes. SB 17 does not limit faculty or staff members' ability to conduct DEI work on their personal time. However, the Component's outside employment policy continues to apply.

**15. May a Component support events or programs that are focused on faculty or staff in certain groups (e.g., identity-driven employee groups)?**

**A.** Yes, provided membership in such groups is not limited to employees of a particular race, color, ethnicity, gender identity, or sexual orientation; participation is voluntary; and the group's activities do not promote preferential treatment of one

group over another or provide special benefits to members of any one group over another. For example, a faculty group called “Women Leaders in Business” must permit faculty membership of all gender types, even if the group’s primary purpose is to provide career and leadership training for women faculty. And any benefits offered through this group by the Component, such as free memberships to certain trade organizations, must be available to all group members.

The Component must treat all such groups equally, and any support, including funding made available for such groups, must be consistent with the support the Component provides to other faculty and staff groups.

### **Scholarships, Financial Aid, and Admissions**

#### **16. How does SB 17 affect student scholarships?**

**A.** A Component may award and administer student scholarships if the scholarship is awarded without regard to race, sex, color, ethnicity, or national origin, and if a DEI statement is not required or considered as part of the application. Under federal law, in most circumstances, Components may not administer scholarships that are closed or that give preference to an individual based on race, color, ethnicity, nation of origin, or sex. Scholarships based on race, color, sex, ethnicity, or national origin should be carefully reviewed by TSUS Office of General Counsel to determine compliance with the law.

#### **17. May a Component send recruitment staff to an event geared towards recruiting students from underserved racial or ethnic groups?**

**A.** Yes. Senate Bill 17 specifically excludes student recruitment efforts and admissions.

### **Grants & Accreditation**

#### **18. What does SB 17 say about grants and accreditation?**

**A.** SB 17 permits an institution of higher education applying for a grant or accreditation to submit a statement that:

1. Highlights the institution’s work in supporting:
  - First-generation college students;
  - Low-income students; or
  - Underserved student populations; or
2. Certifies compliance with state and federal laws.



**19. Are grants that fund DEI-related academic course instruction, scholarly research, creative work, or data collection prohibited by SB 17?**

**A.** No, provided the work to be performed under the grant falls within one of the exemptions in SB 17. As part of applying for a grant for research or academic work, a university faculty or staff member may detail the institution's support of first-generation, low-income, and/or underserved student populations, and may certify compliance with state and federal non-discrimination laws as part of the application.

**20. May a Component apply for a grant to establish a DEI office or engage in DEI activities?**

**A.** No. A grant may not be sought to establish an entity within the Component to perform DEI work.

**21. May a Component apply for grant funding to support students or faculty from particular racial, ethnic, or gender groups?**

**A.** Components may apply for grant programs focused on improving participation by underserved groups, such as HSI grants. However, participation in such grant programs or the receipt of grant funding and/or resources may not be limited to members of a particular race, national origin, ethnicity, gender identity, or sexual orientation. For example, an eligible institution may apply for an HSI grant to provide research stipends to low-income students conducting research on issues related to the local Hispanic community, but it may not condition the award of such stipends on students' race or ethnicity.

***Faculty and staff applying for HSI grants or funding from other organizations with a focus on serving underserved populations should consult with TSUS OGC to ensure grant applications and programs comply with SB 17 and federal law.***

**Student Organizations**

**22. May a Component provide funding or support for a student organization to conduct DEI activities or attend DEI conferences or programming?**

**A.** Yes, student organizations are exempt from SB17. If a student organization seeks funding for travel or attendance to a conference that promotes its organizational mission, the student organization should not be denied support because of the content or viewpoint of the program, assuming other similarly situated student organizations would receive the same support. Section 51.9315 of the Texas Education Code bars universities from denying a student organization any benefit, including funding, that is generally available to student organizations,

if the denial is based on the organization's political, philosophical, ideological, or academic viewpoint or content.

**23. Does SB 17 prohibit Components from supporting identity-driven student organizations (e.g., LGBTQIA+ Association, Asian Students Organization, etc.), including funding, access to facilities and promotion on school websites and other materials?**

**A.** No. SB 17 expressly exempts registered or recognized student organizations. However, under federal law, such groups and their programs and events must be open to participation by all students regardless of their membership in a particular protected class. Moreover, Section 51.9315 of the Texas Education Code bars universities from denying a student organization any benefit, including funding, that is generally available to student organizations, if the denial is based on the organization's political, philosophical, ideological, or academic viewpoint or content. Identity-driven student organizations must be treated the same as non-identity driven student organizations but must not be given preferential treatment because of the organization's identity-based aspects. All registered or recognized student organizations should be treated equally in terms of funding and access to Component facilities. Denying neutral funding or other benefits would violate state and federal law as content or viewpoint discrimination concerning expressive activity on campus.

**24. May a Component deny access to speakers brought in by student organizations because the speaker intends to engage in DEI programming?**

**A.** No. SB 17's restrictions do not apply to student organizations or short-term speakers. Moreover, Texas Education Code section 51.9315 prohibits an institution of higher education from denying a student organization a benefit generally available to other student organizations. The statute defines "benefit" to include the use of facilities for meetings or speaking purposes and permits only content and viewpoint neutral criteria for approving speakers.

**25. May staff and faculty continue to advise identity-driven student organizations?**

**A.** Yes, provided staff and faculty advisors do not receive special funding or compensation for providing this service that other advisors would not receive for advising non-identity driven organizations. Rules for advisors to student organizations must be uniformly applied without regard to the affinity or affiliation of the student group.

## **Miscellaneous**

**26. May a Component lease space or otherwise authorize the use of campus facilities for a DEI-centered or identity driven conference?**

**A.** Yes. Denying facility use requests based on a group's identity-driven purpose would violate state and federal law. However, the Component must ensure use of the Component's facilities does not have the practical effect of establishing a contracted presence of DEI programming on campus.

**27. May a Component recognize affinity alumni networking groups?**

**A.** Yes, but the Component must not show preference for one alumni group over another.