

UT HEALTH SAN ANTONIO AND SB 17 COMPLIANCE

The 88th Texas State Legislature passed, and Governor Greg Abbott signed into law, Senate Bill 17, “Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives,” which amends Texas Education Code 51.5325 effective January 1, 2024.

The University of Texas System (UT System) has developed guidance, including the following FAQs, to assist with our implementation of the bill’s requirements. The guidance in these FAQs is intended to be broad and will not cover every specific situation or nuance that occurs in our community. UTHSA Programs should continue to [seek legal advice from the Office of Legal Affairs as questions arise](#).

Going forward, each UTHSA program is responsible for ensuring that it achieves compliance with SB 17. Therefore, each UTHSA Program must make the administrative changes necessary under the new law while implementing appropriate communication and monitoring practices to support compliance.

It is important to remember that nothing in SB 17 alters our existing obligations under federal and state law, including the anti-discrimination requirements of Title VI and Title VII of the Civil Rights Act of 1964, and the Equal Protection Clause of the 14th Amendment. We must continue to ensure that our programs and activities are open and available to all persons on a non-discriminatory basis. We recognize that implementation will be a continuing and evolving process, and it is important to begin that process now to achieve an appropriate state of compliance by January 1, 2024.

UTHSA remains committed to supporting its community members who come from across the state and around the world and bring a variety of perspectives, skills and experiences.

FREQUENTLY ASKED QUESTIONS

I. GENERAL BILL PROVISIONS

A. Prohibited Activities

1. What specific activities are prohibited by SB 17? ¹

DEI offices are prohibited.

An institution of higher education (institution) cannot maintain a “diversity, equity, and inclusion [DEI] office,” which is defined as an institution office, division, or other unit established for the purpose of:

- (1) 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 law;

¹ Excepted from the statutory prohibitions included in this FAQ are actions, trainings, policies, procedures, programs, and activities **required by federal law**.

- (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 the institution's chief legal officer, UT System Office of General Counsel (UT System OGC), and the Texas Higher Education Coordinating Board (THECB), and for the sole purpose of ensuring compliance with any applicable 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 trainings, programs, or activities developed by an attorney and approved in writing by the institution's chief legal officer, UT System OGC, and the THECB, and for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

Performing the duties of a DEI office is prohibited.

Institutions also cannot hire or assign an employee of the institution or contract with a third party to perform the above-enumerated prohibited duties of a DEI office.

DEI statements are prohibited.

No unit of an institution can compel, require, induce, or solicit any person to provide a DEI statement or give preferential consideration to any person based on the provision of a DEI statement.

Giving preference on the basis of race, sex, color, ethnicity, or national origin is prohibited.

No unit of an institution can give 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.

Mandatory DEI trainings in connection with any institution function are prohibited.

No unit of an institution can require as a condition of enrolling at the institution or performing any institution function any person to participate in DEI training.

2. What is a "DEI training?"

"DEI training" includes a training designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.

"DEI training" does not include a training (1) developed by an attorney; (2) approved in writing by the institution's chief legal officer, UT System OGC, and the THECB; and (3) provided for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

3. How does SB 17 restrict training?

SB 17 includes three restrictions related to training:

- (1) An institution office, division, or unit cannot conduct training designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation ("DEI training");
- (2) An institution cannot hire or assign an employee or a contractor to conduct DEI training;

- (3) An institution cannot require a person to participate in DEI training as a condition of enrolling or performing any function at the institution (“mandatory DEI training”).

The training prohibition does not apply to training designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation when it is (1) developed by an attorney; (2) approved in writing by the institution’s chief legal officer, UT System OGC, and the THECB; and (3) for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

4. May a student or employee participate in voluntary DEI training offered by an outside resource?

Generally, yes. SB 17 does not restrict a student or employee from voluntarily participating in non-institution DEI training offered by an outside resource provided the institution has not contracted with the outside resource to provide DEI training. An institution may continue to offer a library of professional development trainings—similar to LinkedIn Learning—even if the library includes individual DEI training modules. Such professional resources have multiple topics related to overall professional development, and the institution is not contracting with the training provider to conduct impermissible DEI trainings.

Participation by students and employees must be truly voluntary. A supervisor, instructor, or administrator should not track participation in a voluntary DEI training. Further, they cannot give any type of preference, beneficial consideration, or consequence (positive or negative), no matter how informal, to students and employees based on whether they participate in voluntary DEI trainings with an outside resource.

An institution cannot require any person to participate in DEI training with an outside resource in order to perform any institution function, including voluntary participation in college or department hiring committees. Faculty, residents, students, fellows, and non-employee post-docs who feel they have been required to attend prohibited DEI training should report such to the Vice President for Academic, Faculty, and Student Affairs. Non-faculty employees should make any such report to the Office of Human Resources.

5. What is a “special benefit” in the context of a DEI office?

SB 17 does not define “special benefit.” UT System interprets “special benefit” to mean a term, condition, opportunity, or privilege that is unavailable, or substantially better than what is available, or provided to others. Opportunities open to all do not become a “special benefit” because a particular individual or group takes advantage of such opportunity. For example, use of institution space reserved in accordance with the institution’s ordinary processes is not a “special benefit.”

6. What is a DEI statement?

A “DEI statement” is a written or oral statement of a person’s commitment to (1) furthering diversity, equity, and inclusion based on race, color, ethnicity, national origin, sex, gender identity and/or sexual orientation or (2) promoting differential treatment of or providing special benefits to individuals based on their identification as a member of one or more of these classifications.²

² Throughout the FAQs, “classification” refers to race, sex, color, ethnicity, national origin, gender identity, and/or sexual orientation in the applicable bill section.

A “DEI statement” does not include a non-discrimination statement, which typically explains federal and state law obligations, and does not include information submitted in connection with HUB certification.

7. In the context of a person providing a DEI statement, what does it mean to give “preferential consideration?”

“Preferential consideration to any person” who provides a DEI statement means treating one person more favorably than another because they provided a DEI statement or because the content expresses a particular viewpoint regarding DEI.

8. Does SB 17 require institutions to expressly prohibit applicants for employment or admission from providing a DEI statement?

No, SB 17 does not require institutions to expressly prohibit applicants for employment or admission from providing DEI statements in job postings, applications, or other stages of the hiring or admissions processes. If an applicant provides an unsolicited DEI statement, institutions cannot give preferential consideration based on the provided DEI statement.

9. What does it mean to “give preference on the basis of” the listed classifications in “any function of the institution?”

To “give preference on the basis of” a classification means to treat one person more favorably than another, in any respect, because of that classification. “Function” is expansive and includes an institution’s employment, academic, and service functions.

10. What if I have been performing Prohibited Activities as a part of my job?

We recognize that existing offices’, divisions’, and units’ or currently employed individuals’ or contractors’ portfolios or job descriptions may include one or more of the four enumerated duties now prohibited by SB 17 as well as other, non-DEI-related duties. Those offices, divisions, units, and positions may continue to perform the non-DEI-related duties. However, we must evaluate whether and to what extent the following should be changed:

- Office, division, and unit names, portfolios, mission statements, and related communications, policies, and procedures; and
- Individuals’ position titles and job descriptions, duties, and responsibilities.

B. Requirements

1. Does SB 17 require institutions to adopt specific policies or procedures?

Yes, institutions must adapt current disciplinary policies and procedures applicable to employees and contractors to include that engaging in Prohibited Activity may lead to appropriate discipline, including termination.

C. Exceptions

1. Are there any exceptions to the restrictions described above?

Yes, there are exceptions. The restrictions do not apply to:

- (1) academic course instruction;
- (2) scholarly research or a creative work by an institution's students, faculty, or other research personnel or the dissemination of that research or work;
- (3) an activity of a Registered Student Organization;
- (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 and implemented without regard to race, sex, color, or ethnicity;
- (6) data collection; or
- (7) student recruitment or admissions. (However, per a recent U.S. Supreme Court decision, a student's race should not be considered in admissions decisions).

Institutions, and their contractors, shall not circumvent SB 17's prohibitions against conducting the duties of a DEI Office by using a statutory exception to accomplish those prohibited duties. For example, an institution should not contract with an individual or organization in the business of providing DEI trainings to conduct a prohibited DEI training and frame the training provider as a "guest speaker on a short-term engagement."

UT System maintains its commitment to academic freedom, freedom of speech, and freedom of expression, in order to promote open inquiry and expand knowledge at its institutions.

2. Does SB 17 impact "academic course instruction?"

No. SB 17 specifically states that the bill's restrictions do not apply to academic course instruction. Faculty retain academic freedom in how they provide instruction in their assigned courses, curriculum, practicums, seminars, clinical rotations, executive education programs, and any other academic instructional or clinical training setting.

3. Does SB 17 define how the "scholarly research" and "creative work" exception applies?

SB 17 specifically states that the bill's restrictions do not apply to "scholarly research or a creative work by an institution's students, faculty, or other research personnel or the dissemination of that research or work," but the bill does not define either term.

"Scholarly research" may include research conducted by a student, faculty, or research personnel in their respective field under generally accepted scientific standards (e.g., systems in place to ensure the quality and accuracy of hypotheses, methods, data, and findings, such as in a peer reviewed or refereed publication). Grant applications to support research that are submitted by an

institution's students, faculty, or other research personnel are part of the research process and within this exception to SB 17's prohibitions.

"Scholarly research" also may include systematic inquiries by a student, faculty, or research personnel in their respective field. Systematic inquiry includes the collection of data, documentation of critical information, and analysis and interpretation of that data/information in accordance with suitable methodologies set by specific professional fields or disciplines. "Scholarly research" may be intended to develop or contribute to generalizable knowledge.

UT System interprets "creative work" consistent with UT System's Regents' Rules and state and federal law. "Creative work" may include academic work product of an innovative or interpretive nature. "Creative work" may also include non-research written material created for publication and grant submissions seeking funding for research, instructional, or other activities.

Programmatic components directly related to and part of the scholarly research or creative work and proposed in a grant submission are deemed scholarly research or creative work and not subject to the SB 17 prohibitions.

"Research personnel" may include any non-faculty staff or trainee with assigned job responsibilities related to research based on the employment or academic training position they hold at an institution, including individuals who serve on institutional review boards.

As discussed above, "scholarly research" and "creative work" can take many forms, and this answer is not intended to be exhaustive.

4. How does SB 17 impact guest speakers and performers?

SB 17's prohibitions do not apply to guest speakers or performers on short-term engagements. An institution may host guest speakers and performers under its usual policies and rules on a short-term basis for limited duration events not to exceed the customary length for such speaking and performance events. UT System maintains its commitment to freedom of speech and expression at its institutions to promote open inquiry and expand knowledge.

5. What are the permissible uses of collected data?

SB 17 restrictions do not apply to data collection. SB 17 includes other exceptions that may be related to the use of collected data, e.g., academic course instruction, scholarly research, creative work, student academic achievement and postgraduate outcomes designed and implemented without regard to race, sex, color, or ethnicity, and student recruitment and admissions. In addition to considering the applicability of these exceptions, the intended use of collected data should be analyzed to ensure that it otherwise is permissible under SB 17 and consistent with any applicable federal and state law.

II. HIRING PROCESSES

A. Job Postings

1. Does SB 17 limit the methods used for posting open positions?

No, it does not prohibit institutions from posting for jobs in a wide variety of forums.

2. Is it permissible for a job posting to include preferences for language proficiency or experience working with a specific population?

Yes, if the preference is job-related and not intended to target applicants based on protected classifications.

B. Applicant Pools

1. Does SB 17 limit an institution’s ability to ensure meaningful and sufficient efforts are made to accomplish a diverse applicant pool?

No, as long as those efforts otherwise comply with the law’s requirements. When developing strategies to impact the composition of applicant pools, the focus should be on conducting a broad initial search, including nontraditional outreach and recruitment efforts, and any other initiatives that could reasonably impact the pool composition. If a hiring decision maker is dissatisfied with efforts to achieve a diverse applicant pool, it is permissible for the decision maker to go back to the individual or group responsible for developing the pool (such as Human Resources, the search committee chair, or a search firm) with the determination that the search efforts were not meaningful or they were otherwise insufficient. In such an instance, a corresponding request to increase the pool size may be made. The decision maker may not request that the pool be increased to deliver more applicants of a specified classification.

C. Faculty Hiring Committee Training

1. How does SB 17 impact training for faculty hiring committees?

It is recommended that faculty hiring committees be trained on SB 17 provisions related to hiring. Hiring committee trainings may cover implicit bias if either the content is not designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation or if the training complies with the required approvals for trainings referencing these attributes. Any training designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation must be developed by an attorney, approved by the institution chief legal officer, System OGC, and THECB, and for the sole purpose of complying with a court order or state or federal law.

D. Application and Interview Questions

1. What are guidelines for questions that may be asked of applicants in the hiring process, both on applications and in interviews?

If appropriate for the job, applicants may be asked about their experience teaching first-generation college students, low-income students, or underserved student populations. Such questions are permissible because they assist the institution in identifying the most qualified candidate for the job. An institution may not compel, require, induce, or solicit any person to provide a “DEI statement” as defined above.

A better practice is to ask questions that do not categorize students or employees by classification. For example, applicants could be asked:

- What is your experience in/philosophy about/plan for supporting students?
- How do you reach students where they are?
- How have you been effective reaching students of different backgrounds?

- Describe your teaching philosophy.
- What is your experience working with or caring for patients with different backgrounds?

If a job applicant volunteers information relevant to the position in an interview about their experience with or philosophy about teaching or caring for first-generation college students, low-income students or patients, or underserved populations and/or explicitly references teaching or caring for individuals identified by race, color, sex, ethnicity, national origin, gender identity or sexual orientation, that information may be considered because it is not a “DEI statement.”

III. TRAININGS, PROGRAMS, AND ACTIVITIES

A. Trainings

1. May students, faculty, or staff be assigned training as a sanction for a Title IX or Title VII violation?

Generally, yes. Trainings required of students, faculty, or staff as a sanction for violating institutional policies regarding Title IX and Title VII compliance may be permissible if they are designed to educate recipients on compliance with institution policies.

B. Permissible Programs and Activities

1. Are programs and activities designed or implemented in reference to sex permissible?

Yes. Programs and activities designed for women or men that are otherwise lawfully implemented remain permissible. Such programs and activities should comply with existing state and federal law. Examples of such permissible programs and activities include men’s and women’s athletics programs and single-sex dormitories. Academic interest groups like Women in STEM are permissible when such programs openly allow participation by both women and men.

2. Are programs or activities associated with federally- and state-recognized heritage and history days and months, such as Black History Month, Juneteenth, Pride Month, Hispanic Heritage Month, and others permitted?

Yes. SB 17’s “programs or activities” do not include institutional participation in federally-and state-recognized history days and months. Such activities are designed or implemented in reference to national and state traditions and history. An institution’s participation should be through a history-focused lens to further the educational mission of the institution. Any programs or activities associated with federally- and state-recognized heritage and history days or months must be open to all who want to participate.

3. Are patient healthcare and health and wellness initiatives impacted by SB 17?

No. SB 17 does not impact the provision of healthcare to patients or student and employee health and wellness initiatives. Healthcare is individualized and is primarily designed and implemented in regard to health care needs even though, in limited circumstances, it may also include reference to some classifications listed in SB 17 to meet the applicable standard of care. Examples include, but

are not limited to, therapy organized around gender identity or sexual orientation, employee and student wellness programs, and education regarding health risks and issues.

4. Are identity-based employee resource groups (affinity groups) permissible, and, if so, may staff be assigned to support them?

Yes. When certain conditions are present. Employee resource groups typically consist of employees with a common background or a common set of interests. Identity-based groups must be open to all interested participants and receive similar treatment as and benefits available to other employee groups. An institution may adopt rules governing the activities of its employee resource groups, which include identity-based resource groups.

Staff may be assigned to support employee resource groups generally. Any support for identity-based employee resource groups should be the same support provided to all employee resource groups.

5. May institutions maintain memberships in outside organizations that are identity-based and/or have a DEI-focused mission?

Yes. An institution may maintain membership with an outside organization that is identity-based or has a DEI-focused mission when (1) the institution is permitted to and selects its individual members or participants based on identity-neutral criteria; and (2) participation in the organization is not conditioned on participants submitting a DEI statement.

6. May institution faculty and staff maintain memberships in outside organizations, such as professional organizations, that are identity-based and/or have a DEI-focused mission?

Yes. An institution faculty or staff member may maintain membership with an outside organization that is identity-based, such as an association for women in healthcare professions, or has a DEI-focused mission, such as promoting diversity in a certain field of study.

7. Are institution employees prohibited from doing consulting work or other outside work involving DEI?

No. SB 17's "programs and activities" do not encompass work or activities performed outside of a staff or faculty member's scope of employment with the university and are not prohibited by SB 17.

C. Student Organizations

1. SB 17 states that its restrictions may not be construed to apply to an activity of a registered student organization. What is considered an "activity" of a student organization?

SB 17 does not define "activity." UT System interprets the term broadly to encompass all functions of a student organization.

2. May an institution employee be assigned or volunteer to serve a registered identity-based student organization, e.g., as a faculty advisor?

Yes. An institution's employee may provide the same level of administrative support to identity-based registered student organizations as it provides to all registered student organizations. Serving in this context is not one of the prohibited DEI-related duties. An identity-based registered student

organization would not be receiving differential treatment or a special benefit because institution employees also are assigned to serve registered student organizations that are not identity-based.

3. May staff and faculty be members of a student organization?

Yes. UT System Regents' Rule 50202 permits faculty and staff to be members of student organizations and does not violate SB 17 prohibitions.

4. May an institution provide funding to a registered student organization that is organized in reference to race, color, ethnicity, gender identity, or sexual orientation?

Yes, if provided to all student organizations in a neutral manner without regard to the specified classifications. Student activity fees may be used for all registered student organizations. Institutions should continue to allocate student activity fees in accordance with state law and university policy. Allocating student activity fees to a registered student organization is not a "special benefit" and does not negate the application of the bill's exception if such funds are made available to all registered student organizations. Student organizations also are allowed to raise funds independently. Other institutional funds that are not from student activity fees, if used to support student activities, must be implemented in a neutral manner without regard to race, color, ethnicity, gender identity, or sexual orientation.

5. How is a student organization's status as a sponsored student organization impacted by SB 17?

Student organizations that hold registered student organization status pursuant to an institution's rules and policies are exempted from the prohibitions of SB 17. Sponsored student organizations often maintain significant institutional funding, are permitted to use the institution's name, and have dedicated staff not provided to regular registered student organizations. Depending on the level of institutional control and the institution's policies and practices, the programs and activities of a sponsored student organization may be subject to the bill's prohibitions.

IV. ACCREDITATION AND GRANTS

A. Statements in connection with accreditation and grants

1. What provisions does SB 17 include regarding statements institutions may make in the context of grants and accreditations?

For purposes of applying for a grant or complying with the terms of accreditation by an accrediting agency, institutions and their employees are not limited or prohibited from 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;
 - (C) underserved student populations; or
- (2) certifies compliance with state and federal antidiscrimination laws.

2. What does “underserved” mean in the context of submitting a statement to a grantor or accrediting agency highlighting the institution’s work in supporting underserved student populations?

SB 17 does not define “underserved.” Generally, the term can be understood to refer to groups that have limited or no access to resources, such as educational opportunities and healthcare services.

B. Accreditation

1. How should an institution respond to an accrediting agency’s question if it appears that the agency requires the institution to engage in conduct or activities or make statements that may violate SB 17?

Institutions should collaborate with accrediting agencies to determine what is required.

Institutions may make statements that highlight the institution’s work in supporting first-generation college students, low-income students, and underserved populations. Institutions also should consider whether one of the exceptions applies. For example, an institution may engage in training, programming, and activities related to student recruitment and admissions.

2. How may an institution respond to accrediting agency prompts and questions on diversity?

In preparing a response to accrediting agency prompts on diversity, the institution should try to address the specific question being asked while highlighting SB 17-compliant diversity efforts.

Although SB 17 prohibits DEI offices and certain trainings, programs, and activities, institutions may continue many initiatives that both satisfy accrediting agency diversity priorities and comply with SB 17. SB 17 also specifically authorizes institutions to make certain statements for accreditation and includes exceptions from its broader DEI prohibitions, including an exception for student recruitment and admissions.

Permissible responses may emphasize some or all of the following:

- The institution’s/program’s compliance with state and federal antidiscrimination statutes;
- Work to support first generation college students, low-income students, and underserved student populations;
- Efforts or initiatives to recruit and admit students of diverse backgrounds and geographic locations and the results of those efforts or initiatives;
- The general diversity of the institution’s surrounding community, and, in the case of health-related institutions, the diversity of the institution’s patients; and
- Programs or efforts consistent with the particular accrediting agency’s identified, SB17-neutral diversity priorities.

3. Are there specific measures/metrics that institutions must use for data collection and data reporting as part of accreditation, e.g., for LCME and ACGME?

No, SB 17 restrictions do not apply to data collection.

V. MISCELLANEOUS

A. Scholarships

1. May institutions continue to honor student scholarships established by donors for the specific benefit of underrepresented or minority students?

The US Department of Education regulations enforcing Title VI prohibit discrimination in the administration of financial aid programs. Specifically, they prohibit a recipient, on the basis of race, color, or national origin, from denying financial aid; providing different aid; subjecting anyone to separate or different treatment in any matter related to financial aid; restricting the enjoyment of any advantage or privilege enjoyed by others receiving financial aid; and treating anyone differently in determining eligibility or other requirements for financial aid. 34 CFR 100.3(b)(1); see also 34 CFR 100.3(b)(2). SB 17 does not affect these federal requirements. Scholarships based on race, color, or national origin should be carefully reviewed by the institution's legal office to determine compliance with the law.