

Frequently Asked Questions

Diversity, Equity, and Inclusion – Implementation of Senate Bill 17

Introduction

On June 14, 2023 Governor Greg Abbott signed into law, Senate Bill 17, “Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives,” previously passed by the 88th Texas State Legislature. This is codified in Section 51.3525 of the Texas Education Code, “Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives”) and System Administrative Memorandum 01.D.18 (“Diversity, Equity, and Inclusion Initiatives”) and is effective January 1, 2024.

Beginning with FY 24-25, SB 17 requires the University of Houston System Board of Regents to annually certify our System’s compliance to the Texas Legislature and the Texas Higher Education Coordinating Board during the prior fiscal year, before we may spend state appropriated funds for the then-current fiscal year. Thus, it is critically important that each university of the System ensure the necessary adjustments are implemented to achieve compliance with SB 17. Implementation will be a continually evolving process, and accordingly, we have begun that process to achieve an appropriate state of compliance by January 1, 2024, which is the effective date of SB 17.

Each university of the System, including their respective offices, divisions, and units (academic and administrative) are responsible for ensuring that they achieve compliance with SB 17. Each university of the system must make the administrative changes necessary under the new law while implementing appropriate communication and monitoring practices to support compliance.

To assist in this process the UH System Office of General Counsel (OGC) has created the following FAQs to provide guidance on the implementation of SB 17 in your respective offices, divisions, and units. OGC will be available going forward for questions on implementation efforts.

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, Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. We must continue to ensure that our programs and activities are open and available to all persons on a non-discriminatory basis.

1. What is DEI?

A: DEI stands for diversity, equity, and inclusion. Diversity, Equity, and Inclusion, as defined by SB 17 and System Administrative Memorandum 01.D.18 means engaging in any of the following actions:

1. Influencing hiring or employment practices with respect to race, sex, color, or ethnicity, other than through the use of equal opportunity;
2. Promoting differential treatment of or providing special benefits to individuals;
3. Promoting policies or procedures designed or implemented in reference to race, color, or ethnicity, except as expressly authorized by OGC in accordance with state 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 expressly authorized by OGC in accordance with state law.

Events/Programs That Involve Belonging, Cultural Education, and Support for Certain Affinity Groups

SB 17 prohibits(i) giving preference on the basis of race, sex, color, ethnicity, or national origin to a participant in any function of the institution; (ii) hiring or assigning an employee or contracting with a third party to perform the duties of a DEI office; and (iii) requiring any person performing any institution function to participate in DEI training.

2. May a university host university/college/department-wide events or programs that support diversity in a general way?

A: Yes, events or programs that support diversity in a general way are not affected by SB 17 as long as they do not promote preferential treatment of any particular group and are open to everyone. Examples include, but are not limited to, events or programs with themes of promoting a welcoming climate, ensuring curricular alignment, and cultural competency.

3. May a university host multicultural events or programs, such as those that recognize Hispanic Heritage Month, Black History Month, Asian American Pacific Islander Month, Women's History Month, and Indigenous People's Day?

A: Yes, as long as these events or programs are open to everyone who wants to participate. The Division of Student Affairs as well as registered (also called recognized) student organizations would be appropriate hosts of such events or programs, but they must not show preference for any one group over another. The emphasis should generally focus on history and culture. Attendance at such events cannot be mandatory for students or employees. If a student organization that is registered with or recognized by the university wants to host a multicultural event or

program, even one that may include DEI elements, it can do so as they are exempted from the limitations of SB 17. Guest speakers and performers on short-term engagements are also exempt from SB 17.

4. May a university leader “recognize” a cultural celebration such as “Black History Month” in the form of an email blast or other campus communication?

A: Yes. Nothing in SB 17 prevents leadership from recognizing the existence, history, and/or importance of such a celebration. However, caution should be taken to avoid differential treatment of campus community members on the basis of race, color, ethnicity, or any other protected category.

5. May a university host events or programs that focus on specific groups, such as Women in STEM?

A: It depends.

The mere name of an event or program does not violate SB 17. However, engagement in DEI activities, as defined by the bill, such as promoting differential treatment of or providing special benefits to certain persons or groups does violate SB 17. Therefore, as with multicultural events, university events or programs that focus on specific groups must be open to everyone. All groups should be evaluated according to the same objective standards in determining whether or not the event or program can take place.

Some offices will close as a result of SB 17, however compliant activities and services previously conducted by those offices will be handled in different areas. Please communicate with the affiliated division, which previously provided that service, to determine the appropriate avenue to receive continued services if appropriate.

6. May a university support events or programs that are focused on faculty or staff in certain groups?

A: Yes, as long as the university treats all such groups equally and membership is not restricted. And as with students, these faculty and staff groups must be open to everyone and any university support (including funding) for such groups must be consistent with the support the university provides to other faculty and staff groups. For example, a faculty group called, “Women Leaders in Business” would have to permit membership of all gender types, even if the group’s primary purpose is to provide career and leadership training for women. And any benefits offered through this group by the university, such as free memberships, would have to be available to all, not just females.

7. May a university recognize alumni networking groups, such as the Black Alumni Association?

A: Yes, but to the extent that an institution engages with stakeholders, such as alumni networking groups, it should steer clear of showing preference for one over the other. If a university website references alumni groups, providing a link to the Black Alumni Association would be permissible as would links to other specific alumni groups as long as the university was not providing benefits, such as scholarships, to those groups that are closed to a specific ethnicity, race, national origin, gender, or sexual orientation.

8. May a university lease space for an identity driven conference, such as a gathering of African American lawyers?

A: Yes. Turning down such a group based on their identity driven purpose would violate state and federal law. Nothing in SB 17 suggests such a limitation.

9. May a university organize a conference or program that includes DEI programs or activities on campus?

A: No. SB 17 prohibits a university from conducting programs or activities that promote certain legally protected individuals and groups, such as those of a specific race, color, ethnicity, or sexual orientation. However, certain exemptions may apply such as guest speakers and performers on short term engagement.

10. May a university authorize the use of campus facilities for a DEI-centered conference for members of a particular profession (law, engineering, student affairs, etc.)?

A: Yes. A third-party's use of university space would not be in violation of the bill. This would not be the creation of a DEI office, nor would it constitute "hiring" or assigning an employee for DEI purposes, and it would be a stretch to consider this third-party outsourcing of DEI work. However, caution should be taken not to allow this exception to have the practical effect of establishing a contracted presence of DEI programming on campus.

11. May a university support or fund a third-party conference or program that contains DEI programming?

A: Yes. Nothing in SB 17 forbids an institution from supporting third-party academic or professional conferences or programs that are not intended to provide programming on campus or for the university's community. For example, a university may be a sponsor for an out-of-state conference that focuses on an appropriate academic topic but includes DEI programming of a limited nature without violating SB 17. However, if an institution were to make attendance at such a conference mandatory, it would violate SB 17.

12. May college/department monies (some of which are state funds, some of which are local funds) be used to support conference travel where the topic of the presentation is DEI?

A: Yes. Nothing in SB 17 prevents support for continuing education or engaging with professional associations and/or presenting scholarly papers at a conference. However, the university should have a neutral basis for providing such funding that does not consider DEI as a factor in providing the funds. Scholarly and creative work are not affected by SB17. Institutional leadership cannot compel attendance at DEI programs nor outsource DEI work.

13. May a university provide funding or support for a student or student organization to attend an unaffiliated conference that meets the definition of DEI programming?

A: Yes, student organizations are exempted from SB17. Moreover, if a student organization seeks funding for travel or attendance to an unaffiliated, third-party conference that promotes its organizational mission, it should not be denied support simply because of the content or viewpoint of the program, assuming other similarly situated student organizations would receive the same support. The same rationale would apply to an individual student seeking university support for professional development off campus.

Student Organizations

Generally, registered (also called recognized) student organizations' status is not affected by the passage of SB17. The law specifically exempts: an activity of a student organization registered with or recognized by an institution of higher education.

14. Should a university deny benefits to student organizations that have the express purpose of conducting Diversity, Equity, and Inclusion (“DEI”) programming?

A: No. SB 17 expressly exempts student organizations from its restrictions. Moreover, Section 51.9315 of the Texas Education Code bars universities from denying a student organization any benefit that is generally available to other student organizations, if the denial is based on the organization’s political, philosophical, ideological, or academic viewpoint or content.

15. Is a university barred from using state funds to support student organizations that have the express purpose of conducting DEI programming?

A: No. A university cannot deny a student organization generally available funding, regardless of its source. Section 51.9315 defines “benefit” as including “funding sources made generally available to student organizations at an institution of higher education.” If state funds are used in a neutral fashion to support other student

organizations, the university cannot deny funding to the student organization because of its DEI work. And of course, SB 17 expressly exempts student organizations from its restrictions.

16. May a university deny access to speakers brought in by student organizations because the speaker intends to conduct DEI programming?

A: No. SB 17 expressly exempts student organizations from its restrictions as well as short-term speakers. Moreover, Texas Education Code 51.9315 also defines “benefit” to include the use of facilities for meetings or speaking purposes. It also requires only content and viewpoint neutral criteria for approving speakers.

17. May identity driven student organizations continue to receive support and access to facilities?

A: Yes. Identity-driven organizations must be treated the same as non-identity driven organizations. Neutral funding open to all organizations must be made available, as well as access to facilities. Denying neutral funding would violate state and federal law as content or viewpoint discrimination.

18. May staff and faculty continue to advise “identity” driven organizations, such as a Women in STEM organization?

A: Yes, as long as they do not receive special funding/compensation for providing this service that other advisors would not receive for advising non-identity driven organizations.

19. May universities continue to “feature” identity driven student organizations on their website or materials?

A: Yes, as long as they are not given preferential treatment because of their identity components. For example, an engineering program would be compliant with SB 17 if it listed all student organizations that are relevant to engineering students. To deny this neutrally available “benefit” would be in violation of state law governing expressive activity on campus.

20. May student organizations put on events in support of the LGBTQ community?

A: Yes. Student Organizations are exempt from the limitations of SB 17. As such, student organizations may host programs and initiatives supporting the LGBTQ community, including programs discussing sexual orientation or gender identity.

Student Life

21. May institutions maintain offices that provide resources to the LGBTQ community?

A: Programs to support the LGBTQ community may be part of student success and access and are possible if voluntary and open to everyone in the community. Further, while SB 17 prohibits institutions from “assigning” or “hiring” an employee to conduct “programs or activities” that are “designed or implemented in reference to . . . gender identity, or sexual orientation,” the bill exempts programs needed for effective compliance with federal or state law. Such programs cannot be used as a workaround for training that is not otherwise consistent with SB 17.

Current federal guidance states that discrimination on the basis of sexual orientation or gender identity constitutes a violation of Title IX. Moreover, the new Title IX regulations, which are anticipated to be finalized in October 2023, explicitly define sex discrimination to include discrimination based on gender identity and sexual orientation. In addition to federal law, Section 51.282 of the Texas Education Code requires institutions to “develop and implement a comprehensive prevention and outreach program on sexual harassment.”

To the extent that programming previously provided by these offices support compliance with Title IX as well as Section 51.282, such as by eliminating disparate treatment or preventing a hostile environment against the groups in question, they should be maintained. This does not mean that all programming previously supported fits this exception. Such programming is properly to be driven or vetted by the federally mandated Title IX officer or their designee(s) in order to ensure its positive impact on Title IX and related state law compliance. This will likely require a reconfiguration of departments and employees and their scope of work.

22. May university officials ask for, or collect, a student’s preferred pronouns or preferred name?

A: Yes. Nothing in SB 17 affects the ability to ask for or use preferred pronouns. However, institutions should not require students or employees to attend training on the use of preferred pronouns or provide preferential treatment based on pronouns preferred by a student or employee.

23. Does SB 17 affect sex-based athletic teams?

A: No. Another law, recently passed Senate Bill 15, reinforces the existence of single sex teams. Federal law, including Title IX, specifically permits separation of teams by sex. Moreover, Title IX already requires equitable treatment of student-athletes regardless of sex.

Academic Course Instruction

Generally, academic course instruction is not affected by the passage of SB17. The law specifically states that its limitations may not be construed to apply to: (1) academic course instruction or (2) 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. Moreover, guest speakers and performers on short-term engagements are also exempt from SB 17.

24. May a professor discuss race, ethnicity, sex, gender, gender identity, sexual orientation or related topics in their course instruction?

A: Yes. SB 17 does not apply to academic course instruction, scholarly research or creative work by an institution of higher education's students, faculty, or other research personnel or the dissemination of that research work. System 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, to demonstrate professionalism, and to show respect for their students.

25. May a professor use a DEI Statement in their course syllabus?

A: A professor may, on their own syllabus, use a statement relating to DEI if it relates to academic course instruction. However, to ensure compliance with SB 17 the use of the following statement on critical thinking is recommended:

At this university level course, the material is intended to encourage critical thinking and discussion as we examine new ideas and concepts from varying frameworks. To do this effectively I, as the instructor, will do my best to foster an environment in which each class member is able to hear and respect each other. In turn, it is vital that each class member show respect for all worldviews and experiences expressed in class. It is my intent that students from all backgrounds and perspectives be well served by this course, that students' learning needs be addressed both in and out of class, and that the different backgrounds and perspectives that students bring to this class be viewed as a resource, strength, and benefit. It is my intent to present materials and activities that are respectful to all.

26. May academic programs still invite (and advertise) research colloquia by guests from outside the university where the research focuses on DEI issues?

A: Yes. SB 17 specifically exempts research, data collection, and guest speakers on a particular topic.

Student Academic Achievement and Post-Graduate Outcomes

SB 17 exempts programs that support the academic achievement of students. Programs promoting academic achievement should be provided to all students regardless of their race, color, ethnicity, sex, gender identity, or sexual orientation. Nothing in SB 17 prevents institutions from training staff to identify common barriers for at-risk students. SB 17 does not apply to programs for first generation, low-income college students, or underserved student populations, as long as the programs are designed and implemented without regard to race, sex, color, or ethnicity. These programs can continue as well as programs for veterans and students with disabilities programs as required under federal law.

27. May university members assist students with obtaining fellowships or internships that focus on DEI?

A: Yes. Postgraduate outcomes that are specific to career opportunities, including fellowships or internships, are exempt from SB 17. Specifically, a policy, practice, procedure, program or activity to enhance student academic achievement or postgraduate outcome and that is designed and implemented for all students is permitted under SB 17. Career centers, as well as student success resources, are permitted to assist students if the opportunities are available to all.

28. May I write a Letter of Recommendation for a student who is applying for a position or internship with an external group focused on race, sex, gender, national origin, sexual orientation, or gender identity?

A: Yes, SB17 does not prohibit staff or employees from writing letters of recommendation for graduate or undergraduate students. For example, a letter of recommendation for a summer internship with the NAACP would be permitted.

Grants/Scholarships/Endowments

SB 17 states: “Nothing in this section may be construed to limit or prohibit an institution of higher education or an employee of an institution of higher education 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: highlights the institution’s work in supporting first-generation college students; low-income students; or underserved student populations; or certifies compliance with state or federal antidiscrimination laws.”

29. What does the above provision from SB 17 mean?

A: As part of applying for a grant for research or academic work, a university faculty or staff member can detail the institution’s support of first-generation, low-income, or underserved student populations. Also, the faculty or staff member may certify

compliance with state and federal non-discrimination laws as part of the application. Note, however, that this provision in SB 17 does not authorize a grant to perform DEI work that does not constitute academic course instruction, scholarly research or a creative work, data collection, or another activity specifically exempted by SB 17 as discussed in this document. A grant cannot be sought to establish an entity within the university to perform DEI work (for example set up a DEI office) as defined by the statute.

30. How does SB 17 affect student scholarships?

A: Student scholarships are not prohibited by SB 17 if they are awarded and administered by a System university 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. However, if a scholarship is closed to a specific race, color, ethnicity, nation of origin, sex, gender identity, or sexual orientation, a System university cannot support the efforts under SB 17, federal law, and System policy. If an entity separate from the university offers a closed scholarship that is prohibited by SB 17, System policy, or federal law, the System university may not participate in the award or implementation of the scholarship. Further, such “closed scholarships” offered by external groups cannot be specifically advertised on System websites and should be removed.

Data Collection

Senate Bill SB 17 specifically excludes data collection, including that of identifying characteristics of the applicant or employee. Said demographics are required for EEO reports and to comply with other state and federal laws.

31. May funds, whether they be from endowed chairs or professorships (or faculty fellowships) or from the state, be used to support research on DEI topics?

A: Yes. SB 17 specifically exempts research and data collection.

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

A: Yes. SB 17 specifically exempts research and data collection.

Grants, Scholarly Research, & Creative Works

Senate Bill SB 17 specifically excludes scholarly research or creative work by students, faculty, or other research personnel (which may include staff), or the dissemination of that research or work.

33. Does SB 17 allow for the inclusion of language in grant applications that affirms the UHS universities' commitment to diversity?

A: Yes. SB 17 allows institutions and employees of an institution of higher education, for the purposes of applying for a grant, to submit to the grantor a statement that highlights the institution's work in supporting first-generation college students, low-income students, and or underserved student populations. Additionally, as public Institutions of higher education reference could be made to the fact that we must comply with state and federal antidiscrimination laws.

Information, (historical or new), relating to statistical diversity and/or programmatic offerings, awards, and achievements, excluding any prohibited information outlined in SB17, can be included to convey factual data in support of general diversity.

The University of Houston System is committed to being a diverse community of scholarly citizens and strive to remove barriers through the solicitation of grants and scholarly work that advances our global society.

For further guidance or assistance in creating any necessary language, please contact your appropriate Division of Research personnel.

Student Recruitment or Admissions

Senate Bill 17 specifically excludes student recruitment efforts or admissions from the law.

34. May a university send recruitment staff to an event geared towards recruiting underserved racial or ethnic groups?

A: Yes.

35. May a university train recruitment staff on cultural competence that will assist them in recruiting students?

A: Yes.

36. May a university affiliated career center post a third-party identity-based job posting, with the intention of recruiting individuals from a specific racial or gender identity?

A: No, university affiliated career centers cannot post job descriptions that promote the differential treatment of or provides special benefits to certain individuals. Career Centers should work with the employer to reframe the opportunity, regardless of a specific racial or gender identity, or provide the employer an all-encompassing contact list for identity-based student organizations through which to work.

Faculty & Staff Recruitment

SB 17 states “a preference may not be given to a particular applicant based on race, sex, color, ethnicity or national origin for employment.”

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

A: No. Hiring (selecting a particular qualified applicant for a position) must be conducted in accordance with university policy which has always been, and continues to be, that faculty members are hired based on merit. Merit can include notable scholarly or creative work on a particular topic, awarded grants, education, and experience. In addition, SB 17, as well as the Chancellor, has stated the System cannot “compel, require, induce or solicit any person to provide a diversity, equity, and inclusion statement, or give preferential consideration to any person, based on the provision of a diversity, equity, and inclusion statement.” The university should continue to hire on merit. However, we should take actions to recruit a diverse pool of applicants from which to select the best qualified person for the position consistent with federal requirements, such as Executive Order 11246. Advertising jobs in non-traditional outlets/sources is encouraged.

38. May a university give preference to a job applicant with second language fluency?

A: Yes, if the preference is legitimately connected to the position description and essential to the job duties and responsibilities and not a pretext for a racial or ethnic preference.

39. How does SB 17 impact training for faculty and staff hiring committees?

A: It is recommended that faculty hiring committees be trained on SB 17 provisions related to hiring. Please contact your respective Office of Human Resources for further information.

Faculty & Staff Development

40. May college/department monies (some of which are state funds, some of which are local funds) be used to support academic or professional conference travel where the topic of the presentation is DEI?

A: Yes. SB 17 does not preclude support for continuing education or engaging with professional associations or conferences. However, the university should have a neutral basis for providing such funding that does not consider DEI as a factor in providing the funds. Institutional leadership cannot compel attendance at DEI programs nor outsource DEI work.

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

A: Yes, if the activity is part of the faculty members research activity. SB 17 provides an exception for scholarly research and does not limit the ability of faculty members to speak at conferences unaffiliated with their institution.

42. May a faculty or staff member conduct independent DEI work outside the university, such as work as a consultant or trainer?

A: Yes. Nothing in SB 17 limits faculty or staff members' ability to conduct such work on their personal time if the work complies with other limitations on outside work, such as conflict of interest or commitment or other ethical limitations.

43. May faculty receive “release time” to conduct research or other scholarly pursuits involving DEI?

A: Yes. If the work is within the faculty member’s subject matter expertise or scope of scholarly work and it meets relevant academic requirements for release time. SB 17 provides an exception for scholarly research.

Websites and Social Media
(Including Printed Materials)

Websites should not have information that would promote activities that are DEI related. Links to diversity offices or to programs that exclude a portion of the student population based on race, color, ethnicity, gender, or sexual orientation should be eliminated. Advertisements and social media should continue to utilize and maintain the EEO statement required under federal law.

44. May information about DEI be on university websites or social media pages?

A: No. DEI information, as referenced in SB 17, should not be on university websites. Such prohibited information would be that which promotes the differential treatment of or special benefits to certain individuals or groups.

45. May universities feature references to identity driven professional organizations, such as IEEE Women in Engineering on their website?

A: Yes, if the organization is committed to non-discrimination and is open to all individuals. This all-inclusive message should be conveyed up front, such as having the site’s landing page say, “This program welcomes everyone regardless of age, color, disability, ethnicity, sex, gender identity, gender expression, genetic information, marital status, national origin, race, religion, sexual orientation, or veteran status. Our program provides learning opportunities to all participants.” The name of the organization does not necessarily constitute a problem under SB 17. It is the activity of an organization that should be the focus when deciding whether to feature content on university websites. For example, if an unaffiliated third-party

organization offers several scholarship opportunities, and one of those opportunities impermissibly favors one race over another, a direct reference to that particular scholarship opportunity cannot be on a university website and the university cannot provide any support for the administration of that scholarship. This is prudent not only under SB 17, but under the anti-discrimination requirements of Title VI and the Equal Protection Clause of the 14th Amendment.

Further Support?

46. How does an individual or department submit unanswered questions or novel issues for SB 17 compliance assistance and review?

Please direct all unanswered questions or novel issues for SB 17 compliance assistance and review to the UH System Office of the General Counsel at OGCSupport@uh.edu.

Related Statutes, Policies or Requirements

Fourteenth Amendment to the U.S. Constitution

Title IX of the Education Amendments of 1972

Title VII Civil Rights Act of 1964, as amended

Title VI Civil Rights Act of 1964

The Rehabilitation Act of 1973, as amended

Americans with Disabilities Act of 1990, as amended

Executive Order 11246

Texas Education Code Section 51.9315

Texas Education Code Section 51.3525

Texas Commission on Human Rights Act

Texas Labor Code, Chapter 21, Employment Discrimination

State of Texas Disparity Study Historically Underutilized Business Program

System Administrative Memorandum 01.D.05, Equal Opportunity and Non-Discrimination Statement

System Administrative Memorandum 01.D.07, Non-Discrimination

System Administrative Memorandum 01.D.18, Diversity, Equity, and Inclusion Initiatives