

MEMORANDUM

TO: Lawrence Schovanec, President, TTU  
Ronald Hendrick, Provost and Senior Vice President, TTU  
Lori Rice-Spearman, President, TTUHSC  
Darrin D'Agostino, Provost and Chief Academic Officer, TTUHSC  
Richard Lange, President, TTUHSC Paso  
Richard Brower, VP for Academic Affairs, TTUHSC EI Paso  
Ronnie Hawkins Jr., President, Angelo State University  
Don Topliff, Provost and VP for Academic Affairs, ASU  
Keith L. O'Neil, Director, State Board of Higher Education  
28th Legislature, State Board of Higher Education  
Office of Diversity, Equity and Inclusion  
Offices, Divisions, and Units

DATE: June 8, 2023

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Governor Abbott is expected to sign Senate Bill 17 law effective January 1, 2024. Senate Bill 17 amends the Texas Education Code by adding Section 51.6325, 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 activity. The purpose of this memo is to

administration of DEI practices or programs that do not comply with Section 33A, Article

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

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.

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

- Academic course instruction<sup>9</sup>
- 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;
- An activity of a student organization registered with or recognized by an institution of higher education<sup>11</sup>;
- Guest speakers or performers on student engagement events<sup>12</sup>
- 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<sup>13</sup>;
- Data collection<sup>14</sup>
- Student recruitment or admissions<sup>15</sup>

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.<sup>16</sup>

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.<sup>17</sup> Senate Bill 17 requires the governing board or board's designee, the interim between each regular session of the legislature, to testify before the standing legislative committees with primary jurisdiction over the bill.

violation of the bill <sup>19</sup> 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.<sup>20</sup>

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 of federal or state law (e.g. an Affirmative Action Program in accordance with Executive Order 11246) 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 Council 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.

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<sup>19</sup> Tex. Educ. Code § 51.3525(g)

<sup>20</sup> Tex. Educ. Code § 51.3525(i)