



Diversity, Equity, and Inclusion Initiatives¹

Effective January 1, 2024, Senate Bill 17 (SB 17) prohibits community colleges from engaging in certain diversity, equity, and inclusion (DEI) initiatives, with limited exceptions. The bill implicates a variety of college programs and services, raising a number of common questions as to its application.

SB 17 Basics

1. What programs and activities are prohibited by SB 17?

Prohibition on DEI Offices: SB 17 requires a community college board of trustees to ensure that each unit of the college does not establish or maintain a DEI office or hire or assign an employee, or contract with a third party, to perform a DEI office's duties, unless required by federal law. *DEI office* is a division, office, or other unit of the college established to influence the college's 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 in accordance with law, or established to promote differential treatment of or special benefits to individuals based on race, color, or ethnicity. The term also includes a unit established to promote policies or procedures designed or implemented in reference to race, color, or ethnicity or to conduct trainings, programs or activities designed or implemented in reference to race, color, ethnicity, gender covered identity, or sexual orientation, unless approved in writing by the college's general counsel and the Texas Higher Education Coordinating Board (THECB), and in the case of the training, also be developed by an attorney, solely to ensure compliance with law or a court order. Tex. Educ. Code § 51.3525(a)-(b).

Prohibition on DEI Statements: SB 17 requires a community college board to ensure that no unit of the college compels, requires, induces, or solicits a person to provide a DEI statement or give preferential consideration to a person who provides a statement, unless required by federal law. Tex. Educ. Code § 51.3525(b). See below at DEI Offices and Initiatives Generally for more information on DEI statements.

¹ An electronic version of this document is available on [TASB College eLaw](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-dei-inclusion-initiatives.pdf) at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-dei-inclusion-initiatives.pdf.

Prohibition on DEI Preferences: SB 17 requires a community college board to ensure that no unit of the college give preference to an employee, an applicant for employment, or a participant in a function of the college based on the person's race, sex, color, ethnicity, or national origin, unless required by federal law. Tex. Educ. Code § 51.3525(b).

Prohibition on DEI Training: SB 17 requires a community college board to ensure that no unit of the college requires DEI training as a condition of enrolling at the college or performing a college function, unless required by federal law. *DEI training* includes a training, program, or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation but not one developed by an attorney and approved in writing by the college's general counsel and THECB solely to ensure compliance with law or a court order. Tex. Educ. Code § 51.3525(b).

SB 17 permits an employee or student required to participate in a prohibited training to bring an action for injunctive or declaratory relief against the community college. Tex. Educ. Code § 51.3525(i).

2. Are there exceptions to the application of SB 17's provisions?

In addition to the exceptions for compliance with federal law, described above, SB 17 does not restrict an employee, in applying for a grant or complying with accreditation terms, from submitting to the grantor or accrediting agency a statement highlighting the community college's work supporting first-generation or low-income students or underserved student populations or certifying the college's compliance with antidiscrimination laws. Tex. Educ. Code § 51.3525(c).

SB 17's prohibitions on DEI offices and initiatives do not apply to academic courses; scholarly research or creative works by students, faculty, or research personnel or the dissemination of the research or works; or data collection. It does not apply to a policy, procedure, practice, program, or activity intended to enhance student academic achievement or postgraduate outcomes if it is designed and implemented without regard to race, sex, color, or ethnicity. The bill's prohibitions also do not apply to an activity of a registered or recognized student organization, a short-term guest speaker or performer, or student recruitment or admissions. Tex. Educ. Code § 51.3525(d).

3. Must a college discipline an employee or contractor for violations of SB 17?

Yes. SB 17 requires a community college board to ensure that each unit of the college adopts policies and procedures addressing the discipline, including termination, of an employee or contractor who violates the bill's prohibitions on DEI offices and initiatives. Tex. Educ. Code § 51.3525(b).

4. How must a college indicate compliance with SB 17's provisions?

Report: SB 17 requires a community college to submit to the legislature and THECB a report certifying the community college board's compliance with the bill's provisions during the preceding state fiscal year prior to spending appropriated funds during a new fiscal year. Tex. Educ. Code § 51.3525(e). The reporting requirement first applies to funds appropriated to a college for the state fiscal year beginning September 1, 2024.

Testimony: SB 17 requires a community college governing board or its designee to publicly testify each interim to the appropriate standing legislative committee regarding the board's compliance with the bill's requirements. Tex. Educ. Code § 51.3525(f).

Compliance Audit: SB 17 requires the state auditor to conduct a compliance audit of each community college at least once every four years to determine if it spent state money in violation of the bill's provisions. If the auditor determines the institution is in violation, the college must cure the violation by the 180th day after the determination is made. If it fails to timely cure the violation, the college will not be eligible for formula funding increases, institutional enhancements, or exceptional items the next state fiscal biennium. Tex. Educ. Code § 51.3525(g)-(h).

5. Will THECB study the impact of SB 17 on student success measures?

SB 17 requires THECB, in coordination with higher education institutions, to conduct a biennial study of the impact of the implementation of the bill on student application, acceptance, matriculation, retention, and graduation rates and their grade point averages, disaggregated by race, sex, and ethnicity. A report on the study and any recommendations for action must be submitted to the legislature by December 1 each even-numbered year through September 1, 2029. Tex. Educ. Code § 51.3525(j).

6. Does SB 17 impact the application of existing federal laws?

No. Federal laws, including the U.S. Constitution First Amendment, the U.S. Constitution Fourteenth Amendment Equal Protection Clause, Titles VI and VII of the Civil Rights Act of 1964, and Title IX of the Civil Rights Act of 1972, preempt the application of SB 17 to the extent there is a conflict. SB 17 accounts for this by providing exceptions to the bill's prohibitions for compliance with federal law. Tex. Educ. Code § 51.3525(b).

7. What steps should a community college take in response to the bill?

A community college should inventory all policies, practices, programs, and services that may be affected by the SB 17's provisions. For example, the college should review employment practices, employee and student support services, college-sanctioned and -affiliated organizations, administrative unit names, mission statements, position titles, job descriptions, and outreach efforts and related messaging. The college should review this list with stakeholders and the college's attorney to determine any changes necessary to address the bill's prohibitions, such as the amendment of policies and procedures, closure of offices, and reassignment of employees.

The community college should create a plan for phasing in the changes by January 1, 2024. The college should then develop effective messaging regarding the changes, which may include town halls, training initiatives, the dissemination of information online, and other efforts.

DEI Offices and Initiatives Generally

1. May a community college provide programs and services that generally promote diversity and cultural competency, such as a multicultural center?

Yes. A community college is prohibited from providing programs and services to individuals based on their race, sex, color, ethnicity, national origin, gender identity, or sexual orientation if the programs and services are not intended to comply with federal law or do not fall under one of the bill's exceptions, such as those for guest speakers and student recruitment efforts. Tex. Educ. Code § 51.3525(a)-(d). However, the college may offer supports or provide educational programming on different cultures that are available equally to all groups. For

example, while a community college may not maintain a DEI office that provides targeted services to individuals based their race, the college may support a multicultural center that provides all students, regardless of race, necessary support and education on different cultures.

2. Is a college's foundation subject to SB 17?

Maybe. A community college should determine if its foundation may be considered an extension of the college or a separate non-profit organization. For example, if the majority of the foundation's board consists of community college board members, the college's board is administering the foundation. If college employees are paid by the college to administer the foundation, then their activities may fall under the SB 17 prohibitions. The college should review any agreements with the foundation and its involvement in the foundation's overall structure to determine if the foundation may be considered an extension of the community college for purposes of SB 17.

3. May a college provide programming in recognition of holidays and celebrations focusing on a covered identity group, such as Women's History Month or Hispanic Heritage Month?

Yes. A community college may recognize holidays and celebrations surrounding a particular race, sex, color, ethnicity, national origin, gender identity, or sexual orientation if the programming is open to all without preference for a certain group. The college must not require employees and students to participate in any of the programming or risk violating the SB 17 prohibition on mandatory DEI training. The programming should be conducted consistent with the college's educational mission, such as addressing the history of the holiday and its cultural significance.

4. May a community college require a person to submit a DEI statement?

No. SB 17 prohibits a community college from compelling, requiring, inducing, or soliciting a person to provide a DEI statement or giving preferential consideration to a person who provides a statement, unless required by federal law. Tex. Educ. Code § 51.3525(b). The term *DEI statement* is commonly used in the context of hiring to indicate the applicant's commitment to DEI initiatives, understanding of diversity and equity issues related to the person's work, and vision for advancing diversity, equity, and inclusion. However,

because the term is not defined by the bill or limited to employment, a community college should not require a DEI statement from any person or give a person preferential treatment based off of a DEI statement the person voluntarily provides.

Note, a DEI statement is not a nondiscrimination statement provided consistent with federal and state law. The term also does not include commentary regarding service of first-generation or low-income students or underserved student populations or specific circumstances related to working with individuals in covered identity groups.

Employee Issues

1. May a community college support employee organizations and programs that are focused on covered identity groups?

Yes. A community college may support employee organizations and programs that focus on race, sex, color, ethnicity, national origin, gender identity, or sexual orientation. Participation in the organizations and programs must be open to all employees equally. Any funds awarded to the organizations or programs, promotion of the organizations' or programs' activities, or access provided to facilities must be subject to the same rules as other organizations and programs. For example, the college may support an organization focused on Black nursing faculty if all employees may join and enjoy the same benefits of membership. The college's support for the organization must be subject to the same standards set for determining support for any employee organization.

2. May employees attend conferences or pursue training opportunities provided by third parties and focused on a particular covered identity group?

Yes. While a community college may not mandate DEI training, with limited exceptions, an employee may choose to participate in DEI training that is not provided, or contracted for, by the college. Tex. Educ. Code § 51.3525(a)-(b), (d). Participation should be truly voluntary. The college should not award a benefit to a person who participates in the training or sanction a person who chooses not to participate. Approval of a request to participate in the training and any funding provided by the college should be granted consistent with rules set by the college for professional development opportunities generally.

3. Does SB 17 prohibit a college from engaging in efforts to diversify a hiring pool?

No. While a community college should not base hiring decisions on a person's race, sex, color, ethnicity, national origin, gender identity, or sexual orientation, SB 17 does not prohibit a college from engaging in efforts to recruit a diverse pool of applicants for a vacant position so as to hire the most qualified candidates available. For example, the position may be advertised through a wide range of job banks, publications, and job fairs.

4. May a community college employee engage in independent DEI work?

Generally, yes. Work performed by community college employees outside of the scope of their employment and the direction of, and funding by, the college is not subject to SB 17. However, the college should apply any policies addressing outside employment consistently to these employees. Similarly, the college should apply any policies addressing requests for unpaid time off to perform these tasks consistent with other requests. Development leave funded by the college should not be granted for DEI work.

Student Issues

1. May a community college promote or administer scholarships that are awarded solely to a covered identity group?

Unless advised otherwise by the community college's attorney, a scholarship awarded or administered by a college with regard to a person's race, sex, color, ethnicity, national origin, gender identity, or sexual orientation, referred to as a closed scholarship, violates SB 17's prohibitions. Tex. Educ. Code § 51.3525(a)-(b). The restriction on closed scholarships applies whether the college originates the scholarship or participates in the promotion, award, or administration of the scholarship on behalf of a third party.

2. May a college recognize student organizations intended to support individuals based on a covered identity group or that are organized to promote DEI?

Yes. SB 17's prohibitions do not apply to the activities of student organizations. Tex. Educ. Code § 51.3525(d). Further, Texas Education Code section 51.9315 prohibits community colleges from taking action against, or denying a generally available benefit to, a student organization based on the organization's

academic, political, religious, ideological, or philosophical views or the organization's expressive activities. Tex. Educ. Code § 51.9315(g). Student organizations intended to support students based on a covered identity group or that promote DEI must be provided the same benefits as other student organizations, including access to funding, staff advisors, and promotion.

3. Does SB 17 prohibit a college from engaging in efforts to recruit a diverse pool of prospective students?

No. SB 17 does not prohibit a college from engaging in efforts to recruit a diverse pool of prospective students. Tex. Educ. Code § 51.3525(d). Such efforts are similarly not restricted by federal or other state law. The U.S. Supreme Court's recent decision in *Students for Fair Admissions v. President and Fellows of Harvard College* restricts the use of race and other protected characteristics in admissions but not in recruiting. *Students for Fair Admissions, Inc. v. Pres. & Fellows of Harvard Coll.*, 600 U.S. 181 (U.S. 2023). See also U.S. Dept. of Justice and U.S. Dept. of Educ., [Questions and Answers Regarding the Supreme Court's Decision in Students for Fair Admissions, Inc. v. Harvard College and University of North Carolina](#). Therefore, the college may engage in recruiting efforts intended to increase the college-going population from diverse and underserved backgrounds, such as through partnering with school districts, outreach to organizations serving certain identity groups, and participating in targeted college fairs.

4. May a community college assist students in obtaining fellowships and internships with organizations that focus on a covered identity group?

Yes. SB 17 does not apply to a policy, procedure, practice, program, or activity intended to enhance student academic achievement or postgraduate outcomes if it is designed and implemented without regard to race, sex, color, or ethnicity. Tex. Educ. Code § 51.3525(d). Therefore, the bill does not prohibit community colleges from assisting students in obtaining fellowships or internships that focus on a covered identity group as long as the college assists all qualified students and not certain groups of students based on the students' race, sex, color, or ethnicity. Similarly, the college may write letters of recommendation for students to obtain employment as one of these organizations or a position that involves DEI work as long as the decision to provide the letter of recommendation is not based on the students' race, sex, color, or ethnicity.

Instruction and Research

1. May community college faculty discuss matters related to covered identity groups as part of instruction?

Yes. Discussion of race, sex, color, ethnicity, national origin, gender identity, or sexual orientation as part of academic course instruction is not subject to SB 17. Tex. Educ. Code § 51.3525(d). In addition, restrictions on speech germane to the course's subject matter and other job duties of a faculty member may violate the faculty member's right to academic freedom protected by the U.S. Constitution First Amendment. See [First Amendment Basics](#) on [TASB College eLaw](#).

2. May faculty and students engage in research or create works addressing DEI?

Yes. SB 17's prohibitions do not apply to scholarly research or creative works by students, faculty, or research personnel or the dissemination of the research or works or to data collection. Tex. Educ. Code § 51.3525(d). For example, research and inquiries into a person's field of study consistent with scientific standards or methodologies established within the person's professional fields and disciplines or an innovative work are not subject to SB 17.

Third-Party Issues

1. May a community college promote unaffiliated organizations, programs, or conferences that are organized around a covered identity group or DEI matters?

Maybe. A community college may promote an unaffiliated organization, program, or conference organized around a covered identity group, such as a professional organization for women, or DEI matters if the organization or opportunity is open to participation by all and does not discriminate based on race, sex, color, ethnicity, national origin, gender identity, or sexual orientation in the provision of programs and services. Any promotion of these opportunities must be provided consistent with rules and procedures applicable to any unaffiliated organization, program, or conference.

2. May a community college authorize use of campus facilities by a third party to hold an event intended to address DEI matters?

Yes. SB 17 does not prohibit the use of campus facilities by a third party based on the individual's or entity's messaging. In fact, the college is prohibited by the U.S. Constitution First Amendment and Texas Education Code section 51.9315 from discriminating on the basis of viewpoint in facilities use. U.S. Const. Amend I; Tex. Educ. Code § 51.9315. See [Campus Expression and Facilities Use FAQ](#) on [TASB College eLaw](#). Therefore, the college should apply the college's facilities use policies consistently to these individuals and organizations.

3. May guest speakers and performers provide DEI programming?

Yes. Guest speakers and performers on short-term arrangements are exempt from SB 17's prohibitions. Tex. Educ. Code § 51.3525(d). Access should be provided consistent with college procedures.

For More Information

Where can I find more information about SB 17 and DEI offices and initiatives?

If you have questions about these or other legal issues, community college representatives may contact TASB Community College Services at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics,
visit TASB Community College eLaw online at colleges.tasb.org/elaw.

This document is provided for educational purposes and contains information to facilitate a general understanding of the law. References to judicial or other official proceedings are intended to be a fair and impartial account of public records, which may contain allegations that are not true. This publication is not an exhaustive treatment of the law, nor is it intended to substitute for the advice of an attorney. Consult your own attorney to apply these legal principles to specific fact situations.

Published October 2023