

Texas Woman's University

Working Guidance - 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. SB 17 is codified in Section 51.3525 of the Texas Education Code, "Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives" and becomes law on January 1, 2024.

Beginning with Fiscal Year 2024–2025, SB 17 requires the Texas Woman's University Board of Regents to annually certify the System's compliance to the Texas Legislature and the Texas Higher Education Coordinating Board during the prior fiscal year, before TWU may spend state appropriated funds for the then-current fiscal year. Thus, it is critically important that TWU ensure the necessary adjustments are implemented to achieve compliance with SB 17. Implementation will be a continually evolving process, and accordingly, TWU is engaged in the process to achieve an appropriate state of compliance by January 1, 2024, which is the effective date of SB 17.

Each Division of the university including their respective schools, colleges, offices, departments, and units (academic and administrative) are responsible for ensuring that TWU achieves compliance with SB 17. Each Division 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 Office of General Counsel (OGC) has created the following FAQ to provide guidance on the implementation of SB 17 in each of TWU's respective offices, departments, and units. OGC will update the guidance as needed.

It is important to remember that nothing in SB 17 alters TWU's 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. The TWU community must continue to ensure that our programs and activities are open and available to all persons on a non-discriminatory basis.

Texas Woman's University remains committed to supporting its community members who come to TWU from across the state and around the world and bring a variety of perspectives and experiences. TWU remains steadfast in its commitment to its mission, which reads as follows:

Texas Woman's University cultivates engaged leaders and global citizens by leveraging its historical strengths in health, liberal arts, and education and its standing as the nation's largest public university primarily for women. Committed to transformational learning, discovery, and service in an inclusive environment that embraces diversity, Texas Woman's inspires excellence and a pioneering spirit.

If you have questions about SB 17, please consult with your supervisors. Deans, Chairs, Department heads should continue to seek legal advice from the Office of General Counsel as questions related to SB 17 arise.

GENERAL BILL PROVISIONS

1. What specific restrictions are included in SB 17?

A. 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;
- (2) Promoting differential treatment of or providing special benefits 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, TWU’s Office of General Counsel (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 TWU General Counsel, and the THECB, and for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

B. Performing the duties of a DEI office is prohibited.

TWU also cannot hire or assign an employee of the University or contract with a third-party to perform the duties of a prohibited DEI office.

C. DEI statements are prohibited.

No unit of TWU 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.

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

No unit of TWU 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. This restriction is consistent with the federal anti-discrimination laws.

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

No unit of TWU can mandate as a condition of enrolling at the University or performing any University function the requirement for any person to participate in DEI training. A DEI training includes “a training, program, or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.”

2. What does it mean for an office, division, or unit to be “established for the purpose of” performing the duties of a DEI office listed above?

Divisions and Colleges must review the purposes, duties, and missions of existing offices, divisions, and units to evaluate whether they are established for the purpose of performing any of the four enumerated duties that DEI offices are prohibited from performing.

Similarly, they must determine whether individuals are “hired or assigned” for the purpose of performing any of the four enumerated prohibited DEI office, division, or unit duties.

To ensure compliance with SB 17, Divisions and Colleges must evaluate:

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

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

Under SB 17, a unit of the institution may not be established or maintained for the purpose of “providing special benefits on the basis of race, color, or ethnicity.” SB 17 does not define “special benefit.” TWU 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 are not considered 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 university’s ordinary processes is not a “special benefit.”

4. How does SB 17 restrict training?

SB 17 includes three restrictions related to training:

- (1) An office, division, or unit cannot be established for the purpose of conducting trainings, programs, or activities 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 the duties of an office established for the purpose of conducting 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 TWU’s General Counsel and the Texas Higher Education Coordinating Board; and (3) for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

5. 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 a non-TWU DEI training offered by an outside resource, provided that TWU has not contracted with the outside resource for the purpose of providing DEI training.

A department 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 for the purpose of conducting 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, a supervisor, instructor, or administrator 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.

TWU cannot require any person to participate in DEI training with an outside resource in order to perform any institution function.

6. What is a DEI statement?

Under SB 17, TWU may not compel, require, induce, or solicit any person to provide a “DEI statement”.

TWU interprets a “DEI statement” to mean 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 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.

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.

SB 17 does not prohibit the University, as part of its recruitment and selection process, from soliciting information related to TWU’s mission, student population, or role as a federally-designated Hispanic-Serving Institution.

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

Under SB 17, a person may not be afforded “preferential consideration” for providing a DEI statement. TWU interprets “preferential consideration” to mean 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 universities to expressly prohibit applicants for employment or admission from providing a DEI statement?

No, SB 17 does not require universities 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 or voluntary DEI statement, institutions cannot give preferential consideration based on the provided DEI statement. The statement should not be given positive or negative consideration in evaluating the applicant.

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

SB 17 prohibits giving “preference on the basis of race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any function of the institution.” This restriction is consistent with federal antidiscrimination law. To “give preference on the basis of” a classification means to treat one person more favorably than another because of that classification. “Function” is expansive and includes an institution’s employment, academic, and service functions.

EXCEPTIONS

1. Are there any exceptions to the restrictions described in SB 17 and above?

Yes, there are exceptions. The restrictions contained in SB 17 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 student organization registered with or recognized by an institution;
- (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.

SB 17 makes clear that TWU and its 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.

TWU maintains its commitment to academic freedom, freedom of speech, and freedom of expression, in order to promote open inquiry and expand knowledge.

EVENTS, PROGRAMS, AND ACTIVITIES

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

Yes. TWU is the nation's largest public university primarily for women. 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.

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

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 identity-based 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. 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 restriction on "programs or activities" do not include 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. Participation should be through a history-focused lens to further TWU's educational mission. 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.

4. May TWU host multicultural events or programs?

Yes, as long as these events or programs are open to everyone who wants to participate. The events and programs must not show preference for any identity-based group over another. The emphasis should generally focus on history or culture. Attendance at such events cannot be mandatory for students or employees. Events hosted by recognized and registered student organizations are exempted from the limitations of SB 17. Guest speakers and performers on short-term engagements are also exempt from SB 17.

5. May a TWU department or college have a diversity or DEI-related committee?

All committee mission statements, bylaws, and position responsibilities should be reviewed to determine compliance with SB 17. Committee names and position titles shall not include the terms diversity, equity, and inclusion.

Departments and Colleges should ensure that all committees adhere to the following:

1. They are not established for the purpose of influencing hiring or employment practices at TWU with respect to race, sex, color, or ethnicity;
2. They are not established for the purpose of promoting preferential treatment or special benefits on the basis of race, color, or ethnicity;
3. They are not established for the purpose of promoting policies or procedures designed or implemented in reference to race, color, or ethnicity;

4. They are not established for the purpose of conducting trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation;
5. Participation and membership is open to all on a non-discriminatory basis; and
6. Participation does not require the provision of a DEI statement or participation in a mandatory DEI training.

6. May a university host events or programs that reference or focus on specific identity-based groups?

It depends. The mere name of an event or program does not violate SB 17. However, engagement in certain DEI activities, for instance, by offices that were to promote differential treatment of or provide special benefits to certain persons or groups as defined by the bill, does violate SB 17. Therefore, 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 the event or program can take place.

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

Yes. Employee resource groups typically consist of employees with a common background or a common set of interests. Identity-based affinity groups must be open to all interested participants and receive similar treatment as and benefits available to other employee groups.

Staff may be assigned to support employee resource groups generally. Any university support for such groups must be consistent with the support the university provides to other faculty and staff groups.

8. To what extent are patient healthcare and health and wellness initiatives impacted by SB 17?

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.

9. May the university recognize identity-based alumni networking groups?

Yes, but to the extent that a department engages with stakeholders, such as alumni networking groups, it should steer clear of showing preference for one over another.

10. May a university lease space for an identity-driven conference, such as a gathering of Native American lawyers?

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.

11. May college or 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?

Yes. Nothing in SB 17 prevents support for continuing education, engaging with professional associations, 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 SB 17. Institutional leadership cannot compel attendance at DEI programs nor outsource DEI work.

12. 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?

Yes, student organizations are exempted from SB 17. 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 and recognized student organizations' status is not affected by the passage of SB 17. The law specifically exempts: an activity of a student organization registered with or recognized by an institution of higher education.

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

SB 17 does not define “activity.” TWU interprets the term broadly to encompass all functions of a student organization.

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

Yes, TWU 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 student organizations put on events in support of the LGBTQ community?

Yes. Registered and recognized 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.

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 and procedures. 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 in accordance with University policies and procedures.

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

Student organizations that are registered with or recognized by TWU are exempted from the prohibitions of SB 17. However, depending on the level of institutional control and the specific policies and practices regarding a sponsored student organization’s programs and activities, Senate Bill 17 may be implicated in some instances.

ACADEMIC COURSE INSTRUCTION

1. How does SB 17 impact “academic course instruction”?

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.

The bill’s restrictions also do not apply to guest speakers, including those in an academic instructional or clinical setting.

TWU maintains its commitment to academic freedom, freedom of speech, and freedom of expression, in order to promote open inquiry and expand knowledge.

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

Yes. SB 17 does not apply to academic course instruction, scholarly research or creative work by a university’s students, faculty, or other research personnel or the dissemination of that research work. University policy recognizes a faculty member’s academic freedom in the classroom.

3. May a professor use a diversity statement in their course syllabus?

A professor may, on their own syllabus, use a statement relating to diversity if it pertains to academic course instruction. However, such statements must not indicate an intention to treat students differently or in a preferential manner on the basis of their race, sex, color, ethnicity, or national origin. It is recommended that any diversity statement include a non-discrimination statement, such as “The Department does not condone discrimination in any form and complies with Texas Woman’s University Non-Discrimination Policy.”

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

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 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.

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

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.

2. May TWU employees 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?

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 League of United Latin American Citizens (LULAC) would be permitted.

GRANTS, SCHOLARSHIPS, AND 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.”

1. Does SB 17 allow for the inclusion of language in grant applications that affirms TWU’s commitment to diversity?

Yes. SB 17 allows TWU and its employees, for the purposes of applying for a grant, to submit to the grantor a statement that highlights the University’s work in supporting first-generation college students, low-income students, and or underserved student populations. Additionally, as a public institution of higher education, the grant application can also include that TWU must comply with state and federal antidiscrimination laws. In addition, historical or new information relating to statistical diversity, programmatic offerings, awards, and achievements can be included to convey factual data in support of general diversity.

As the nation’s largest public university primarily for women, TWU is committed to furthering transformational learning, discovery, and service in an inclusive environment that embraces diversity through the solicitation of grants and scholarly and creative works. Diversity and collaboration are fundamental to TWU’s academic culture of innovation, research, and creative expression.

2. How does SB 17 affect student scholarships?

Student scholarships are not prohibited by SB 17 if they are awarded and administered by TWU 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. If an entity separate from the University offers a closed scholarship that is prohibited by SB 17 or federal law, TWU may not participate in the award or implementation of the scholarship.

DATA COLLECTION

Senate Bill 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.

1. 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?

Yes, SB 17 specifically exempts research and data collection.

2. May researchers use race, ethnicity, color, sexual orientation, gender identity, or sex in gathering data for research?

Yes. SB 17 specifically exempts research and data collection. The Office of Research and Sponsored Programs, institutional review boards, and internal grant-funding programs should evaluate research projects in a neutral manner, regardless of whether the projects are designed or implemented in reference to race, color, ethnicity, sexual orientation, gender identity, or sex.

SCHOLARLY RESEARCH AND CREATIVE WORKS

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

1. 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 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 TWU’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 or 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. “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 TWU, 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.

STUDENT RECRUITMENT OR ADMISSIONS

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

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

Yes.

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

Yes.

HIRING PROCESSES

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

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

No. Hiring (selecting a particular qualified applicant for a position) must be conducted in accordance with state and federal law and 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 states that TWU 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.” TWU 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. Advertising jobs in non-traditional outlets and sources is encouraged.

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

Guidelines consistent with state and federal law and University policy should be used during the hiring and selection process. In addition, questions that do not categorize students or employees

by classification are a best practice in the recruitment of candidates. For example, applicants could be asked:

- What is your experience in or philosophy about or 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.

If appropriate for the job, applicants may be asked about their experience at a Hispanic- Serving Institution (“HSI”) such as TWU or their experience teaching first-generation college students, low-income students, or underserved student populations. Such questions are permissible because they assist the University in identifying the most qualified candidate for the job.

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 or explicitly references teaching or working with 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.”

If a job applicant provides an unsolicited or voluntary “DEI statement”, the statement should not be given positive or negative consideration. TWU interprets a “DEI statement” to mean 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 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.

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

Yes, if the preference for fluency in a second language is legitimately connected to the position description and essential to the job duties and responsibilities.

FACULTY & STAFF DEVELOPMENT

1. May college or 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?

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.

2. May faculty and staff speak at a conference focused on DEI?

Yes, if the activity is part of the faculty or staff member’s research activity or the dissemination of their scholarly or creative work. SB 17 provides an exception for scholarly research and does not limit the ability of faculty and staff members to speak at conferences.

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

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 other ethical limitations.

ACCREDITATION

1. How may a department respond to accrediting agency prompts and questions on diversity?

In preparing a response to accrediting agency prompts on diversity, the department should try to address the specific question being asked while highlighting compliant diversity efforts. Although SB 17 prohibits DEI offices and certain trainings, programs, and activities, departments may continue many initiatives that both satisfy accrediting agency diversity priorities and comply with SB 17.

Permissible responses may emphasize some or all of the following:

- TWU or the 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 TWU's surrounding community, and, in the case of health-related programs, the diversity of the institution's patients; and
- Programs or efforts consistent with the particular accrediting agency's identified, SB 17- neutral diversity priorities.

2. What are appropriate measures or metrics that institutions may use for data collection and data reporting as part of accreditation?

SB 17 restrictions do not apply to data collection.