

### **H.3.1 (Policy) State Law Prohibitions**

Responsible Departments: Alamo Colleges District Title IX/VII/IV/ADA/504 Coordinator and General Counsel

Board Adoption: 12-19-23

Last Amended: 5-21-2024

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#### **Purpose**

This policy is designed to implement state law requirements limiting and prohibiting certain practices, including those generally referred to as Diversity, Equity and Inclusion initiatives, codified Texas Education Code §51.3525, and tolerating antisemitic speech and acts, as antisemitism is defined at Texas Government Code § 448.001, as required by Executive Order GA-44. In any unintended cases of failure of this policy to conform to then-applicable statutory, regulatory or executive order requirements regarding such matters, those requirements are hereby incorporated by reference and shall prevail to the extent of any conflict. The Chancellor may adopt procedures which, without limitation, reflect regulations to be drafted by state agencies to implement statutory requirements.

#### **Diversity, Equity and Inclusion Practices**

##### **Definition**

Diversity, Equity and Inclusion practices are defined as:

- (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 laws;
- (2) promoting differential treatment of or providing special benefits to individuals on the basis of race, color, or ethnicity;
- (3) promoting policies or procedures designed or implemented in reference to race, color, or ethnicity; or
- (4) conducting training, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation

##### **Prohibition**

The College District shall not establish or maintain a Diversity, Equity and Inclusion office, division, unit, or function, or hire or assign an employee, or contract with a third party for the purposes of conducting Diversity, Equity and Inclusion practices as outlined in the definition section of this policy.

The College District shall not compel, require, induce, or solicit any person to provide a diversity, equity and inclusion statement, or give preferential consideration (e.g., in employment) to any person based on the provision of a diversity, equity and inclusion statement.

The College District shall not 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 College District.

The College District shall not require any person as a condition of enrollment or of

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performing any institutional function to participate in training which is designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.

#### **Exceptions**

Policies, procedures and required training, programs and activities otherwise prohibited are allowed only when approved in writing by the institution's general counsel and the Texas Higher Education Coordinating Board for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

Required training, programs and activities also must be developed by an attorney and maintained in (i) the AlamoTALENT learning management system if for employees, and (ii) the office of the Vice Chancellor for Student Success if for students.

This policy does not restrict the issuance of statements that highlight the College District's work in supporting first-generation college students, low-income students, or underserved student populations for purposes, without limitation, of grant application or accreditation maintenance.

This policy does not restrict 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.

Additional exceptions are, and this policy does not restrict:

- academic course instruction;
- scholarly research or a creative work by students, faculty or other research personnel or the dissemination of that research or work;
- an activity of a registered or recognized student organization;
- guest speakers or performers on short-term engagements;
- data collection; or
- student recruitment or admissions.

#### **Required Periodic State Reporting**

The Board must submit to the Legislature and the Texas Higher Education Coordinating Board a report certifying its compliance with Texas Education Code §51.3525 during the preceding state fiscal year before spending money appropriated to the institution for a current fiscal year.

In the interim between each regular session of the Legislature, the Board's designee must testify before the standing legislative committees with primary jurisdiction over higher education at a public hearing regarding its compliance with Section 51.3525.

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#### **Institutional Consequences of Violation**

The State Auditor must audit College District compliance with Texas Education Code §51.3525 at least once every four years. If the State Auditor determines that the College District has spent state money in violation of that section, the College District must cure the violation within 180 days after that determination is made to avoid ineligibility to receive formula funding increases, institutional enhancements, or exceptional items during the immediately following the state fiscal biennium.

A student or employee of the College District who is required to participate in training in violation of Texas Education Code §51.3525(b)(1)(E) may bring an action for injunctive or declaratory relief against the College District.

#### **Antisemitism**

##### Definition (from Texas Government Code § 448.001)

Antisemitism is defined as a certain perception of Jews that may be expressed as hatred toward Jews. The term includes rhetorical and physical acts of antisemitism directed toward Jewish or non-Jewish individuals or their property or toward Jewish community institutions and religious facilities.

##### Admonition

The College District shall foster appropriate discourse.

##### Prohibition

The College District shall not tolerate antisemitic speech or acts by employees, students, other persons or groups on its premises, including its protected free speech areas.

##### Discipline

##### Employees

- Inadvertent failure to comply with this policy shall be no more than a Step One disciplinary offense under the Progressive Discipline Procedure D.9.1.2.
- A second inadvertent failure to comply and ANY reckless failure to comply shall be a Step Two disciplinary offense.
- A third inadvertent failure to comply, a second reckless failure to comply and ANY knowing or deliberate failure to comply shall be a Step Three disciplinary offense.
- ANY violation of this policy whatsoever occurring after a Step Three violation of this policy shall be a Step Four disciplinary offense resulting in termination of employment for cause.

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#### Contractors

The engagement of an independent contractor to the College District whose activities on behalf of the College District violate Texas Education Code §51.3525 is terminable at the discretion of the College District, subject to any countervailing statutory or regulatory restrictions.

#### Students

Students who engage in prohibited antisemitic speech or acts are subject to discipline under the student Non-Academic Misconduct Disciplinary and Appeals Process, Procedure F.4.2.1, up to and including expulsion.

#### **Internal Reporting of Possible Violations**

Suspected violations of this policy may be reported to the Director of Ethics, Compliance & Policy or through the NAVEX online reporting system.

*Legal Reference -Texas Education Code §51.3525*

*Texas Government Code § 448.001*

*Executive Order GA-44*

*Legal Reference - TACC Policy Reference Manual*