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Which States Are Enacting the Best DEI Bans?

The Martin Center looks at half a dozen attempts to regulate ideological extremism on campus.

MAY 2, 2024



Shannon Watkins



A WAVE OF BILLS COMBATING “DIVERSITY, EQUITY, AND inclusion” (DEI) efforts on college campuses have made their way into several state legislatures this year. Bills introduced in states such as Utah, West Virginia,

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Arizona, Kentucky, Iowa, and South Carolina all aim to quell an agenda of racial discrimination and political litmus testing antithetical to higher education's purpose.

But not all of the bills are created equal. While each is designed to curb DEI practices, some articulate the restrictions with greater clarity and specificity. Additionally, some have superior mechanisms of oversight and accountability. A few institutions include provisions upholding viewpoint diversity, recommitting schools to institutional neutrality, and mandating extra transparency measures.

Some state bills have superior mechanisms of oversight and accountability.

These legislative efforts reflect a growing national concern over the negative influence of DEI, a concern that is shared by university boards themselves. The Board of Governors of the University of North Carolina System, for example, is expected to vote on, and likely pass, its own

anti-DEI policy at its next meeting in May. Even Congress has [recently introduced a bill](#) to combat DEI in medical schools.

These bills may not all be adopted, but their existence is an indication that DEI may be losing its foothold in academia.

West Virginia: House Bill 4387, Introduced January 10, 2024

Under this bill, institutions are not permitted to require or solicit a diversity statement in hiring, promotion, contract renewal, or admissions processes. Preferential treatment may not be given to a student or employee on the basis of race, sex, color, ethnicity, or national origin. Mandatory diversity training is prohibited, and institutions may not spend funds on DEI activities, offices, and officers.

Academic departments, faculty teaching and research, registered student organizations, and dedicated student-recruitment offices are not included in the bill's prohibitions. Guest speakers are also permitted, as long as the event isn't both mandatory for faculty, staff, or students *and* designed to promote DEI.

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The bill proposes that institutions may not receive appropriated funds until their governing boards submit a report outlining how they have complied with this law, a report that then has to be certified by the designated legislative body. Students, faculty, employees, and alumni may bring a civil action against a violating institution.

Arizona: Senate Bill 1005, Introduced on January 1, 2024

This bill applies to public entities broadly but includes the state university system and community colleges. Under this bill, public institutions may not spend funds on DEI programming and may not require employees to participate in a DEI program. Public entities may also not enter into a contract with a company that participates in DEI programming or spend money on supplies or support for such programming. DEI offices and officers are strictly prohibited. Institutions are prohibited from implementing any policy or procedure on the basis of race, sex, or color.

Arizona's prohibitions on compelled speech are weak.

The bill outlines specific theories and ideologies that public entities are prohibited from adopting or promoting as an official institutional position. The list of concepts includes cultural appropriation, allyship, intersectionality, anti-racism,

neopronouns, and transgenderism.

However, the bill's prohibitions on compelled speech are weak. It does not prohibit universities from subjecting students to DEI training (although it does so for employees). The bill also doesn't explicitly prohibit the use of diversity statements, and it lacks strong mechanisms of oversight and accountability. Protections for academic freedom or student organizations are not included.

South Carolina: House Bill 4663, Introduced January 9, 2024

(Note: *Tennessee House Bill 1948*, introduced on January 24, 2024, and *Oklahoma Senate Bill 1303*, introduced on February 5, 2024, closely resemble the South Carolina bill.)

Like Arizona's, the South Carolina bill extends to all public entities and includes the education system. This bill, however, includes specific provisions relating to higher education.

The bill prohibits the establishment and support of DEI offices and officers, the solicitation of diversity statements, and the preferential treatment of anyone who *provides* a diversity statement. Preferential treatment may also not be given to any job applicant on the basis of race, sex, color, ethnicity, or national origin. Additionally, institutions may not require those enrolling in an institution to participate in a DEI training program or activity.

The bill's main weakness, however, is that none of these prohibitions apply to "student recruitment or admissions." It seems that college applicants could be required to submit a DEI statement as part of the admissions process, or that applicants who provide such a statement may be given preferential treatment.

The bill explicitly states that its provisions do not apply to course instruction, academic research, student organizations, and short-term speaker engagements. Ample oversight measures are included. For example, no funds may be spent until a compliance report is submitted to the General Assembly, and institutions' representatives must publicly testify before a legislative committee regarding compliance with this bill. The state auditor, furthermore, will conduct periodic compliance audits.

South Carolina applicants could still be required to submit a DEI statement as part of the admissions process.

Iowa: Senate File 2435, Introduced on April 18, 2024

Iowa's anti-DEI effort appears as an amendment to an education appropriations bill. It similarly bans DEI offices and officers, the use of DEI statements, and the granting of preferential treatment to those who provide a diversity statement. The bill includes carve-outs for academic course

instruction, academic research, student organizations, and guest speakers.

Each institution must submit an annual report certifying compliance to the legislature and the governor.

Kentucky: House Bill 9, Introduced January 19, 2024

Kentucky's bill bans colleges from giving preferential treatment in hiring and admissions, notably adding religion to the list of characteristics by which individuals must not be judged. Segregated housing is prohibited—with two reasonable exceptions based on sex and disability. Spending resources on DEI offices and employees is prohibited, as is requiring DEI training or DEI statements as part of the hiring and admissions processes.

Several provisions set Kentucky's bill apart from those of other states. The bill mandates, for example, that institutions amend their policies on nondiscrimination with the addition of an ideological-neutrality clause that "promotes intellectual diversity." These policies must be published in student and faculty handbooks and posted publicly online.

Secondly, the bill requires institutions in Kentucky to conduct an annual intellectual-freedom and viewpoint-diversity assessment. The responses must be included in an annual report submitted to the Kentucky Council on Postsecondary Education, and each institution's report on intellectual freedom and viewpoint diversity must be prominently displayed on a public website.

Lastly, Kentucky's bill includes a bold provision. The bill does not allow a course "dedicated to the promotion or justification of discriminatory concepts or diversity, equity, and inclusion initiatives" to count for credit toward graduation or a certificate.

The bill states that its prohibitions do not apply to the academic freedom of faculty, students, student organizations, academic course content, guest speakers, and individuals' First Amendment rights.

Utah requires employees to be trained in the difference between

Utah: House Bill 261, Signed into Law and Takes Effect July 1, 2024

Utah's law resembles other DEI bills for its round prohibition of the use of diversity statements

“personal advocacy” and institutional business.

(referred to as “prohibited submissions”) and university engagement in “prohibited discriminatory practices.” It furthermore prohibits spending on DEI offices, personnel, training, and programming.

Utah’s bill stands out, however, because of the additional items it requires institutions to *do*. Institutions, for example, shall “publish the titles and syllabi of all mandatory courses, seminars, classes, workshops, and training sessions on the institution’s website in an online database readily searchable by the public.” An additional requirement is that employees be trained in the differences between “personal political advocacy [and] an institution’s business and employment activities.” Provisions that promote viewpoint diversity, free speech, and civic education are included in the bill. Institutions must also conduct a campus-climate survey that evaluates students’, faculty’s, and staff members’ experiences and perceptions of free speech and academic freedom on campus.

Of special note is the fact that the law strictly requires institutions to maintain a posture of institutional neutrality. They may not “take, express, or assert a position or opinion on controversial subjects” such as anti-racism, critical race theory, implicit bias, and racial privilege.

As in other bills, the university board and state auditor must conduct compliance reviews and report the results to the legislature, which may withhold funds if violations are not cured. In terms of accountability, one notable difference is that the Utah law makes no provision for students, faculty, or staff to take civil action for an institutional violation. Instead, individuals may merely “submit a complaint for noncompliance” to the board.

Perhaps the bill’s most notable weakness is that it does not include carve-outs for student organizations and short-term speaker engagements. Even if such exceptions are not technically needed, it is best to be as precise as possible about what falls under the prohibitions. The bill does, however, clearly protect academic research and classroom teaching.

Perhaps no one individual bill presents a silver bullet for solving the DEI issue, but lawmakers should imitate the strongest provisions offered by this collection of legislative attempts: 1) the elimination of all DEI administrative offices, discriminatory practices, DEI statements, and DEI training, with clear carve-outs for the academic freedom and First Amendment rights of faculty, students, and guest speakers; 2) special provisions upholding viewpoint diversity and institutional neutrality; 3) additional transparency measures such as the posting of mandatory-course syllabi online; 4) the conducting of regular student and faculty surveys on the state of free speech on campus; and 5) rigorous oversight and accountability measures, including but not limited to annual compliance reports, regular compliance audits, and concrete consequences for violations.

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