

THE CHRONICLE OF HIGHER EDUCATION

'COMPLIANCE U'

The New Anti-DEI Bureaucracy

By *Maggie Hicks*

JUNE 21, 2024



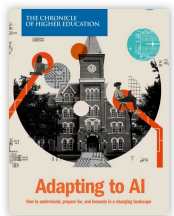
LILY PADULA FOR THE CHRONICLE

Under a new Indiana law, public colleges are required to provide students a venue to complain if they think a professor isn't protecting their right to "intellectual diversity." In Utah, the Board of Higher Education will now conduct a biannual review of public institutions to ensure they're complying with that state's new law. And public colleges in Texas must submit an annual report to the state Legislature outlining how they've complied with bans on diversity, equity, and inclusion practices.

Republicans believe DEI is so deeply ingrained in higher education that simply banning it is not enough. And so they've enacted a new layer of oversight and bureaucracy to monitor administrators' and professors' actions, according to a *Chronicle* analysis.

"The more we learn about how DEI has infiltrated every aspect of campus life," said Sherry Sylvester, a senior fellow at the Texas Public Policy Foundation, "we know it's going to take longer and longer to unravel it."

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Lawmakers nationwide have [passed](#) 14 laws that ban identity-based recruitment and retention efforts in 12 states. Four will go into effect in July.

DEI critics say efforts like diversity training, diversity statements, employing DEI officers, and explicitly recruiting and hiring people based on their race, gender, or sexual orientation discriminate against white people, are expensive and ineffective, and diminish free inquiry. They also argue faculty are indoctrinating students with liberal ideology.

But DEI advocates say administrators must tailor intervention strategies to communities' needs, undo past discrimination, and abide by federal antidiscrimination laws. Faculty, they argue, are protected by free-speech laws.

“Ultimately, every faculty member is going to be afraid that something that is done on one campus in one state could be banned everywhere else.”

Compliance initiatives will add to an “avalanche of overcompliance by faculty and administrators,” said Jeremy C. Young, a program director at the free-speech advocacy group PEN America. Smaller, less resourced institutions may have to spend time and money they don’t have interpreting complicated legalese. Administrators who are weary of legislative ramifications might ban programs that would’ve otherwise been allowed. They’ll also interpret the law in different ways, which could cause confusion over what is and is not allowed, he said. If a faculty member has an “enemy” on a complaint-review committee, they could face more scrutiny and avoid controversial topics altogether, Young said.

“Ultimately, every faculty member is going to be afraid that something that is done on one campus in one state could be banned everywhere else,” he said. “It just maximizes the effect of the law far beyond what the legislative text actually calls for.”

‘Compliance U’ Era

New compliance systems result from politicians’ deepening mistrust of college administrators, said Peter Lake, a law professor at Stetson University and director of the Center for Excellence in Higher Education Law and Policy.

Since the Great Recession, colleges have entered what he calls a “Compliance U” era, with lawmakers enforcing increasingly strict and public-facing rules to ensure administrators are properly following their direction.

He also pointed out that students and their families, who are being charged more and more in tuition, see higher education less as a privilege and more as a business.

“People are tending to see themselves as consumers,” he said. “When they don’t like the product, they go to regulators to demand solutions.”

In recent years, compliance has appeared in higher education through laws supported by both sides of the political spectrum, Lake said. Title IX regulations, which require colleges to ensure that sex-based discrimination doesn’t block students’ access to education, for instance, have drastically increased reporting requirements for issues like sexual harassment. Laws requiring colleges to make classes and campuses more accessible to people with disabilities also include stricter compliance, Lake said. Colleges, for example, need to prove to lawmakers and the public they’re increasing the availability of mental-health resources and accommodations for students.

The compliance systems are likely to be time consuming and require additional, and often more experienced, personnel, he said. Staff members have to go through hours of training to understand new requirements.

“I don’t think higher education was designed as a compliance industry the way the medical field is today,” Lake said. “It’s a culture shift and, of course, a lot of the compliance is very legalistic. It puts a lot of emphasis on thinking like a lawyer and being able to translate legal edicts to educational operational goals.”

When it comes to anti-DEI legislation, lawmakers also know that the laws aren’t necessarily popular, Lake said. Many administrators may be opposed to them, and

students are as well, he said, which places colleges in a position where what the law is asking could be in conflict with what the consumers, or students, want, he said.

“It truly is a rock and hard place,” Lake said. “Because if the energy of Compliance U is consumerism, and you should have it a certain way but the law doesn’t permit it, then you’ve got a business problem on a fundamental level.”

Several accreditors have [developed](#) stricter oversight on how colleges are adhering to antidiscrimination laws and serving historically underrepresented students. That, along with existing federal civil-rights laws, has led to an explosion of DEI positions and programs. Administrators will now have to untangle federal, state, and campus initiatives from each other.

A New Bureaucracy

The new laws ban diversity statements, DEI officers, mandatory diversity training, and/or hiring and admitting people based on their identity at public colleges.

Anti-DEI laws often vaguely define restricted terms, like DEI, intellectual diversity, or divisive concepts, resulting in uneven and haphazard [enforcement](#) among colleges, according to *The Chronicle*’s [tracking](#) of how 160 colleges have responded to the political efforts. While some colleges may simply change the name of an office or title of an employee, others have fired DEI-related employees and shut down any programs that overwhelmingly serve historically marginalized students.

To better understand enforcement efforts, *The Chronicle* reviewed legislation in six states that have taken effect or soon will. The laws require public colleges to set up complaint systems, create committees that will determine whether the laws have been violated, and compile yearly reports about how they’re complying, among other things.

Many of the compliance efforts deploy students and faculty members to report back what they're seeing on campuses. It's then up to the board of trustees, human resources departments, or other faculty and staff members at each college to determine whether the incident violates the law.

Indiana's new [law](#), for instance, allows colleges to withhold tenure and promotions from employees who are "unlikely" to ensure "intellectual diversity," which it defines as "multiple, divergent, and varied scholarly perspectives on an extensive range of public-policy issues." It also encourages colleges to punish faculty members who fail to expose students to a variety of intellectual viewpoints or who discuss ideologies unrelated to their subject matter, but it doesn't specify what that exposure looks like or what could lead to punishment.

In order to comply with the [law](#), which will take effect on July 1, public colleges in the state must create a way for students and employees to submit complaints against staff and faculty members who they believe aren't abiding by the regulations. The complaints will then be reviewed by the human-resources department. The board of trustees at each institution also must create a diversity committee to review issues "concerning intellectual and cultural diversity issues." Each year, colleges must submit a report to the Indiana Commission for Higher Education that details how the reporting system works as well as how many complaints were filed.

Tennessee's public colleges are also required to create complaint systems for anyone who believes a faculty member may have violated state [laws](#) banning diversity training and restricting the use of 16 "divisive concepts," such as arguing that a person is inherently privileged due to their race or sex and that an individual's moral character is defined by their race or sex. Any complaints must be investigated and reported to the comptroller of the treasury. While the law doesn't specify who should be investigating the complaints, some colleges are turning to administrators and larger oversight committees to do the work.

At Austin Peay State University, for example, a senior administrator will evaluate complaints and determine whether they should be passed on to a Faculty and Staff Grievance Committee. The committee will then hold a hearing with the complainant to determine appropriate discipline, according to the university's [policy](#) on divisive-concepts violations.

Faculty at all public institutions in the state also must publicize a syllabus for each course offered during a given semester “to assess the extent to which divisive concepts may have been included or have otherwise affected the curriculum.”

Utah passed a [law](#) in January eliminating DEI offices, mandatory diversity training, diversity statements, and identity-based preferences in hiring and admissions. Under the law, the Utah Board of Higher Education will conduct a review of public institutions every other year to ensure they're complying with the law and send a report to the State Legislature's subcommittee on higher-education appropriations. The board is also responsible for organizing a campus-climate survey at each institution that will be shared with the Legislature.

In Kansas, anyone who believes an institution violated its [law](#) banning diversity statements at public colleges should send complaints to the state Board of Regents. The board must investigate each complaint, and if it determines action is not required, the complainant is able to direct their report to the state attorney general and the court in the district where the college is located. At the beginning of each legislative session, the Board of Regents must submit a report detailing the number of complaints it received, as well as how many went to the attorney general and courts. It also must explain the results of each investigation.

In Texas and Iowa, public colleges must submit annual reports outlining their compliance. Iowa's [law](#) requires the reports to go to the state General Assembly and governor while Texas institutions will send theirs to the lieutenant governor and the speaker of the state House of Representatives.

“There’s a sentiment that the decisions are being made in backrooms and that there really isn’t a way to let people into the process.”

DEI advocates say that expecting campus administrators to interpret already-vague laws will only lead to more confusion and red tape.

“We still aren’t seeing a lot of instances of governments or institutions mandating compliance or meting out punishments in higher ed,” said Young, of PEN America. “What we’re seeing instead is just a lot of fear-spreading and a lot of these very intense, invasion-of-privacy almost, attempts to try to enforce compliance through fear.”

In states where lawmakers are in charge of oversight, like Texas, there is a concerning opacity in how the audit process will work and what could happen if they find that a college did violate the law, said Antonio Ingram II, assistant counsel at the NAACP Legal Defense Fund. Ingram worries that administrators will be too cautious and continue to overcorrect.

“It’s unclear how these [committees] are being staffed, it’s unclear what the due process will look like oftentimes when these issues arise,” Ingram said. “There’s a sentiment that the decisions are being made in backrooms and that there really isn’t a way to let people into the process.”

Not Enough, Texas Says

Texas lawmakers began cracking down on colleges only months after [Senate Bill 17](#), its anti-DEI legislation, went into effect.

In February, a conservative news website [published videos](#) of an undercover reporter asking DEI staff members at Texas universities how they've been changing their work. Many replied that they were finding ways around the law or still doing the work, just with a different name.

Weeks after the videos were published, Sen. Brandon Creighton, the Republican sponsor of SB 17, sent a warning to public colleges that they could risk losing state funding if they weren't complying with the law. He also called on college administrators to detail how they'd been complying with the law ahead of a hearing with the Senate's higher-education subcommittee in May.

"While I am encouraged with the progress I have seen from many institutions of higher education in implementing SB 17, I am deeply concerned with the possibility that many institutions may choose to merely rename their offices or employee titles," Creighton said in the letter to institution leaders. "This letter should serve as a notice that this is unacceptable."

In April, the University of Texas at Austin [announced it would close](#) its Division of Campus and Community Engagement and Women's Community Center, offices it had opened after eliminating its Multicultural Engagement and Gender and Sexuality Centers. It also fired at least 49 employees with DEI-related roles.

At the hearing in May, leaders and the general counsels from seven higher-ed systems in the state explained to lawmakers how they'd been complying with SB 17. James B. Milliken, chancellor of the University of Texas system, testified that the system had closed 21 DEI offices, eliminated 311 DEI-related positions that previously focused on DEI, and cut 681 contracts and programs.

"Given the importance of the law to the Legislature and to the governor and given the enormous consequences of violation," Milliken said, "ensuring compliance has been a top UT-system priority over the past year."

Correction (June 27, 2024, 5:40 p.m.): This article originally stated that Chancellor James B. Milliken of the University of Texas system testified in May that changing campus policies without violating Senate Bill 17 would require a “magnitude” of effort from staff across the system. In fact, Chancellor Milliken told lawmakers that “a change of the magnitude of SB 17 required the work of many administrative offices and supporting staff” to fulfill.

Read other items in this [The Assault on DEI](#) package.

We welcome your thoughts and questions about this article. Please [email the editors](#) or [submit a letter](#) for publication.

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