



# THE UNIVERSITY OF TEXAS AT TYLER FY 2024 TEXAS EDUCATION CODE § 51.3525 COMPLIANCE AUDIT

**Background:** The 88th Texas State Legislature passed, and the Texas Governor signed into law, Senate Bill 17, which amended Section 1, Subchapter G, Chapter 51 of the *Texas Education Code* by adding Section 51.3525, “Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives” (TEC §51.3525). TEC §51.3525 requires the Board of Regents of The University of Texas (UT) System, as summarized below, to ensure that each unit of each UT institution does not, except as required by federal law:

- Establish or maintain a diversity, equity, and inclusion (DEI) office;
- Hire or assign an employee of the institution or contract with a third party to perform the duties of a DEI office;
- 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;
- 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; and
- Require, as a condition of enrolling at the institution or performing any institution function, any person to participate in DEI training, which includes a training, program, or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation.

The University of Texas at Tyler (“UT Tyler”) engaged King & Spalding LLP (“K&S”) to perform an audit to assess UT Tyler’s compliance with TEC §51.3525.

**Objective:** The overall objective of this engagement was to provide the President and Executive Leadership reasonable assurance as to whether UT Tyler has complied with the requirements of TEC §51.3525. This included determining whether UT Tyler has:

- ❖ Closed the DEI office or made appropriate changes to offices, divisions, or other units that were previously responsible for DEI initiatives.
- ❖ Complied with the restriction on hiring or assigning employees to perform DEI duties.
- ❖ Updated staff hiring and employment practices to remove requirements for DEI statements and to not provide preferential treatment based on race, sex, color, ethnicity, or national origin to an applicant for employment, an employee, or a participant in any function of the institution.
- ❖ Complied with the prohibition on requiring participation in DEI training as a condition of performing any institutional function.
- ❖ Discontinued programs and activities which promote differential treatment of, or provide special benefits to, individuals based on race, color, or ethnicity.
- ❖ Developed or updated disciplinary policies and procedures to comply with TEC §51.3525, if necessary.

**Conclusion on Compliance with TEC §51.3525:** Based on the work performed, we believe that UT Tyler has achieved compliance with TEC §51.3525:

TEC §51.3525 Requirements	Based on Audit Procedures and Management Actions
“Does not, except as required by federal law: (A) establish or maintain a diversity, equity, and inclusion office[.]”	Complies
“Does not, except as required by federal law:... (B) hire or assign an employee of the institution or contract with a third party to perform the duties of a diversity, equity, and inclusion office[.]”	Complies



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TEC §51.3525 Requirements	Based on Audit Procedures and Management Actions
“Does not, except as required by federal law:… (C) 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 [.]”	Complies
“Does not, except as required by federal law:… (D) 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[.]”	Complies
“Does not, except as required by federal law:… (E) require as a condition of enrolling at the institution or performing any institution function any person to participate in diversity, equity, and inclusion training, which: (i) includes a training, program, or activity designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation; and (ii) does not include a training, program, or activity developed by an attorney and 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[.]”	Complies
“(2) adopts policies and procedures for appropriately disciplining, including by termination, an employee or contractor of the institution who engages in conduct in violation of Subdivision (1).”	Complies

In fall 2023, UT System implemented UTS 197 *Compliance with State Law Regarding Diversity, Equity, and Inclusion in Institutions of Higher Education* (UTS 197) to help achieve and enable ongoing compliance with TEC§51.3525. UTS 197 includes activities which are considered important but are not specifically required by statute. The secondary objective of this audit was to provide reasonable assurance that UT Tyler has complied with the requirements of UTS 197.



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Based on the work performed, we believe that UT Tyler has achieved significant compliance with the key requirements of UTS 197. However, while not specifically required by statute, we have identified opportunities, as described below, to help ensure ongoing compliance with TEC§51.3525:

Observations and Recommendations (by Rating)	Management Action Plans
<p>1) High: Texas law prohibits institutions of higher education from requiring any person to participate in DEI training as a condition of enrollment, employment, or performance of any institution function at UT Tyler. The DEI-focused training program identified was discontinued. K&amp;S did not receive a formal list of employees who are responsible for preparing and disseminating training materials for students.</p> <p>K&amp;S recommends confirming for students that there are no DEI-related or required trainings as of January 1, 2024, DEI training programs have been discontinued as of January 1, 2024, and DEI-related training programs (if any) were approved by the institution’s general counsel and the Texas Higher Education Coordinating Board or permitted under the exception for grants / agency accreditation.</p>	<p>In response to this observation, the Division of Student Success reviewed and confirmed compliance with the specific items referenced.</p> <p><b>Completed as of July 18, 2024.</b></p>
<p>2) High: Given the scrutiny around the word “equity,” UT Tyler should consider revising its value statement to the following: “We respect and value people, philosophies, and all cultures; we strive to create <i>a community of fairness</i> <del>an equitable community</del> where everyone feels like they belong.”</p> <p>K&amp;S recommends similar revisions to similar UT Tyler’s value statements.</p>	<p>The value statement has been removed. Any additions or revisions to the value statement will undergo a review process to ensure compliance.</p> <p><b>Completed as of July 16, 2024.</b></p>
<p>3) High: Websites and social media should not communicate prohibited DEI functions, programs or activities or give the impression that eliminated DEI functions, programs or activities are still active. K&amp;S noted there are UT Tyler social media accounts without formal central oversight and therefore views there to be opportunities for social media posts to occur without prior review and approval by Marketing.</p> <p>K&amp;S recommends that UT Tyler implement a central oversight model or network of oversight for approval of UT Tyler website materials and social media pages to ensure compliance with TEC § 51.3525.</p>	<p>The institution currently requires prior approval of content posted to the University’s website, and the Office of Marketing and Communications manages this oversight process through a mix of technology and personnel assigned to review existing and requested content. In response to this observation, the Office of Marketing and Communications has extended this prior approval requirement and oversight to all posts on official social media accounts. The individuals responsible for overseeing the prior approval process are trained on TEC § 51.3525 compliance and provided guidance from the Office of Compliance. Personnel in the Office of Marketing and Communications are responsible for reporting suspected noncompliance to the Office of Compliance.</p> <p><b>Completed as of July 15, 2024.</b></p>



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<b>Observations and Recommendations (by Rating)</b>	<b>Management Action Plans</b>
<p>4) High: Leadership from the Texas Legislature have communicated that institutions of higher education should have internal controls and ongoing monitoring to ensure ongoing compliance with TEC §51.3525. K&amp;S did not identify adequate internal controls and monitoring processes in place to ensure ongoing compliance with TEC§ 51.3525.</p> <p>a) K&amp;S recommends UT Tyler adopt a new UT Tyler SB 17 DEI Compliance Policy to set forth its internal controls and monitoring for compliance with TEC §51.3525. This should include identifying compliance lead(s), compliance/discipline processes, training requirements, periodic monitoring, and certification process.</p> <p>b) K&amp;S recommends including a training module on compliance with TEC §51.3525 for new employees during onboarding and for all employees as part of the annual compliance training materials.</p> <p>c) K&amp;S recommends creating a Q&amp;A guidance document specific for the Academic Deans to further clarify what is and is not prohibited by TEC §51.3525.</p>	<p>a) The Office of Compliance drafted a new UT Tyler policy entitled “Compliance with State Law Regarding Diversity” which was approved by the UT Tyler HOP Committee on July 16, 2024. This policy covers the topics within Observation 4. The Office of Compliance is named in policy as the Office responsible for ongoing compliance and staff contact names and information are published online for the campus community to contact for any questions or to report suspected noncompliance. Reports of noncompliance are investigated in accordance with the institution’s <i>Compliance Investigations</i> policy.</p> <p><b>Completed as of July 16, 2024.</b></p> <p>b) The new <i>Compliance with State Law Regarding Diversity</i> policy was approved on July 16, 2024 and specifically requires training. Accordingly, the Office of Human Resources added a training module to both new employee onboarding training and annual compliance training for existing employees. All training modules are reviewed a least annually.</p> <p><b>Completed as of July 16, 2024.</b></p> <p>The Office of Compliance provides the institutional guidance document to Deans. In response to this recommendation, the Office of Compliance has created a guidance document that highlights Q&amp;A topics that are of specific interest to Academic Deans.</p> <p><b>Completed as of July 17, 2024.</b></p>



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<b>Observations and Recommendations (by Rating)</b>	<b>Management Action Plans</b>
<p>5) <b>Medium:</b> Texas law prohibits institutions of higher education from hiring or assigning employees or contracting with third parties to perform DEI duties. Management noted that an addendum had been made for contracts to include TEC §51.3525 considerations, but K&amp;S had not reviewed it as of the time of the audit. K&amp;S did not find any language or provisions implicating DEI activities or TEC §51.3525.</p> <p>K&amp;S recommends confirming that UT Tyler’s standard terms and conditions addendum incorporated into its contracts includes language prohibiting the vendors from providing UT Tyler any services that would run afoul of TEC §51.3525.</p>	<p>The standard terms and conditions addendum is promulgated by UT System. At this time, no changes have been made or advised by UT System regarding this addendum; however, UT Tyler’s contract review process includes reviews by the Office of Legal Affairs and the Office of Compliance. As part of our contract review process, reviewers and approvers ensure that nothing prohibited by TEC § 51.3525 is solicited or procured. As an added step in response to this observation, departments or individuals requesting a contract are now required to affirmatively state in UT Tyler’s contracts management system that nothing in the requested contract violates TEC § 51.3525.</p> <p><b>Completed as of July 26, 2024.</b></p>
<p>6) <b>Medium:</b> Texas law prohibits institutions of higher education from preferential treatment based on race, sex, color, ethnicity, or national origin to an employee, or a participant in any function of the institution. No reference to DEI requirements were identified in evaluation materials for promotions, merit increases and awards. The K&amp;S work plan did not specifically address student scholarships, which is a potentially high-risk area for DEI implications.</p> <p>K&amp;S recommends a detailed review of its scholarships to ensure they do not consider race, sex, color, ethnicity or national origin in their award or qualification criteria.</p>	<p>The Office of the Provost and the Office of Enrollment Management reviewed all 321 endowments and 81 current use gift funds and confirm that none of the names of the scholarships covered by these gifts indicate a preference based on prohibited criteria. In three instances, the donor indicated their intent in the gift documents – but not requirements – for certain recipients (e.g., a female computer science student); however, the Provost and the Vice President for Enrollment Management confirmed that scholarships are open to all students and are awarded based on merit, need, or academic achievement. The Provost has confirmed that the administration of scholarships meets the compliance standard.</p> <p><b>Completed as of July 18, 2024.</b></p>



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<p>7) Medium: Texas law prohibits institutions of higher education from compelling, requiring, inducing, or soliciting any person to provide a DEI statement or give preferential consideration to any person based on the provision of a DEI statement. No DEI statements were identified on clinical staff applications.</p> <p>K&amp;S recommends confirming that the form faculty, student and staff employment and student applications do not include any DEI statements.</p>	<p>The Office of Human Resources and the Office of the Provost reviewed employment forms for faculty, staff, and students and confirmed that they do not contain DEI statements. The Office of Enrollment Management reviewed applications for undergraduate and graduate admissions and confirmed that application materials do not include DEI statements. One program – the MA in School Counseling – had a single prompt requesting applicants to provide a response as to how they would serve students from diverse backgrounds and with diverse needs. The Office of the Provost, in consultation with the College of Education and Psychology and the Office of Legal Affairs, has revised this prompt to ensure compliance.</p> <p><b>Completed as of July 18, 2024.</b></p>
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It is noted, in light of the UT Health East Texas arrangement between UT Tyler and Ardent Health, a review of Ardent Health’s DEI statement, trainings, and activities was performed to analyze the impact of such statement on UT Tyler under Section 51.3525. See Appendix A for details.

We will follow up on the action plans to determine the implementation status. Follow-up will help ensure that timely action has been taken to address the observations in this report.

Stephen Ford, CPA, MBA, CHIAP  
Vice President, Chief Audit Executive



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## Methodology and Scope

This engagement was conducted on behalf of the Internal Audit Department by King & Spalding in accordance with the *International Standards for the Professional Practice of Internal Auditing* and generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the engagement to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our objectives. The Internal Audit Department is independent per GAGAS requirements for internal auditors. The procedures performed included, but were not limited to, interviews with management, reviewing policies and procedures, reviewing hiring practices, reviewing financial information, obtaining and reviewing supporting documentation, and other work which was deemed necessary to achieve the audit objective.

The scope of this audit covered activities management undertook to address DEI-related:

- Offices and duties that may have been performed elsewhere within the institution;
- Staff hiring and employment practices and DEI statements;
- Training;
- Programs and activities;
- Applicable policies and procedures;
- Internal controls and monitoring;
- External facing web pages and social media accounts that may have referenced active DEI activities; and
- Funding.

The scope of the audit included activities taken from January 1, 2024, until April 30, 2024.

## Observation Ratings

<b>Priority</b>	An issue that, if not addressed timely, has a high probability to directly impact achievement of a strategic or important operational objective of the University as a whole.
<b>High</b>	An issue considered to have a medium to high probability of adverse effects to a significant office or business process or to the University as a whole.
<b>Medium</b>	An issue considered to have a low to medium probability of adverse effects to an office or business process or to the University as a whole.
<b>Low</b>	An issue considered to have minimal probability of adverse effects to an office or business process or to the University as a whole.

## Criteria

- TEC §51.3525
- UTS 197
- UT System SB 17 Guidance and Other key institutional policies where applicable

### REPORT DATE

August 13, 2024

### REPORT DISTRIBUTION

To: Dr. Julie Philley, President  
Cc: Mr. Daniel Deslatte, Chief Business Officer  
Dr. Amir Mirmiran, Provost  
Mr. Dwain Morris, Chief Financial Officer  
Mr. Carl Baranowski, Chief Legal Officer  
Dr. Archie L. Holmes, Jr., UT System Executive Vice Chancellor for Academic Affairs  
Dr. John Zerwas, UT System Executive Vice Chancellor for Health Affairs  
Mr. J. Michael Peppers, UT System Chief Audit Executive  
Legislative Budget Board [audit@lbb.texas.gov](mailto:audit@lbb.texas.gov)  
Governor [budgetandpolicyreports@gov.texas.gov](mailto:budgetandpolicyreports@gov.texas.gov)  
State Auditor’s Office [iacoordinator@sao.state.tx.us](mailto:iacoordinator@sao.state.tx.us)



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## Appendix A

### Performing DEI Duties Prohibited – Ardent

#### Procedures:

**Ardent Health’s DEI activities:** Review Ardent Health’s DEI statement, trainings, and activities in light of the UT Health East Texas arrangement between UT Tyler and Ardent Health and analyze the impact of such statement on UT Tyler under TEC §51.3525.

#### Results:

#### **K&S identified areas of improvement surrounding Ardent’s DEI statement, trainings, and activities:**

- Ardent publicly posts its DEI statement, which describes Ardent’s focus on “supporting local communities, including diverse suppliers and partners who share [its] commitment to equality and integrity.” The statement describes Ardent’s work to “ensure that [its] team members accurately reflect the diverse populations that [it] serve[s].” The statement also describes Ardent’s commitment to support and elevate women at Ardent and describes the professional development resources available to men and women throughout Ardent.
- During the On-Site Review, K&S learned that Ardent has historically disseminated women in leadership communications to employees working in the UT Health East Texas hospitals, which would include UTHSCT employees and Ardent employees. These communications previously involved “lunch and learns” – a program that we understand involved supporting women in leadership by spotlighting current women in leadership at Ardent. K&S understands this lunch and learn program ended prior to January 1, 2024. More recently, K&S learned Ardent has been circulating a newsletter spotlighting Ardent women in leadership, and this newsletter has replaced the Ardent-sponsored lunch and learns. K&S understands these women in leadership materials are also circulated by Ardent to employees working in the UT Health East Texas hospitals.
- During the On-Site Review, HR explained that Ardent is responsible for the clinical training components for employees working at the UT Health East Texas hospitals. Prior to SB 17, Ardent’s clinical training included a full DEI module, but HR confirmed during the On-Site Review that in 2023, Ardent removed this DEI module from the clinical training materials to facilitate UT Tyler’s compliance with SB 17.
- During the On-Site Review, K&S learned that Ardent has a DEI Committee that meets regularly and makes decisions regarding its approach to DEI. A UT Tyler employee was previously a member on this Committee, and its attendance during the Committee meetings made UT Tyler aware of Ardent’s DEI activities. But UT Tyler has since ceased its representation on this Committee for SB 17 considerations. K&S understands the Committee still operates and may maintain minutes documenting what activities the Ardent DEI Committee is planning.
- Based on the On-Site Review, K&S understands Ardent leadership is aware of SB 17 and the related restrictions on UT Tyler. K&S also understands that Ardent leadership has agreed not to extend the Ardent DEI initiatives to UT Tyler and has taken affirmative steps to limit the reach of its DEI efforts in light of SB 17 by, e.g., removing the DEI module from its UT Health East Texas clinical operations training materials. Although K&S understands Ardent is taking steps to facilitate UT Tyler’s compliance with SB 17, it appears there are not yet sufficient parameters and safeguards in place to ensure that Ardent’s DEI initiatives do not impact UT Tyler’s compliance with SB 17. For example, dissemination of an Ardent newsletter promoting women in leadership could create confusion among the UTHSCT employees who receive these materials as to why they are receiving these materials given the SB 17 restrictions. Ardent sharing these types of materials with UTHSCT employees may also, depending on the specific content of the newsletter, draw scrutiny as to UT Tyler’s compliance with SB 17 because of the integration between the Ardent clinical operations and the UTHSCT clinical operations as part of UT Health East Texas. It is also unclear what funds Ardent is using to support the Ardent DEI initiative and whether such funds are from Ardent parent, from Ardent’s UT Health East Texas clinical operations, or





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from another source of funding. Even if these funds are unrelated to the operations of UT Health East Texas, having a DEI initiative directed towards Ardent employees at hospitals operating under the UT Health name as part of UT Health East Texas may draw unwanted scrutiny as to UT Tyler’s compliance with SB 17.

**Observations - Ardent Health’s DEI activities:** To formally articulate UT Tyler’s position on SB 17 to Ardent and ensure that Ardent is aware of UT Tyler’s DEI restrictions, K&S recommends providing Ardent with a formal letter that (i) includes a copy of UT System Policy 197, Compliance with State Law Regarding Diversity, Equity, and Inclusion in Institutions of Higher Education, and any other policy adopted by UT Tyler to address compliance with § 51.3525, and (ii) requests that Ardent comply with such policies and § 51.3525 in managing the UTHSCT clinical operations.

In the written notice, K&S recommends requesting a follow-up meeting to discuss the impact of Ardent’s DEI initiatives on UTHSCT’s clinical operations, with the meeting to include Donald Baker and other appropriate Ardent leaders. The purpose of the meeting would be to discuss and decide on formal parameters around Ardent’s DEI initiatives and the UTHSCT clinical operations, particularly as it relates to UTHSCT employees receiving information about Ardent’s DEI initiatives, including materials around Ardent’s women in leadership initiatives (including invites to DEI events and dissemination of DEI-related newsletters). The Ardent DEI Committee should also be fully briefed on the SB 17 considerations and UT Tyler’s DEI policies applicable to the UTHSCT clinical operations, so Ardent’s DEI Committee is aware of these limitations as it makes decisions regarding its approach to DEI in East Texas. K&S also recommends exploring with Ardent whether Ardent is willing to focus any DEI initiatives that do not comply with SB 17 on only areas outside of Texas in order to allow for uniform treatment of employees within the UT Health East Texas facilities as to SB 17.

K&S recommends confirming with Ardent whether the Ardent DEI initiatives in the East Texas region are funded solely with funding from Ardent parent and if not, understanding the source of funding.

In advance of this meeting and submission of this formal notice, K&S also recommends obtaining sample “women in leadership” newsletters disseminated by Ardent to employees of UTHSCT so UT Tyler can better understand the content of what is being shared as part of Ardent’s women in leadership initiative. K&S also recommends confirming whether these newsletters are still being circulated to employees working in the UT Health East Texas hospitals, including UTHSCT employees.

**Management Action Plan:** A formal letter was sent on July 29, 2024, as recommended above, and discussions were held with Ardent leadership to ensure Ardent’s awareness of UT Tyler’s DEI restrictions and its compliance in managing UTHSCT clinical operations.

**Anticipated Implementation Date:** Completed as of July 29, 2024.