

DOJ Guidance: Recommendations for Implementation

1. ERGs and registered student organizations

Continue to allow identity-based and affinity ERGs and registered student organizations, as long as the organizations are (1) clearly open to all, including in programs and activities, and (2) adopt standard non-discrimination language that is incorporated in the charter, constitution or other governing document for the organization.

Further, we recommend the creation of a compliance toolkit and training for leadership of ERGs and registered student organizations that outlines expectations around inclusivity, advertisement, and language, as well as includes examples of required language and practices. The Office of Legal Affairs, in partnership with the Offices of Human Resources, Academic Affairs, and Student Life, will develop this toolkit and share with ERGs and registered student organizations through standard communication channels. Further, as part of the toolkit process, consideration should be given to the potential creation of an annual audit or affirmation process to confirm that organizations remain in compliance with these requirements moving forward.

2. Continued usage of race neutral criteria in university programs and activities

Allow for the continued usage of the “race neutral criteria” identified by the DOJ where it is confirmed that the criteria does not serve the purpose of being a proxy for race or ethnicity and there is appropriate documentation of the purpose for the use of the criteria. For example, programming that provides support and resources to all first-generation students, regardless of protected class status, and has been developed in alignment with research-based findings and university experience regarding the specialized needs of this population of students would continue to be allowable.

To support this continued use, the Office of Legal Affairs will provide written guidance by the week of September 15th to units and colleges on appropriate usage of race neutral criteria, prohibited usage of race neutral criteria, and recommendations for documentation of appropriate usage.

3. Recruitment activities with affinity and identity-based organizations

Allow for continued participation in recruitment activities or programs with/sponsored by affinity and identity-based organizations where the college or unit can (1) clearly articulate and document legitimate factors for engagement; (2) demonstrate that this engagement has discipline-specific relevance and is part of a broader recruitment strategy; and, (3) confirm that the organization is open to all without regard to protected class status.

To support this continued use, the Office of Legal Affairs will include in the written guidance (referenced above) appropriate legitimate factors for continued engagement in

recruitment activities with affinity and identity-based organizations and recommend documentation of these factors by the college or unit. Further, the Offices of Human Resources and Academic Affairs, in partnership with the Office of Legal Affairs, will develop documentation templates and compliance requirements to be incorporated into existing faculty and staff hiring processes.

4. SB1 exceptions for DEI training and orientations

Pause the advancement of any SB 1 exception requests to ODHE for DEI trainings or orientations that include implicit bias or privilege at this time given that the DOJ guidance does not discuss exceptions for accreditation, licensure, or other state or federal law requirements. Instead, we recommend working with programs to understand if there are alternative ways to achieve licensure or accreditation requirements through external engagement with regulators and accreditors.

5. Cultural Competency

The WMC and university services and programs that see patients/clients (e.g., Counseling and Consultation Service, Student Health Services) may continue to provide training on cultural competency given the importance of providing this factual training to support the provision of patient/client-centered, individualized care, which lead to better patient/client outcomes and patient/client experiences.

Terminology for these trainings will be updated to better match the training and the intent of the work in alignment with best practices.