

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 474

By Senator Smith (Mr. President)

[By Request of the Executive]

[Introduced on February 14, 2025; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding two new articles, designated §5-33-1, §5-33-2, §5-33-3, §18B-1G-1, §18B-1G-2, §18B-1G-3, §18B-1G-4, §18B-1G-5, and four new sections, designated §18-2-9b, §18-5-29, §18B-14-5, §18B-14-6, relating to the elimination of diversity, equity, and inclusion programs, trainings, activities, offices, and officers from the executive branch, primary and secondary schools, and institutions of higher education of the state.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 33. EQUAL TREATMENT BY EXECUTIVE BRANCH ACT OF 2025.

<u>§5-33-1.</u>	<u>Legislative</u>	<u>Findings.</u>
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The purpose of this article is to ensure that the various departments, divisions, agencies, and boards of the State of West Virginia are treating individuals as equals under the law with respect to recruitment, hiring, promotion, and training.

§5-33-2. Definitions.

As used in this article:

(1) "Diversity, equity, and inclusion" means any action, attempt, or effort to:

(A) Influence hiring or employment practices with respect to race, color, sex, ethnicity, or national origin, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;

(B) Promote or provide special benefits to individuals on the basis of race, color, ethnicity, or national origin;

8 (C) Promote policies or procedures designed or implemented in reference to race, color,
9 ethnicity, or national origin, other than to ensure compliance with an applicable court order or state
10 or federal law; or

11 (D) Conduct trainings, programs, or activities designed or implemented in reference to
12 race, color, ethnicity, or national origin, other than trainings, programs, or activities developed for
13 the sole purpose of ensuring compliance with an applicable court order or state or federal law.

14 (2) "Ethnic group" means a category of population that is set apart and bound together by
15 common ties of race, language, nationality, or culture; and

16 (3) "Race" means any one of the groups that humans are often divided into based on
17 physical traits regarded as common among people of shared ancestry.

18 (4) "Sex" means an individual's physical form as a male or female based solely on the
19 individual's reproductive biology and genetics at birth.

§5-33-3.

Prohibition.

1 (a) No department, division, agency, or board of this state may:

2 (1) Establish or maintain an office or division or other unit by any name whose purpose, in
3 whole or in part, is the promotion of diversity, equity, and inclusion;

4 (2) Hiring or assign an employee or contracting with a third party to promote diversity,
5 equity, and inclusion;

6 (3) Compel, require, induce, or solicit any person to provide a diversity, equity, and
7 inclusion statement or give preferential consideration to any person based on the provision of a
8 diversity, equity, and inclusion statement;

9 (4) Give preference on the basis of diversity, equity, and inclusion to an applicant for
10 employment, an employee, or a participant in any function of the office or department; or

11 (5) Requiring as a condition of employment that an employee participate in diversity,
12 equity, and inclusion training.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9b. Equal Treatment in Primary and Secondary Education Act of 2025.

(a) As used in this section:

(1) "Ethnic group" means a category of population that is set apart and bound together by common ties of race, language, nationality, or culture; and

(2) "Race" means any one of the groups that humans are often divided into based on physical traits regarded as common among people of shared ancestry.

(3) "Sex" means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth.

(b) A school district, a public charter school, the West Virginia Board of Education, the West Virginia Department of Education, or any employee of the aforementioned entities may not provide instruction in, require instruction in, make part of a course, or require a statement or affirmation by any employee of the following concepts:

(1) One race, ethnic group, or sex is morally or intellectually superior to another race, ethnic group, or sex for any inherent or innate reason;

(2) An individual, by virtue of the individual's race, ethnicity, or sex, is racist, sexist, or oppressive, whether consciously or unconsciously for any inherent or innate reason;

(3) An individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race, ethnicity, or sex;

(4) An individual's moral character is strongly influenced by the individual's race, ethnicity, or sex;

(5) An individual, by virtue of the individual's race, ethnicity, or sex, bears responsibility for actions committed by other members of the same race, ethnic group, or sex;

(6) An individual should feel discomfort, guilt, anguish, or any other form of psychological

distress because of the individual's race, ethnicity, or sex; and

(7) Academic achievement, meritocracy, or traits such as a hard work ethic are racist or sexist or were created by members of a particular race, ethnic group, or sex to oppress members of another race, ethnic group, or sex.

(c) Nothing in subsection (b) of this section prohibits:

(1) The discussion of those concepts in theory as part of an academic course if discussion of alternative theories is also included in the course;

(2) The discussion, examination and debate that race, ethnicity, or sex has impacted historical or current events, including the causes of those current or historical events; and

(3) The right to freedom of speech protected by the First Amendment of the United States Constitution and the West Virginia Constitution outside the context of employment with any school district or public charter school.

(d) Any student, parent, or guardian of a student, or employee aggrieved by an alleged violation of this section may file a complaint with the school principal.

(e) Any complainant, upon an adverse ruling or no ruling within 10 business days by the school principal, may file an appeal to the county superintendent except that in the case of a student enrolled in or an employee of a public charter school, the complainant may file an appeal to the authorizer.

(f) Any complainant, upon an adverse ruling or no ruling within 10 business days by the county superintendent or public charter school authorizer, may file an appeal to the state superintendent. The state superintendent shall make forms available for students, parents or guardians of a student, and employees to file complaints and appeals pursuant to this subsection.

(g) Each school principal shall report the number of complaints filed with him or her the previous school year, the nature of each complaint, and the resolution of each complaint to the county superintendent annually by August 1.

(h) The county superintendent shall report the number of complaints filed in his or her

county the previous school year, the nature of each complaint, and the resolution of each complaint to the state superintendent annually by September 1.

(i) The state superintendent, or his or her designee shall report to the Legislative Oversight Commission on Education Accountability the number of complaints filed during the previous school year statewide and by county, the nature of each complaint, and the resolution of each complaint annually by October 1.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-29. Preferred Gender Pronouns.

(a) For the purposes of this section: "Sex" means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth.

(b) County board and public charter school employees shall not be:

(1) Required to use a student's preferred pronoun when referring to the student if the preferred pronoun is not consistent with the student's sex;

(2) Civilly liable for using a pronoun that is consistent with the sex of the student to whom the teacher or employee is referring, even if the pronoun is not the student's preferred pronoun; and

(3) Subject to an adverse employment action for not using a student's preferred pronoun if the student's preferred pronoun is inconsistent with the student's sex.

(c) A county board or public charter school is not civilly liable if a county board or public charter school employee refers to a student using a pronoun that is consistent with the sex of the student to whom the employee is referring, even if the pronoun is not the student's preferred pronoun.

(d) No county board or public charter school may establish a policy or take any action that is contrary to this section.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 1G. DIVERSITY, EQUITY, AND INCLUSION OFFICES AND OFFICERS
PROHIBITED.

§18B-1G-1. Definitions.

(a) As used in this section:

(1) "Diversity, equity, and inclusion" means any action, attempt, or effort to:

(A) Influence hiring or employment practices with respect to race, color, sex, ethnicity, or national origin, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;

(B) Promote or provide special benefits to individuals on the basis of race, color, ethnicity, or national origin;

(C) Promote policies or procedures designed or implemented in reference to race, color, ethnicity, or national origin, other than to ensure compliance with an applicable court order or state or federal law; or

(D) Conduct trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, or national origin, other than trainings, programs, or activities developed for the sole purpose of ensuring compliance with an applicable court order or state or federal law.

(2) "Diversity, Equity, and Inclusion Office" means an office, division, or other unity of an institution of higher education tasked with diversity, equity, or inclusion actions, attempts, or efforts;

(3) "Diversity, Equity, and Inclusion Officer" means any officer, employee, or agent of an institution of higher education tasked with diversity, equity, or inclusion actions, attempts, or efforts;

(4) "Ethnic group" means a category of population that is set apart and bound together by common ties of race, language, nationality, or culture; and

(5) "Race" means any one of the groups that humans are often divided into based on

23 physical traits regarded as common among people of shared ancestry.

24 (6) "Sex" means an individual's physical form as a male or female based solely on the
25 individual's reproductive biology and genetics at birth.

§18B-1G-2. Restrictions.

1 (a) A state institution of higher education and each governing board of a state institution of
2 higher education shall ensure that each unit of the institution does not:

3 (1) Establish, sustain, support, staff, or maintain a diversity, equity, and inclusion officer or
4 office;

5 (2) Hire or assign an employee of the institution or contract with a third party to perform the
6 duties of a diversity, equity, and inclusion office;

7 (3) Compel, require, induce, or solicit any person to provide a diversity, equity, and
8 inclusion statement or give preferential consideration to any person based on the provision of a
9 diversity, equity, and inclusion statement;

10 (4) Give preference on the basis of diversity, equity, and inclusion to an applicant for
11 employment, an employee, or a participant in any function of the institution; or

12 (5) Require as a condition of enrolling at the institution or performing any institution function
13 any person to participate in diversity, equity, and inclusion training.

14 (b) A state institution of higher education and each governing board of a state institution of
15 higher education shall ensure that each unit of the institution shall adopts policies and procedures
16 for appropriately disciplining, including by termination, an employee or contractor of the institution
17 who engages in conduct in violation of subdivision (a) of this section.

18 (c) Subsection (a) shall not be construed to cover or affect a state institution of higher
19 education's support of any of the following:

20 (1) Academic course instruction;

21 (2) Research or creative works by the state institution of higher education's students,
22 faculty, or other research personnel, and the dissemination of such research or creative works;

(3) Activities of registered student organizations;

(4) Arrangements for guest speakers and performers with short-term engagements;

(5) Mental or physical health services provided by licensed professionals;

(6) Services or support provided to individuals with learning, physical or neurological developmental disabilities;

(7) Policies, programing, training, practices, activities, or procedures designed to prevent sexual harassment;

(8) Data collection;

(9) Sex-based educational opportunities such as science, technology, engineering, and mathematics (STEM) opportunities for women;

(10) Donor-designated scholarships;

(11) Single-sex athletic programs, events, or teams;

(12) Single-sex spaces including restrooms, changing rooms, locker rooms, showers, sleeping quarters, and dorms;

(13) Compliance with the state institution of higher education's obligations under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order.

§18B-1G-3. Exceptions.

(a) "Diversity, equity, and inclusion office" does not include any of the following:

(1) An office or position operating with the sole and exclusive mission of ensuring legal compliance under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*,

as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order;

(2) An academic department within a state institution of higher education that exists primarily for the purpose of offering courses for degree credit and that does not establish a policy or procedures to which other departments of the public institutions of higher education are subject;

(3) A registered student organization;

(4) An office or position engaged in providing services or support to individuals with learning, physical or neurological developmental disabilities; or

(5) A unit which may provide resources to certain individuals as long as the resources are equally available to all employees or students regardless of race, color, or ethnicity.

(b) "Diversity, equity, and inclusion officer" does not include any of the following:

(1) Any employee whose sole job duties are to ensure compliance with the state institution of higher education's obligations under Title IX of the federal Education Amendments Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Age Discrimination in Employment Act of 1972, 20 U.S.C. §1681 *et seq.*, as amended, the federal Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.*, as amended, the federal Civil Rights Act of 1964, Pub. L. No. 88-352, as amended, the West Virginia Human Rights Act, West Virginia Code §5-11-1 *et seq.*, or any other applicable federal or state law or court order;

(2) Any faculty member while engaged in teaching, research, or the production of creative works, the dissemination of the faculty member's research or creative works, or advising a registered student organization; or

(3) A guest speaker or performer with a short-term engagement.

(c) Nothing in this article may be construed to limit or prohibit an institution of higher education or an employee of an institution of higher education from, for purposes of applying for a grant or complying with the terms of accreditation by an accrediting agency, submitting to the

grantor or accrediting agency a statement that:

(1) Highlights the institution 's work in supporting:

(A) First-generation college students;

(B) Low-income students; or

(C) Underserved student populations.

§18B-1G-4. Reporting.

(a) A state institution of higher education shall file and certify with the Joint Committee on Education a report of the steps taken by the academic institution of higher education and its staff, administration, and faculty to comply with this article.

(b) The state institution of higher education shall publish the report described in subsection (a) on the institution of higher education's webpage.

(c) The state institution of higher education shall file the report described in subsection (a) by July 1, 2025, and on July 1 of each year thereafter, or the state institution of higher education shall not be permitted to expend any moneys appropriated by the Legislature for the next fiscal year.

§18B-1G-5. Spending.

A state institution of higher education shall reallocate any and all unexpended moneys appropriated by the Legislature in fiscal year 2025-2026 that would have been expended on prohibited diversity, equity, and inclusion offices and officers on or after the effective date of this article to merit scholarships for lower-income and middle-income students, first generation college students, or to reduce tuition and mandatory fees for resident students.

ARTICLE 14. MISCELLANEOUS.

§18B-14-5. Equal Treatment in Higher Education Act of 2025

(a) As used in this section:

(1) "Diversity, equity, and inclusion" means any action, attempt, or effort to:

(A) influence hiring or employment practices with respect to race, color, sex, ethnicity, or

national origin, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;

(B) Promote or provide special benefits to individuals on the basis of race, color, ethnicity, or national origin;

(C) Promote policies or procedures designed or implemented in reference to race, color, ethnicity, or national origin, other than to ensure compliance with an applicable court order or state or federal law; or

(D) Conduct trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, or national origin, other than trainings, programs, or activities developed for the sole purpose of ensuring compliance with an applicable court order or state or federal law.

(2) "Ethnic group" means a category of population that is set apart and bound together by common ties of race, language, nationality, or culture; and

(3) "Race" means any one of the groups that humans are often divided into based on physical traits regarded as common among people of shared ancestry.

(5) "Sex" means an individual's physical form as a male or female based solely on the individual's reproductive biology and genetics at birth.

(b) State institutions of higher education in this state have an obligation to prohibit, among other things, discrimination on the basis of race or ethnic group in the administration of their education programs, activities, or with respect to admission or employment.

(c) State institutions of higher education have an obligation to protect the right to free speech and expression protected by the First Amendment of the United States Constitution, the West Virginia Constitution, and the provisions of §18B-20-1 *et seq.* As part of that commitment, state institutions of higher education must be committed to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the university community to be offensive, unwise, immoral, or misguided and that it is for the individual members of the university community, not for the university as an institution, to

35 make those judgements for themselves.

36 (d) Except as provided in subsection (e) of this section, a state institution of higher
37 education or any employee of a state institution of higher education may not require a student or
38 employee to take instruction in, or include in the curriculum of any required course, or require a
39 statement or affirmation by any student or employee that the following concepts are factual and
40 accurate or must be held as a belief of the student or employee:

41 (1) One race, ethnic group, or sex is morally, or intellectually superior to another race,
42 ethnic group, or sex for any inherent or innate reason;

43 (2) An individual, by virtue of the individual's race, ethnicity, or sex, is racist, sexist, or
44 oppressive, whether consciously or unconsciously for any inherent or innate reason;

45 (3) An individual should be discriminated against because of the individual's race, ethnicity,
46 or sex;

47 (4) An individual's moral character is strongly influenced by the individual's race, ethnicity,
48 or sex;

49 (5) An individual, by virtue of the individual's race, ethnicity, or sex, bears responsibility for
50 actions committed by other members of the same race, ethnic group, or sex;

51 (6) An individual has an obligation to feel discomfort, guilt, anguish, or any other form of
52 psychological distress because of the individual's race, ethnicity, or sex; and

53 (7) Academic achievement, meritocracy, or traits such as a hard work ethic are racist or
54 sexist or were created by members of a particular race, ethnic group, or sex to oppress members
55 of another race, ethnic group, or sex.

56 (e) Nothing in subsection (d) of this section prohibits:

57 (1) The discussion of those concepts in theory as part of an academic course if discussion
58 of alternative theories is also included in the course;

59 (2) The discussion, examination, and debate that race, ethnicity, or sex has impacted
60 historical or current events, including the causes of those current or historical events; and

61 (3) The right to freedom of speech protected by the First Amendment of the United States
62 Constitution and the West Virginia Constitution.

63 (f) Each campus shall report to the Higher Education Policy Commission or the Council for
64 Community and Technical College Education, as applicable, a description of any violations of this
65 section. The description shall include the nature of each incident, as well as what disciplinary
66 action, if any, was taken against members of the campus community determined to be responsible
67 for those specific incidents of violation and shall be reported without revealing personally
68 identifiable information annually, by August 1. The commission and council shall then report to the
69 Legislative Oversight Commission on Education Accountability any violations reported to them
70 pursuant to this subsection.

§18B-14-6.

Nondiscrimination.

1 (a) It is the policy of the state that the administrations of state institutions of higher
2 education, and their administrative units, be officially neutral with regard to widely contested
3 opinions in the state regarding unconscious or implicit bias, cultural appropriation, identity group
4 allyship, micro aggressions, group marginalization, ant-racism, systemic oppression, social
5 justice, intersectionality, neo-pronouns, racial privilege, critical race theory, and any related
6 formulation of these concepts.

7 (b) "Diversity, Equity, and Inclusion Training" means:

8 (1) Training toward any diversity, equity, and inclusion activity which seeks to:

9 (A) Manipulate or otherwise influence the composition of the faculty or student body with
10 reference to race, color, sex, ethnicity, or national origin, apart from ensuring colorblind and sex-
11 neutral admissions and hiring in accordance with state and federal anti-discrimination laws;

12 (B) Engage in, or promote or promulgate for, differential attention to, treatment of, or
13 provision of special benefits to, individuals or groups on the basis of race, color, ethnicity, or
14 national origin except where permitted by law; or

15 (C) Promote as the official position of the institution or component thereof, or of the

administration, or develop or engage in training, programming, or activities promoting, a widely contested opinion in contravention of the neutral educational policy of this state as described in subsection (a) of this section; or

(2) Training from an administrative official or administrative unit of an institution that involves one or more of the following interrelated concepts:

(A) The nation, the state, American or state culture, society in general is based on or significantly influence by present-day institutional structures or relations of power, privilege, subordination, or oppression that operate on the basis of race, sex, color, ethnicity, national origin, or any intersection of these classes;

(B) Special benefits should be conferred on the basis of race, color, ethnicity, or national origin; or

(C) Unconscious or implicit bias, cultural appropriation, identity group allyship, microaggressions, micro-invalidating, group marginalization, anti-racism, systemic oppression, structural racism, structural inequity, racial privilege, social justice, intersectionality, neo-pronouns, inclusive language, or related formulation of these concepts.

(c) No diversity statement shall ever be required or solicited as part of an admissions process, employment application process, hiring process, contract renewal process, or promotion process; or as a condition of participation in any administrative or decision-making function of any public institution of higher education.

(d) No public institution of higher education shall give preferential consideration to an applicant, student, staff member, or faculty member due to any opinion expressed or action taken in support of another individual or a group of individuals on the basis of race, color, ethnicity, or national origin.

NOTE: The purpose of this bill is to eliminate divisions, officers, programs, trainings, and policies related to diversity, equity, and inclusion from all departments, divisions, agencies, boards, public primary and secondary schools, and institutions of higher education.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.