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MEMORANDUM

To: Faculty

From: Russ Ivy, Interim Provost and Vice President for Academic Affairs

Date: August 31, 2023

Subject: Guidance on Senate Bill 266

A handwritten signature in black ink that reads 'Russell Ivy'.

I want to take a moment to acknowledge some changes in state statutes.

With the enactment of Senate Bill 266, Florida's public universities are now prohibited from spending funds to promote, support, or maintain programs and activities that advocate for diversity, equity, and inclusion, or promote or engage in political or social activism. There are numerous exceptions, including student-led activities and any initiatives that focus on veterans, low-income students, first generation students, students with unique abilities, nontraditional students, and transfer students, among others.

While additional implementation advice regarding this legislation is still pending from the state, please review the attached guidance document and list of frequently asked questions prepared by FAU's Office of the General Counsel.

CC: Council of Deans
Provost's Advisory Council

GUIDANCE ON SENATE BILL 266

A recently enacted Florida law, known as Senate Bill 266 or SB 266, amends Florida Statute 1004.06 by prohibiting the use of any state or federal funds to promote, support, or maintain any programs or campus activities that:

- (1) violate Florida Statute 1000.05 (also known as HB 7); or
- (2) advocate for diversity, equity, and inclusion, or promote or engage in political or social activism.

The legislation does not prohibit the following categories of activities:

- Student led organizations are allowed to expend student fees and utilize university facilities for speech and expressive activity that would otherwise violate SB 266, so long as funds are allocated to student-led organizations and use of facilities is granted pursuant to written policies or regulations of the University.
- Programs, campus activities or functions:
 - (a) Required for compliance with general or federal laws or regulations;
 - (b) For obtaining or retaining institutional or discipline-specific accreditation with approval of the Board of Governors; or
 - (c) For access programs for military veterans, Pell Grant recipients, first generation college students, non-traditional students, “2+2” transfer students from the Florida College System, students from low-income families, or students with unique abilities.

The legislation directs the Board of Governors to promulgate regulations that implement these requirements and define “diversity, equity, and inclusion,” and “political or social activism.” We are currently awaiting those regulations.

This guidance is meant to assist you in understanding and complying with the new statutory requirements. It may be updated as more information becomes available, including when the Board of Governors promulgates their regulations.

SB 266 FAQ

What programs and campus activities are prohibited?

First, SB 266 prohibits *any* program or campus activity that violates Florida Statute 1000.05, or advocates for diversity, equity, and inclusion, or promotes or engages in political or social activism. It is important to remember that, unlike HB 7, this prohibition does not distinguish between voluntary and involuntary activities; it applies to any program or campus activity.

It is also important to remember that under existing Florida law, the University may not shield students, faculty, or staff from expressive activities. Shielding is defined as limiting access to, or observation of, ideas and opinions that students, faculty or staff may find uncomfortable, unwelcome, disagreeable, or offensive. However, what SB 266 seeks to prohibit are campus programs and activities that *advocate* for diversity, equity, and inclusion, or *promote* political or social activism. In other words, it is the advocacy or promotion of a particular viewpoint that this legislation seeks to prohibit.

What does Florida Statute 1000.05 prohibit?

Florida Statute 1000.05, also known as HB 7, states that subjecting any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the concepts listed below shall constitute discrimination on the basis of race, color, national origin, or sex:

- Members of one race, color, national origin, or sex are morally superior to members of another race, color, national origin, or sex.
- A person, by virtue of his or her race, color, national origin, or sex is inherently racist, sexist, or oppressive, whether consciously or unconsciously.
- A person's moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, national origin, or sex.
- Members of one race, color, national origin, or sex cannot and should not attempt to treat others without respect to race, color, national origin, or sex.
- A person, by virtue of his or her race, color, national origin, or sex bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, national origin, or sex.
- A person, by virtue of his or her race, color, national origin, or sex should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.
- A person, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the person played no part, committed in the past by other members of the same race, color, national origin, or sex.
- Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, national origin, or sex to oppress members of another race, color, national origin, or sex.

HB7 is currently enjoined by the United States District Court for the Northern District of Florida. However, its prohibitions have been included within SB 266, which became effective after the Federal Court's injunction was issued.

Do the prohibitions of SB 266 apply to academic programs?

Yes, so long as those programs are not required for compliance with general or federal laws or regulations or for obtaining or retaining institutional or discipline-specific accreditation. If such programs are required for accreditation, approval must be sought from the Board of Governors. We anticipate that the approval process will be included in the regulations issued by the Board of Governors.

Does SB 266 apply to activities in the classroom?

As stated in the guidance provided on HB7, educators must always be sensitive to the potential for perception of the academic process as “indoctrination” rather than education. Therefore, objective and skillful exposition of subject matter, including the acknowledgment and critique of a variety of scholarly methodologies and opinions, is the duty of every FAU employee. Consistent with the statute, faculty should avoid blaming students for perceived historical injustices, implying that students are personally responsible for events that occurred in the past, telling students that they should feel guilty for those events, or conditioning students’ academic success on acceptance of any particular “belief.” Faculty should also avoid instructional activities that advocate for diversity, equity, and inclusion, and should not promote or engage in political or social activism in the classroom.

Does SB 266 apply to the individual research activities of faculty?

No. Research is not a program or campus activity.

What happens if a complaint is brought against a faculty member for an alleged violation of SB 266?

Any complaints of a violation of the law’s provisions will be handled in accordance with University policies, procedures, and regulations governing investigations, due process, and progressive discipline, including any applicable collective bargaining agreements.

Does SB 266 restrict programs and activities conducted by student organizations?

No. SB 266 allows student organizations to expend student fees and utilize university facilities for speech and expressive activity that would otherwise violate SB 266, so long as funds are allocated to student-led organizations and use of facilities is granted pursuant to written policies or regulations of the University.

Can Faculty and Staff members continue to serve as advisors to Registered Student Organizations?

Yes. Faculty and staff members of the University may continue to serve in advisory capacities to Registered Student Organizations (RSOs) and Student Government. As stated in FAU Regulation 4.006, which governs RSOs and Student Government, it is presumed that Students of legal adult age are adults and, therefore, make and are accountable for their decisions and behaviors as individuals and as members of the organization.