



2024 UTAH STATE LEGISLATURE HB 261 – SUMMARY



UTAH ASSOCIATION OF
PUBLIC CHARTER SCHOOLS

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HB 261 bans “prohibited submissions,” “prohibited trainings” and “prohibited discriminatory practices.” In essence, the goal is to keep public employers from considering race, gender and other protected personal characteristics, and attitudes about those characteristics, in the full range of employment decisions.

Personal identity characteristics

The bill defines “personal identity characteristics” as “race, color, ethnicity, sex, sexual orientation, national origin, religion or gender identity.” That list is largely built around structures coming out of Congress’ Civil Rights Act of 1964; including sexual orientation and gender identity in the list reflects the way civil rights understanding has evolved since the mid-60’s.

Prohibited discriminatory practices

HB 261 bans discriminatory practices, including another variation of the classic ban: thou shalt not use personal identity characteristics to discriminate. The bill’s language is more drawn out than that, but it really does reduce to that.

Reflecting the ways in which the national discussion about discrimination has evolved, HB 261 includes another group of prohibited behaviors that may best be described as promoting beliefs claiming the inherent superiority or inferiority of any group of people based on personal identity characteristics. The law reflects forms of the contemporary state of debate around these topics, but in many ways they boil down to a ban on promoting the notion that one group or another is inherently inferior or superior to another group, when the groups are defined by personal identity characteristics.

Prohibited submissions

One explicit example of a prohibited discriminatory practice is a ban on charter schools requiring employees or prospective employees to submit a statement about these issues for an employment decision. Lines 487-488 and 893-909 describe the specific flavors of prohibited submissions. As with many other parts of this bill, it is probably better to understand the broader category of “prohibited submissions,” than it is to parse whether a specific kind of statement is formally banned. The law prohibits charter schools from requiring employees or potential employees to submit a statement about their commitment to these issues.

The law is exhaustive in identifying the employment points where a charter school may not require a prohibited submission. If you want to see the list of specifically identified decisions where the prohibition applies, look at lines 492-506. Functionally, though, I think it’s safest to assume that it’s a comprehensive ban. And if the Legislature discovers at some point that they inadvertently left an employment decision off that list, I am confident they will add that point to the list. My recommendation is pretty simple: don’t.

While the law prohibits charter schools from requiring these kinds of submissions, it does not stop applicants from voluntarily submitting these statements in an employment decision. However, the law does prohibit charter schools from giving a preference to applicants or employees who make that voluntary statement over other applicants who do not make such a statement or submission.

Prohibited trainings

In similar fashion, HB 261 prohibits charter schools from requiring employees to participate in trainings that promote ideas that groups defined by personal identity characteristics are inherently superior or inferior to other groups defined along similar dimensions. As with the list of employment decisions where a charter school cannot require a prohibited submission, the law also includes a lengthy list describing flavors of prohibited trainings. (Examples on that list include anti-racism, critical race theory, implicit bias, racial privilege.) If you are uncertain about whether your required training crosses the line, begin by asking whether it promotes beliefs about the inherent inferiority or superiority of any group. If the answer is yes, assume it's prohibited. If you remain uncertain, consult lines 179-219 in the bill.

Federal exception

Many state laws dealing with discrimination include a federal exception clause. HB 261 is like that. In this case, HB 261 says that its provisions don't apply, if federal law requires a charter school to do something, or to maintain eligibility for a federal program. Importantly, this exception only extends as far as federal law **REQUIRES** the behavior.

Governor Cox has signed this bill, and it will take effect July 1, 2024.