Publication of Equal Employment Opportunity Statements

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TASB Legal Services receives a number of inquiries every year about the legal requirements for publishing an equal employment opportunity (EEO) statement. In particular, districts often ask whether they are required to purchase advertising from certain private publications. As set forth below, few, if any, Texas districts are legally required to publish their EEO statements beyond their local community.

Q: Are districts required to provide notice of equal employment opportunity?

A: Yes. Districts are required to provide notice of equal employment opportunity through several different means, including work-site posters, vacancy notices and applications, and, in specific cases, through the local newspaper.

Posters: As employers, districts with the threshold number of employees must post notices in the workplace under Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act, among others. In addition, districts must post notices under laws applicable to recipients of federal funding and to educational institutions. A summary of these laws and the posting requirements is available in the TASB HR Library, Work-Site Posting Requirements¹. Posters² are available through TASB HR Services.

Applications and vacancy notices: Districts should include EEO statements on applications and vacancy notices to ensure that their EEO policy is communicated to applicants. For example, Title IX, which prohibits discrimination on the basis of sex in education programs or activities, requires districts that receive federal financial assistance to include a notice of nondiscrimination on each vacancy notice used in connection with recruitment of employees. 34 C.F.R. § 106.9(b)(1). The sample forms³ in the TASB HR Library include EEO statements.

CTE programs: Special rules apply to districts with career and technical programs (CTE). A district that provides CTE programs must comply with the Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs, 34 C.F.R. pt. 100, App. B. TEA Career and Technical Education (CTE) Program Access Review (PAR) Monitoring.⁴ Before the beginning of each school year, the district must advise students, parents, employees, and the general public that all career and technical education opportunities will be offered without regard to

¹ www.tasb.org/services/hr_services/mytasb/library/documents/hr_posting.pdf.
² store.tasb.org/work-site-posters/.
⁴ www.tea.state.tx.us/index2.aspx?id=2147495647&menu_id=2147483703.
race, color, national origin, sex, or disability. The district must use local newspapers or other media that reach the general public in the district’s local community to disseminate the required notification. Sample notices are available, in English and Spanish, on TEA’s Web Site, Career and Technical Education (CTE) Program Access Review (PAR) Resources.  

**Q: Are districts required to advertise their EEO status in minority-owned publications?**

**A:** No. Other than the requirement regarding CTE programs discussed above, there is no legal requirement that Texas school districts publish their EEO statements in magazines, newspapers, or other media, regardless of who owns the publication, except in connection with a job posting or similar communication to applicants.

If a district wishes to engage in voluntary outreach activities, the focus should be on the quality of contact. Advertising in a magazine is not likely to be effective if the magazine is not circulated to qualified, minority applicants regardless of who owns or operates the magazine. Moreover, there are often low- and no-cost methods of targeting underrepresented groups—such as attending recruiting fairs at historically black colleges or women’s colleges—that are likely to be more effective.

**Q: Are districts required to adopt affirmative action programs?**

**A:** Probably not. Texas law does not require school districts to establish affirmative action programs. The primary source of affirmative action requirements is a group of federal laws applicable to federal contractors. Several federal laws require federal contractors to take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, national original, disability, or Vietnam era veterans’ status. Exec. Order No. 11,246, 3 C.F.R. § 339 (1964-1965), reprinted as amended in 42 U.S.C. § 2000e (1991); Rehabilitation Act, § 503, 29 U.S.C. § 793 (1992); Vietnam Era Veterans’ Reemployment Rights Act, 38 U.S.C. § 4212 (2002). These laws are enforced by the Office of Federal Contract Compliance Programs (OFCCP).

Few, if any, Texas districts are federal contractors under these laws. The test for whether an entity is a federal contractor subject to OFCCP jurisdiction is as follows:

1. The entity holds one or more Federal contracts or subcontracts for supplies or services;
2. The value of the contracts or subcontracts exceeds $50,000; and
3. The contractor has 50 or more employees.  

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5 [www.tea.state.tx.us/index2.aspx?id=2147495596&menu_id=2147483703&menu_id2=2147483709](http://www.tea.state.tx.us/index2.aspx?id=2147495596&menu_id=2147483703&menu_id2=2147483709)

6 Two other groups of contractors are also subject to OFCCP jurisdiction: (1) contracts who provide construction services to the federal government; and (2) contractors who hold Government bills of lading, serve as depositories of Federal funds, or are issuing and paying agents for U.S. savings bonds and notes in any amount. Districts are not likely to fall into either of these categories.

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TASB Legal Services
See 41 C.F.R. §§ 60-1.40, 60-250.4, and 60-741.4. Most Texas districts receive federal funding and/or federal grants, either directly or through TEA. However, few districts, if any, have contracts to provide goods or services to the federal government.

**Q:** Are districts required to engage in “good faith efforts”?

A: Again, probably not. Good faith efforts refers to a federal contractor’s efforts to make all aspects of its affirmative action plan work. Good faith efforts are a component of mandatory affirmative action programs. If a district is not required to have a mandatory affirmative action program, the district is not required to engage in good faith efforts as defined by OFCCP.

Good business practices may include voluntary efforts to recruit applicants from underrepresented groups, such as through outreach to educator preparation programs with a high percentage of minority participants. But, these practices are not mandatory for entities that are not federal contractors.

**Conclusion:** Few, if any, Texas school districts are legally-required to externally publish their EEO statements, unless the publication is associated with a job advertisement or in compliance with a CTE program. A district with questions regarding the specific application of EEO laws should contact its school attorney. The district may also contact TASB Legal Services at 800-580-5345 for general assistance.