

DATE:	November 18, 2021
SUBJECT:	Senate Bill 3, 87th Texas Legislature, Second Called Session– Update to Instructional Requirements and Prohibitions
CATEGORY:	87th Texas Legislature, 2nd Called Session Implementation
NEXT STEPS:	Share with appropriate staff

The 87th Texas Legislature, Second Called Session (87(2)), enacted Senate Bill (SB) 3. SB 3 (87(2)), effective December 2, 2021, updates various instructional requirements and prohibitions enacted by House Bill (HB) 3979 during the Regular Session of the 87th Legislature (87(R)). This letter provides highlights of SB 3 (87(2)) and notes where relevant changes occurred from HB 3979 (87(R)) that impact instructional requirements for school districts and open-enrollment charter schools. These highlights should not replace consultation with local counsel and other appropriate staff in implementing these legislative enactments.

Highlights of Senate Bill 3

SB 3 (87(2)), like HB 3979 (87(R)) before it, creates a new section of the Texas Education Code (TEC), §28.0022, that provides certain requirements and prohibitions related to instructional content. Several components of SB 3 (87(2)) are new and apply to the entirety of the section. Two examples follow:

- Nothing in this section may be construed as limiting the teaching of or instruction in the essential knowledge and skills (i.e., the TEKS) adopted under TEC, Chapter 28, Subchapter A. TEC, §28.0022(e).
- This section does not create a private cause of action against a teacher, administrator, or other employee of a school district or open-enrollment charter school. A school district or open-enrollment charter school may take appropriate action involving the employment of any teacher, administrator, or other employee based on the individual's compliance with state and federal laws and district policies. TEC, §28.0022(f).

The following chart provides a listing of several statutory components of SB 3 (87(2)), noting the differences between the HB 3979 (87(R)) version that preceded it. The statute has been reorganized in this chart for clarity. In the chart, **bolded** text indicates language added by SB 3 (87(2)) to subsections that previously existed in HB 3979 (87(R)) but that have been changed. *Italicized* text indicates language from HB 3979 (87(R)) that was deleted, expanded, or otherwise incorporated by SB 3 (87(2)).

	Senate Bill 3 (TEC, §28.0022)	House Bill 3979
(a)	For any course or subject , including an innovative course, for a grade level from kindergarten through grade 12... [TEC, §28.0022(a)]	Expands: “For <i>any social studies course</i> in the required curriculum...” [TEC, §28.002(h-3)]
(a)(1)	...a teacher may not be compelled to discuss a widely debated and currently controversial issue of public policy or social affairs; [§28.0022(a)(1)]	Replaces: “...a teacher may not be compelled to discuss a <i>particular current event or</i> widely debated and currently controversial issue of public policy or social affairs;” [§28.002(h-3)(1)]
(a)(2)	...a teacher who chooses to discuss a topic described by Subdivision (1) shall explore that topic objectively and in a manner free from political bias ; [§28.0022(a)(2)]	Replaces: “...a teacher who chooses to discuss a topic described by Subdivision (1) shall, <i>to the best of the teacher’s ability, strive to explore the topic from diverse and contending perspectives without giving deference to any one perspective</i> ,” [§28.002(h-3)(2)]
(a)(3)	...a school district, open-enrollment charter school, or teacher may not require, make part of a course, or award a grade or course credit, including extra credit, for a student’s: [§28.0022(a)(3)]	Same. [§28.002(h-3)(3)]
(a)(3)(A)	... work for, affiliation with, or service learning in association with any organization engaged in:	No similar provision.
(a)(3)(A)(i)	lobbying for legislation at the federal, state, or local level, if the student’s duties involve directly or indirectly attempting to influence social or public policy or the outcome of legislation; or	No similar provision.
(a)(3)(A)(ii)	social policy advocacy or public policy advocacy; [§28.0022(a)(3)(A)]	No similar provision.
(a)(3)(B)	... political activism, lobbying, or efforts to persuade members of the legislative or executive branch at the federal, state, or local level to take specific actions by direct communication; or [§28.0022(a)(3)(B)]	Same. [§28.002(h-3)(3)(A)]
(a)(3)(C)	... participation in any internship, practicum, or similar activity involving social policy advocacy or public policy advocacy; [§28.0022(a)(3)(C)]	Same. [§28.002(h-3)(3)(B)]
(a)(4)	... a teacher, administrator, or other employee of a state agency, school district, or open-enrollment charter school may not: [§28.0022(a)(4)]	Same. [§28.002(h-3)(4)]

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(a)(4)(A)	... require or make part of a course inculcation in the concept that: [§28.0022(a)(4)(A)]	Replaces: "... require or make part of a course the concept that:" [§28.002(h-3)(4)(B)]
(a)(4)(A)(i)	... one race or sex is inherently superior to another race or sex; [§28.0022(a)(4)(A)(i)]	Same. [§28.002(h-3)(4)(B)(i)]
(a)(4)(A)(ii)	... an individual, by virtue of the individual's race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously; [§28.0022(a)(4)(A)(ii)]	Same. [§28.002(h-3)(4)(B)(ii)]
(a)(4)(A)(iii)	... an individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race or sex ; [§28.0022(a)(4)(A)(iii)]	Expands: "... an individual should be discriminated against or receive adverse treatment solely or partly because of the individual's race;" [§28.002(h-3)(4)(B)(iii)] Replaces: "... <i>members of one race or sex cannot and should not attempt to treat others without respect to race or sex;</i> " [§28.002(h-3)(4)(B)(iv)]
(a)(4)(A)(iv)	... an individual's moral character, standing, or worth is necessarily determined by the individual's race or sex; [§28.0022(a)(4)(A)(iv)]	Same. [§28.002(h-3)(4)(B)(v)]
(a)(4)(A)(v)	... an individual, by virtue of the individual's race or sex, bears responsibility, blame, or guilt for actions committed by other members of the same race or sex; [§28.0022(a)(4)(A)(v)]	Replaces: "... an individual, by virtue of the individual's race or sex, bears responsibility for actions committed <i>in the past</i> by other members of the same race or sex;" [§28.002(h-3)(4)(B)(vi)] Replaces: "... an individual <i>should feel discomfort, guilt, anguish, or any other form of psychological distress on account of the individual's race or sex;</i> " [§28.002(h-3)(4)(B)(vii)]
(a)(4)(A)(vi)	... meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race; [§28.0022(a)(4)(A)(vi)]	Same. [§28.002(h-3)(4)(B)(viii)]
(a)(4)(A)(vii)	...the advent of slavery in the territory that is now the United States constituted the true founding of the United States; or [§28.0022(a)(4)(A)(vii)]	Same. [§28.002(h-3)(4)(B)(ix)]
(a)(4)(A)(viii)	... with respect to their relationship to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the authentic founding principles of the United States, which include liberty and equality; [§28.0022(a)(4)(A)(viii)]	Same. [§28.002(h-3)(4)(B)(x)]

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(a)(4)(B)	... teach, instruct, or train any administrator, teacher, or staff member of a state agency, school district, or open-enrollment charter school to adopt a concept listed under Paragraph (A); or [§28.0022(a)(4)(B)]	Replaces: “... be required to engage in training, orientation, or therapy that presents any form of race or sex stereotyping or blame on the basis of race or sex” [§28.002(h-3)(4)(A)]
(a)(4)(C)	require an understanding of the 1619 Project. [28.0022(a)(4)(C)]	Same. [§28.002(h-3)(4)(C)]
(b)	... Subsection (a)(3) does not apply to a student's participation in: [§28.0022(b)]	No similar provision.
(b)(1)	... community charitable projects, such as building community gardens, volunteering at local food banks, or other service projects; [§28.0022(b)(1)]	No similar provision.
(b)(2)	... an internship or practicum: [§28.0022(b)(2)]	No similar provision.
(b)(2)(A)	... for which the student receives course credit under a career and technology education program or under the P-TECH program established under Section 29.553; and [§28.0022(b)(2)(A)]	No similar provision.
(b)(2)(B)	... that does not involve the student directly engaging in lobbying, social policy advocacy, or public policy advocacy; or [§28.0022(b)(2)(B)]	No similar provision.
(b)(3)	... a program that prepares the student for participation and leadership in this country's democratic process at the federal, state, or local level through the simulation of a governmental process, including the development of public policy. [§28.0022(b)(3)]	No similar provision.
(c)	... A state agency, school district, or open-enrollment charter school may not accept private funding for the purpose of developing a curriculum, purchasing or selecting curriculum materials, or providing teacher training or professional development related to a concept listed in Subsection (a)(4)(A) . [§28.0022(c)]	Expands: “... A state agency, school district, or open-enrollment charter school may not accept private funding for the purpose of developing a curriculum, purchasing or selecting curriculum materials, or providing teacher training or professional development <i>for a course described by Subsection (h-3)(3).</i> ” [§28.002(h-4)]

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(d)	... A school district or open-enrollment charter school may not implement, interpret, or enforce any rule in a manner that would result in the punishment of a student for reasonably discussing the concepts described by Subsection (a)(4) in school or during a school-sponsored activity or have a chilling effect on reasonable student discussions involving those concepts in school or during a school-sponsored activity. [§28.0022(d)]	Replaces: "... A school district or open-enrollment charter school may not implement, interpret, or enforce any rules <i>or student code of conduct</i> in a manner that would result in the punishment of a student for discussing, or have a chilling effect on student discussion <i>of</i> , the concepts <i>described by Subsection (h-3)(4).</i> " [§28.002(h-5)]
(g)	... Nothing in this section may be construed as prohibiting a teacher employed by a school district or open-enrollment charter school from directing a classroom activity that involves students communicating with an elected official so long as the district, school, or teacher does not influence the content of a student's communication. [§28.0022(g)]	No similar provision.

Other Provision of SB 3

SB 3 (87(2)) includes several other modifications or additions to the Texas Education Code, beyond §28.0022. This includes directives to the State Board of Education to modify certain portions of the social studies TEKS for civics education. It also includes teacher training requirements in civics education. Please note, as revisions to the TEKS and development of training have not been completed, future correspondence will provide additional detail regarding implementation of the civics training requirement after the 2021-2022 school year.

This communication provides a comparison regarding some changes enacted by SB 3 (87(2)) and does not supersede or negate the actual language of the statute. A school district or open-enrollment charter school should consult local counsel and other appropriate staff when implementing at the local level.