



Association of  
Title IX Administrators

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# Title VI, Islamophobia, Antisemitism, and the Balancing of Rights

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# Today's Presenters



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# Clash of Cultures

- Valuing individual dignity, and demonstrating it, matters both in principle and to the community
- Most institutions/districts do not have published Title VI procedures
- Inadequate/no training in the areas of race, color, and national origin, let alone shared ancestry or ethnic characteristics
- No centralized point person to address reports
- Conflicts with campus access and facility policies in higher education
- Conflicts with protection of free expression vs. accountability for actions

# The Conflict of Values in Higher Education

- Institutions strive to create and sustain learning environments that promote diversity, maintain civility, and establish an atmosphere of mutual respect
- At the same time, they want to support and promote exploration of new and often controversial ideas
- These important goals can create conflict when the expression of an individual's opinion is articulated in such a way that it offends, embarrasses, or denigrates another, or when it's directed at an individual or group based on their protected characteristic(s)
- This is a complex challenge for public institutions which must uphold the First Amendment rights of students, faculty, and staff, as well as private institutions which often promise to uphold free expression, while maintaining the values of civility

# Legal Standards

# Title VI of the Civil Rights Act

“No Person in the United States shall, on the grounds of **race, color, or national origin**, be **excluded from participation in, be denied the benefits of, or be subjected to discrimination** under any **program or activity receiving Federal financial assistance**.”

42 U.S.C. § 2000e-2(a)





“

## **First Amendment**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

”

# Seminal Cases of Unprotected Expression

<b><i>Chaplinsky v. New Hampshire</i>, 315 U.S. 568 (1942).</b>	FIGHTING WORDS
<b><i>Miller v. California</i>, 413 U.S. 15 (1973).</b>	OBSCENITY
<b><i>Brandenburg v. Ohio</i>, 39 U.S. 444 (1969).</b>	INCITEMENT*
<b><i>Virginia v. Black</i>, 538 U.S. 343 (2003). <i>Counterman v. Colorado</i>, 600 U.S. 66 (2023).</b>	TRUE THREAT
<b><i>Milkovich v. Lorain Journal Co.</i>, 497 U.S. 1 (1993). <i>Hustler Magazine v. Falwell</i>, 485 U.S. 46 (1988).</b>	DEFAMATION



# Relevant First Amendment Law Applicability

- ***Chaplinsky v. New Hampshire***, 315 U.S. 568 (1942) – (“fighting words”) unlikely to be applicable, not applied since 1942
- ***Brandenburg v. Ohio***, 39 U.S. 444 (1969) – (“incitement of harm”) requires “imminent lawless action,” speech that merely advocates rather than incites violence would likely be protected
- ***Virginia v. Black***, 538 U.S. 343 (2003) – True threat requires expressed intent to intimidate, expanded by ***Counterman v. Colorado***, 600 U.S. 66 (2023), that requires that initiator of communication was actually aware or reckless with respect to the threatening nature of the communication

# Heckler's Veto

- Occurs in circumstances when opponents to a message block the delivery of that message by direct action or shouting down a speaker through protest
- Also occurs when a representative of the public entity accepts limits or restrictions on speech that override another speaker, or when the public entity restricts or cancels a speech based on anticipated or actual reactions of the opponents of the speech

**Is this OK?**

## Heckler's Veto (Cont.)

- Generally, no, because the Constitution requires the government to control the crowd in order to defend the communication of ideas, rather than to suppress them
- But when the opposition moves from counter speech to violence the government may step in and is expected to protect the speaker and others

# Recent OCR Resolution Agreements

# OCR Resolution Agreement – NYU 2020

- **September 15, 2020:** NYU engaged in a resolution agreement with OCR based on a finding of the University's discrimination against students of Jewish descent by failing to respond appropriately to incidents that created a hostile environment for Jewish students on campus in violation of Title VI
- The University agreed to:
  - Revise its Non-discrimination and Anti-Harassment Policy to include a statement prohibiting discrimination on the bases of **shared ancestry** and **ethnic characteristics**, including Anti-Semitism
  - Ameliorate discrimination and harassment that involves student clubs
  - Issue a statement by the President that the University will not tolerate acts of discrimination or harassment on the basis of shared ancestry and ethnic characteristics
  - Provide campus-wide training



# OCR Resolution Agreement – U. Michigan 2024

- **June 17, 2024:** OCR engaged in a resolution agreement with the University of Michigan based on allegations that the University discriminated against students on the basis of their national origin (shared Jewish ancestry/Israeli) by failing to respond to incidents of harassment during the 2023-24 school year, consistent with Title VI
  - There were 75 reports of alleged harassment and discrimination during this time period, during which the University only investigated one report
  - The reports reflected incidents involving a protest and chanting for removal and death of Jewish people and the state of Israel, posting of swastika symbols, and online antisemitic hate messages as examples

# OCR Resolution Agreement – U. Michigan

- The University reached out to students who reported to offer support resources and services
- There was no information provided about how to make a report
- There were no trainings or materials addressing discrimination based on **shared ancestry** or **ethnic characteristics**
- The Resolution Agreement included requirement to:
  - Review or re-investigate reports of discrimination based on shared ancestry or ethnic characteristics
  - Conduct climate surveys
  - Provide training for employees

# OCR Resolution Agreement – CUNY 2024

- **June 17, 2024:** OCR investigation and resolution involves complaints against 9 CUNY schools and colleges as well as the central office involving complaints of discrimination and harassment involving **shared ancestry** discrimination
  - Behavior included students and faculty disrupting college courses to use class time to call for decolonization of Palestine – the college failed to follow up with impacted students
  - The schools failed to investigate complaints
- CUNY agreed to:
  - Reopen or initiate investigations of complaints and report resolutions to OCR
  - Provide Title VI training for investigators and law enforcement
  - Administer climate surveys on each campus, no later than Sept. 30, 2024

# OCR Resolution – Lafayette College 2024

- **June 21, 2024:** OCR determined that Lafayette misapplied the legal standard with respect to harassment on social media, did not discharge its obligation to take steps designed to address or redress the hostile environment created by the antisemitic and anti-Arab discrimination conduct reported to the College
- Required College to:
  - Review responses to determine if hostile environment existed
  - Document all complaints alleging discrimination on the basis of shared ancestry
  - Review policies and procedures
  - Provide training for all students, staff, and faculty

# OCR Resolution Agreement – Brown University 2024

- **July 8, 2024:** OCR determined Brown failed to comply with Title VI regarding reports of 75 antisemitic and Islamophobic incidents between October 2024, and March 2024.
  - Required proactive steps to support nondiscriminatory campus environment, updating policies and procedures, annual training, detailed recordkeeping, climate assessment



# OCR Resolution Agreement – Red Clay Cons. School District (DE) 2024

- **January 29, 2024:** OCR determined that the District miscoded incidents of harassment on the basis of Jewish ancestry; failed to address repeat offenders effectively, including through discipline and its enforcement; and failed to timely implement a safety plan for the student. The District also did not maintain adequate documentation of its investigation.
- Required District to:
  - Offer to reimburse the student for past counseling, academic, or therapeutic services and/or for future services the student receives as a result of the harassment
  - Issue a statement stating that the District does not tolerate acts of harassment, including acts of harassment based on a student's actual or perceived race, color, or national origin, including shared ancestry or ethnic characteristics

# OCR Resolution Agreement – Red Clay Cons. School District (DE)

- Required District to:
  - Review its policies and procedures
  - Develop or revise its procedure for documenting the date and substance of each report or complaint of harassment and actions taken by the District in response
  - Annually train all employees on Title VI's prohibition of discrimination
  - Annually train school-level administrators who are directly involved in processing, investigating, and/or resolving complaints and other reports of discrimination
  - Provide an age-appropriate informational program for students to address discrimination based on race, color, and national origin, including harassment based on shared ancestry and ethnic characteristics
  - Administer a school climate survey

# OCR Resolution Agreement – Park City School District (UT) 2024

- **March 20, 2024:** OCR received seven complaints in five months. OCR's review confirmed that student-to-student harassment based on race, national origin, and sex at three schools, created a hostile environment for Black students, Asian students, Jewish students, and many students based on sex, including LGBTQI+ students. Additionally, OCR identified concerns regarding the District's responses to harassment and possible hostile environments for Hispanic students and students with disabilities at the three schools. Further, OCR identified specific violations of the 2020 Title IX regulations.
- Required the District to:
  - Determine what further action, if any, is needed to provide an equitable resolution of each incident of student-to-student harassment during the 2022-2023 school year
  - Review and revise, as necessary, its policies and procedures governing student-to-student harassment

# OCR Resolution Agreement – Park City School District (UT)

- Required the District to:
  - Develop and use a standard form to report or file a complaint about harassment and a standard form for designated employees to use when responding to such reports or complaints
  - Develop a Title IX Coordinator job description
  - Draft and disseminate a Notice of Nondiscrimination
  - Administer an age-appropriate climate survey of employees, grade 3-12 students, and parents
  - Train all current employees
  - Ensure that its Title IX Coordinators, investigators, decisionmakers, and informal resolution facilitators are trained
  - Annually, provide developmentally appropriate training for grades 3-12 students and their parents

# OCR Resolution Agreement – Carmel Unified School District (CA) 2024

- **July 26, 2024:** OCR found that the District had notice of multiple instances of swastikas or other antisemitic vandalism, an incident in which a student made a reference to Hitler, and one in which another student commented on killing and harming Jews, that created a hostile environment based on shared Jewish ancestry for students, and that the District failed to take prompt and effective steps to address it, in violation of Title VI. In addition, in some cases, the District failed to adequately determine whether the reported antisemitic harassment created a hostile environment for affected students, and if so, whether remedies or other actions were needed to redress the hostile environment for those students.



# OCR Resolution Agreement – Carmel Unified School District (CA)

- Required the District to:
  - Determine what further action, if any, is needed to provide an equitable resolution of each incident
  - Review and revise its policies and procedures to ensure that the District adequately addressed the Title VI prohibition on discrimination
  - Issue a written guidance memorandum to District staff reflective of the District's revised policies and procedures
  - Develop and use a standard form to report or file a complaint about harassment and a standard form for designated employees to use when responding to such reports or complaints

# OCR Resolution Agreement – Carmel Unified School District (CA)

- Required the District to:
  - Draft and disseminate a Notice of Nondiscrimination
  - Administer an age-appropriate climate survey of employees, students, and parents
  - Train all District administrators, including the principals and assistant principals, who are directly involved in processing, investigating, and/or resolving complaints and other reports of possible discrimination
  - Annually, provide presentations with developmentally appropriate information to students and their parents

# Discussion

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# Discussion Topics

- Groups at Odds: How do we address and communicate to groups in conflict their value without showing favoritism?
- How can we reflect institutional/district neutrality and moral courage?
- How do we address the intersection of Titles of VI, VII, IX, and state laws?
- How do we respond to social media challenges?
- How do we build out Title VI policies and procedures?
- What is the role, responsibilities, and authority of a Title VI Coordinator?
- How can we do more with less?
- How to maintain civility and inclusion when DEI support and budgets are threatened?

# Questions?

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