



NACUA Webinar

Title VI Compliance: Preventing and Addressing National Origin and Shared Ancestry Discrimination and Harassment

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Agenda

- Welcome & Introductions
- Legal Foundation, Current Guidance, and Enforcement Posture
- Hostile Environment
- Protests
- Q&A
- Scenarios/Hypotheticals
- Practical Takeaways
- Q&A
- Conclusion

Legal Foundations

The Backdrop

Title VI Statute
(Public and Private)

Title VI Regulations
(Public and Private)

Guidance & Dear
Colleague Letters

Resolution
Agreements

Equal Protection
(Public)

First
Amendment/Speech
Codes

Enforcement
Actions (and
Private Litigation)

Case Law

Legal Foundation: Title VI – Statutory Language

"No person in the United States shall, on the ground 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. § 2000d



Focus Point: National Origin Discrimination and Shared Ancestry or Ethnic Characteristics

**National origin
includes
discrimination or
harassment
based on a
person's actual
or perceived:**

Shared ancestry

Ethnic characteristics

Citizenship

**Residency in a country with a dominant
religion**

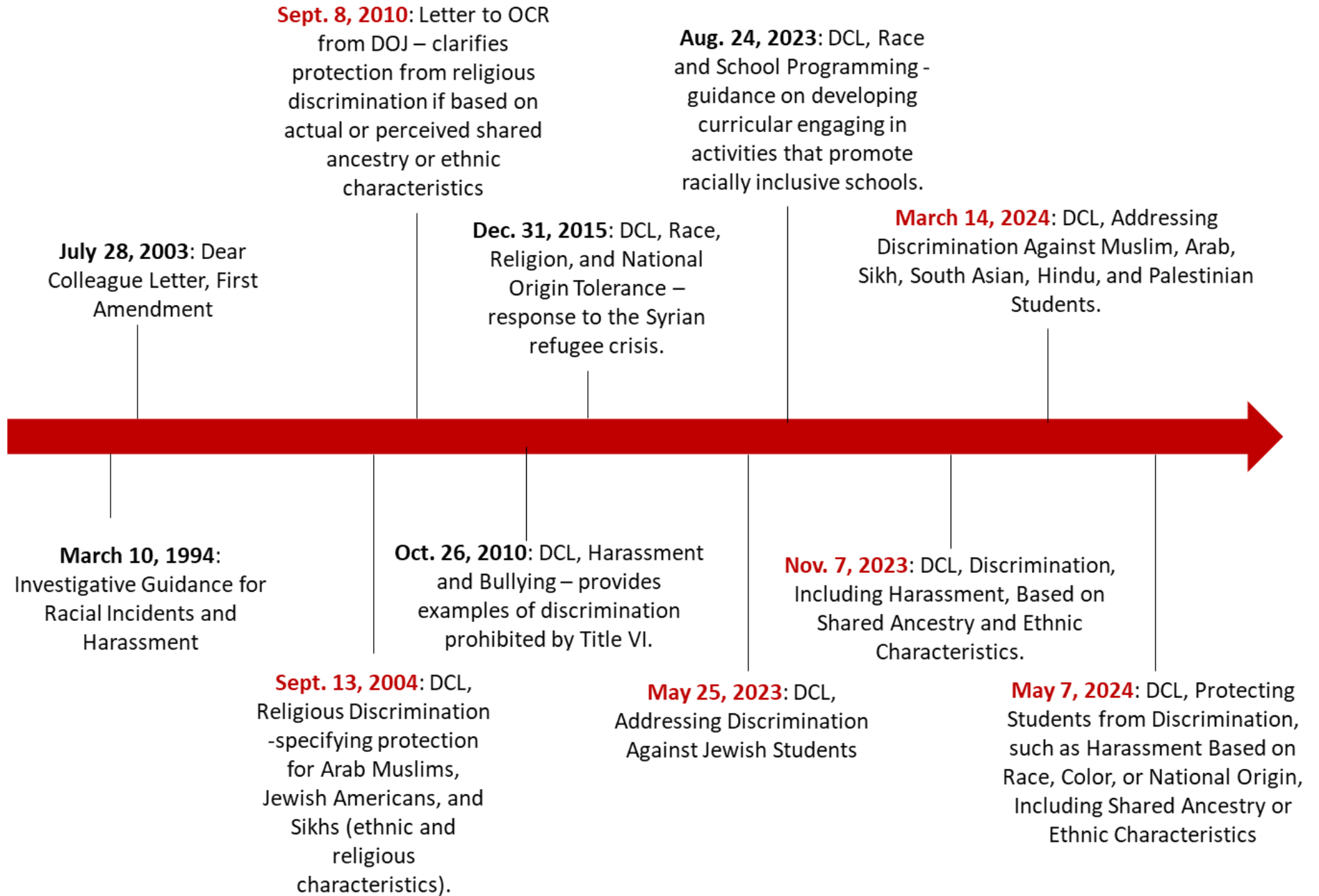
**Residency in a country with a distinct
religious identity**

Dear Colleague Letter, November 7, 2023

Title VI does not protect individuals from discrimination based only on religion, however, students of a religious group may be protected under Title VI if the discrimination is based on national origin. This includes addressing antisemitism, Islamophobia, and discrimination against those who are or are perceived to be Jewish, Israeli, Muslim, Arab, Palestinian, Sikh, South Asian, Hindu, or from any religion or region of the world.

OCR Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics, January 2023

Timeline Through 2024



Legal Foundation: Title VI - Employment



"Nothing contained in this subchapter shall be construed to authorize action . . . with respect to **any employment practice of any employer, employment agency, or labor organization except where a *primary objective of the Federal financial assistance is to provide employment.*"**

Legal Foundation: Title VI Regulations

Each Federal department and agency is authorized to effectuate Title VI by issuing:

Rules, Regulations, Orders

Department of Education
34 CFR 100

Department of Justice
28 CFR 42.101 et seq.

25 other agencies
including:
Department of Health and
Human Services
(including NIH)
45 CFR 80
Department of Agriculture

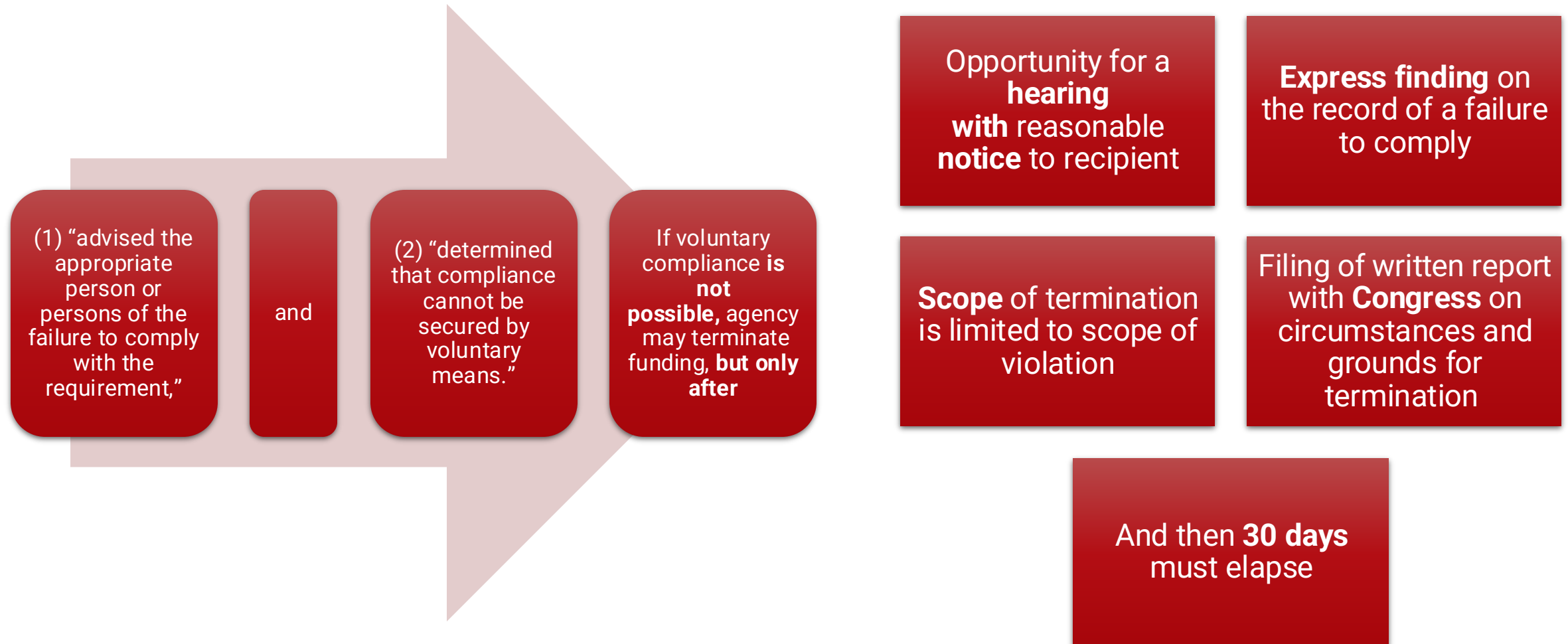
Legal Foundation: EPC & Religion

- Within the federal government, DOJ has sole authority to address equal protection violations in public schools on the basis of race, color, **religion**, sex, or national origin when certain statutory prerequisites are met.
- Whenever the Attorney General receives a complaint in writing . . .
 - Applies only to public schools
 - Must materially further desegregation
 - No "access authority"
 - Separate provisions on K-12 (signed by a parent) and Higher Ed (signed by an individual or his parent)

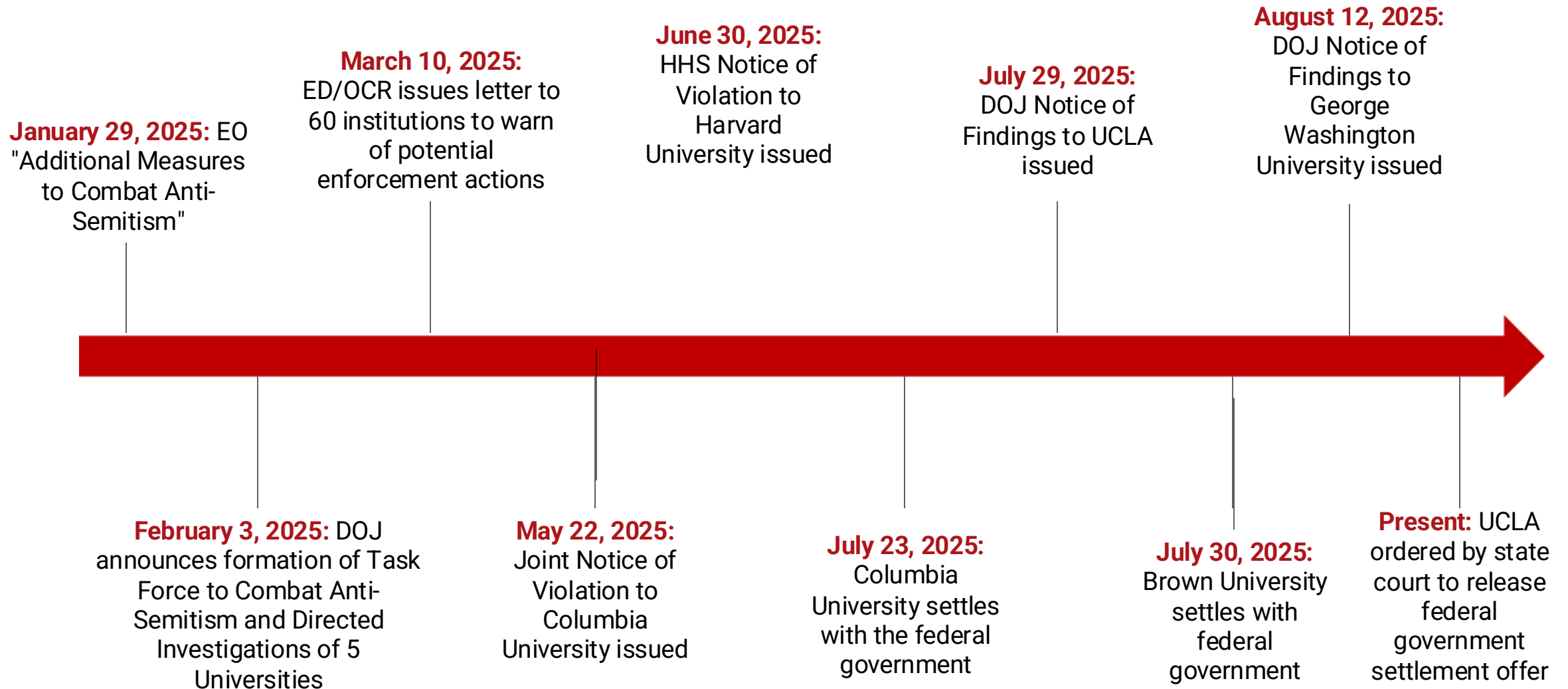
42 U.S. Code § 2000c-6



Legal Foundation: Title VI Voluntary Compliance & Procedural Protections



Timeline 2025-Present



Enforcement

Tools for Federal Enforcement

Federal Agencies

- Directed Investigation/ Compliance Reviews
- Complaints
- When Voluntary Resolution Fails
 - Administrative proceedings
 - Referral to DOJ/DOJ civil action
 - Any other means authorized by law

Department of Justice

- Everything that other agencies can do PLUS:
 - Litigation via Referral
 - Initiating Litigation
 - Intervention
 - Statements of Interest and Amicus Briefs
 - Participation in Appellate and Supreme Court Litigation

Enforcement Posture: OCR Investigations & Other Investigations (As of 10/24/2025)

Approximately 160 open shared ancestry investigations

Approximately 90 higher education institutions under investigation by OCR with more by the Joint Task Force (JTF)

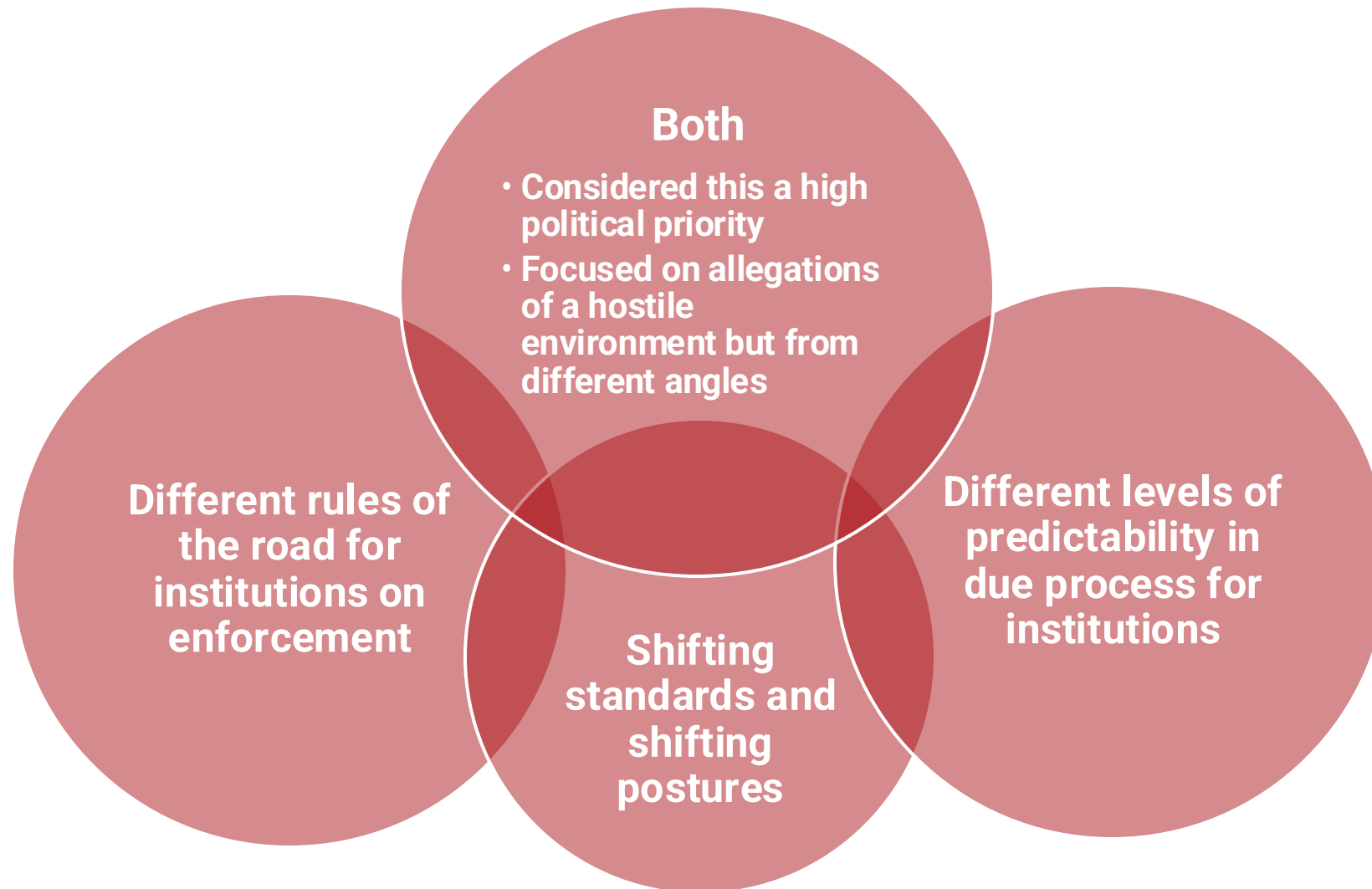
OCR 60 Institution Letter

JTF Investigations: Columbia University, George Washington University, Harvard University, Johns Hopkins University, New York University, Northwestern University, UCLA, UC Berkeley, University of Minnesota and University of Southern California

U.S. Commission on Civil Rights (and State Advisories)

<https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination/race-color-and-national-origin-discrimination-key-issues/list-of-open-title-vi-shared-ancestry>

Enforcement Posture: Biden vs. Trump Administration



What is the Standard for Assessing a Hostile Environment under Title VI?

Hostile Environment Analysis & *Davis*

Davis Standard

- Severe, pervasive, and objectively offensive that the student was effectively denied access to educational opportunities
- Constellation of surrounding circumstances, expectations, and relationships
- Actual knowledge
- Response (or lack of) was clearly unreasonable in light of the known circumstances

Hostile Environment Analysis: 60 Institution Letter

A hostile environment exists where there is **harassing conduct** that is **sufficiently severe, pervasive, or persistent** so as to interfere with or limit the ability of an individual to participate in or benefit from the education services, activities, or privileges provided by a school.

According to OCR, schools **often respond** to individual reports of harassment but fail to consider how the particular instance of harassment, **either in and of itself, or in conjunction with other incidents of harassment**, may contribute to a hostile environment.

Hostile Environment Analysis

May 2023 Dear Colleague Letter	November 2023 & May 2024 Dear Colleague Letters	Trump Notices of Violation Columbia (May 22, 2025) Harvard (June 30, 2025)
"OCR generally finds that a hostile environment exists where there is harassing conduct that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a school."	"Unwelcome conduct based on race, color, or national origin that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from a school's education program or activity."	<p>Columbia: Davis standard* & "Harassment that is severe or pervasive and motivated (at least in part) by race, color, or national origin, can give rise to a hostile environment claim under Title VI.</p> <ul style="list-style-type: none">➤ See Hayut v. State Univ. of N.Y., 352 F.3d 733, 748 (2d Cir. 2003) (applying harassment framework to Title IX case);➤ Vengalattore v. Cornell Univ., 36 F.4th 87, 103 (2d Cir. 2022) ("[C]ases brought under Title IX are generally to be analyzed in the same way as cases under Title VI."). <p>Thus, student-on-student harassment violates Title VI where it is so severe or pervasive that it "effectively bars the victim's access to an educational opportunity or benefit."</p> <ul style="list-style-type: none">➤ Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ., 526 U.S. 629, 633 (1999). <p>Harvard: Davis standard* GWU: Davis standard*</p>

Hostile Environment Analysis

Current Approach



Harassing conduct



Sufficiently severe, pervasive, or persistent
(similar to severe or pervasive)



Has to interfere with or limit the ability of an individual to participate in or benefit from services, activities, or privileges provided by an institution



Totality of the circumstances: cannot just look at incidents in isolation when determining a hostile environment



Needs to be **objectively offensive** (directly from the standard set out in the case cited *Zeno v. Pine Plains Cent. Sch. Dist.* 2d. Cir. 2012) based on the “reasonable person” standard

Hostile Environment Analysis: Harassing Conduct

Harassing conduct is unwelcome conduct that may include:

Verbal abuse

Graphics or written statements

Physical assault

Other conduct that may be threatening, harmful, or humiliating

Does not have to be directed at a particular individual

Harassing conduct may occur in:

Classrooms (in-person & virtual)

Residence halls

Hallways

Cafeterias/dining halls

Athletic fields

Locker rooms

Bathrooms

Online

Social media sites

Off-campus

OCR Fact Sheet: Harassment based on Race Color, or National Origin on School Campuses, July 2, 2024

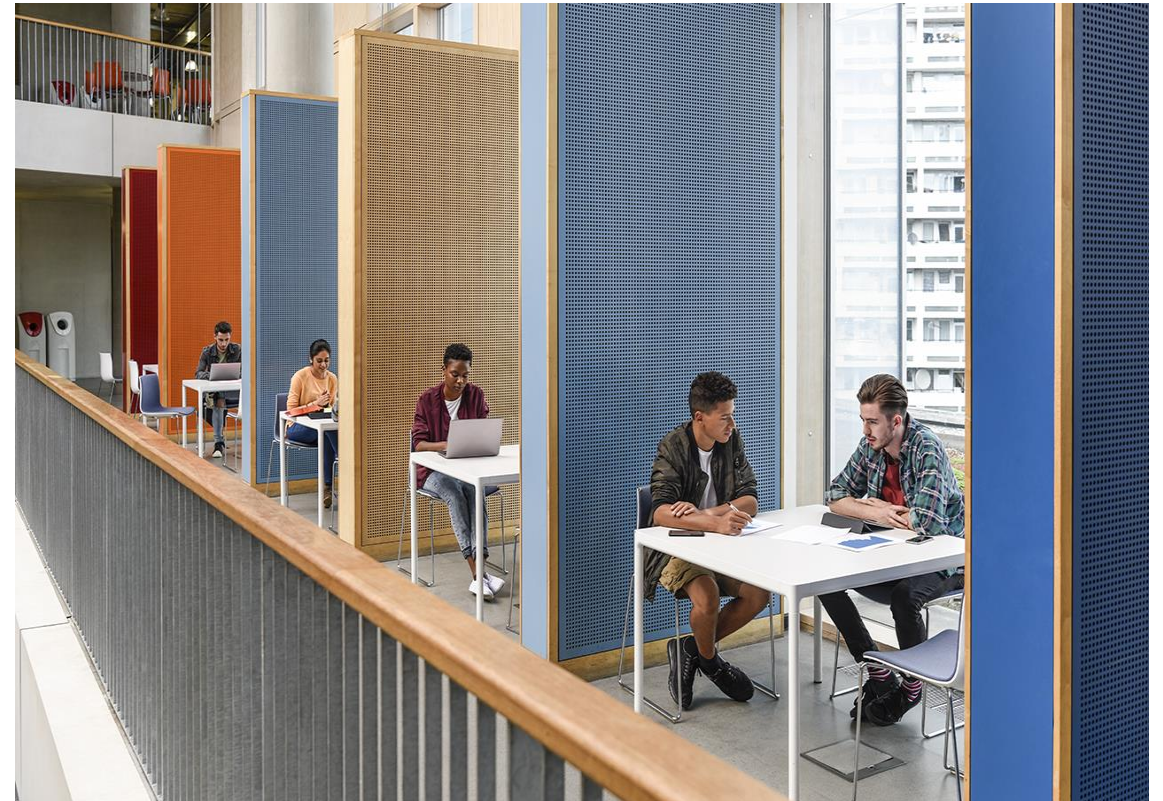
Hostile Environment Analysis: 1994 OCR Guidance & "Severe, Pervasive or Persistent"

- Context, nature, scope, frequency, duration and location of incidents, as well as the identity, number and relationships of the persons involved
- Must consist of more than casual or isolated incidents to establish a Title VI violation
- **Severity:** the nature of the incidents must be considered, for instance, injury to persons or property, or conduct threatening injury to persons or property is considered severe
- The severity of the incidents needed to establish a hostile environment varies inversely with their pervasiveness or persistence



Hostile Environment Analysis: 1994 OCR Guidance & "Severe, Pervasive or Persistent"

- Size of the institution and location of the incidents are important to the analysis
- The effect of an incident in the private and personal environment of an individual's dorm room may differ from the effect of the same incident in a student center or a dorm lounge.
- **Harassing conduct/acts do not need to be targeted at the specific complainant in order to create a hostile environment: the acts can be directed at anyone.**



Hostile Environment Analysis: 1994 OCR Guidance & "Severe, Pervasive or Persistent"



Reasonable Person/Objective Standard

- First determine that the complainant meets the subjective standard.
- If they do, then determine if the harassment was sufficiently serious that it would have adversely affected a reasonable person's access to the institution's educational program
- Reasonable person = same age and protected class as the victim, under similar circumstances
- The perspective of a person of the same protected class as the victim is necessary because it is an immutable characteristic upon which the harassment is based

Evolution of Antisemitism Enforcement from Biden to Trump

Enforcement Posture: Biden vs. Trump Administration

20 Resolution Agreements to Date

New York University	University of Illinois Urbana-Champaign	Lehigh University
University of Vermont	Muhlenberg College	University of Washington
University of Michigan	Temple University	Harvard University
City University of New York	University of California System	Emory University
Lafayette College	University of Cincinnati	Columbia University (Trump)
Brown University (Biden & Trump)	Rutgers University	George Washington University (Trump)
Drexel University	Johns Hopkins University	

Enforcement Posture: Common Elements of Biden Resolution Agreements

Review Prior Reports/Conduct analysis of hostile environment under TVI

Have appropriate policies, procedures and protocols related to investigating reports of TVI discrimination/harassment, protests and demonstrations and what roles/responsibilities are responsible for each part of the process

Training, training, training!

Students, employees, senior leaders, those responsible for implementing/administering processes

Campus climate: survey and analyze

Response to reports

Ensure centralized reporting/office to remove barriers to reporting

Enforcement Posture: Common Elements of Biden Resolution Agreements

Documentation and
Recordkeeping

Monitoring periods by OCR

Communication (statements
and administration providing
opportunities to hear campus
community)

Individual remedies

Appoint Title VI Coordinator
New New York Law Alert:
August 2025 – Governor signed
first in the nation law to require
Title VI Coordinators in every
college and university

Enforcement Posture: Trump Proposals and Agreements

Columbia University Agreement

- Restoration of terminated HHS and/or NIH grants
- Pay \$200M to the federal government
- Monitor
- Student Liaison to support Jewish life and Jewish students on campus
- Trainings about campus norms, including anti-discrimination /harassment and civil discourse



Enforcement Posture: Trump Proposals and Agreements

Columbia University Agreement

- Revision of disciplinary processes
 - Only faculty/staff panel members going forward
 - Moved to Office of the Provost
 - Vetting and conflict review process must be established
- Demonstrations/protests in buildings prohibited
 - All activity subject to anti-discrimination/harassment policies
 - Requirement of an identification policy going forward
 - Student group discipline/enforce existing processes
- Consistency of enforcement of disciplinary rules



Enforcement Posture: Trump Proposals and Agreements

Columbia University Agreement

- Even implementation of institution-wide policies on harassment/discrimination under Title VI
- Employee trainings must cover relevant obligations under the Agreement
- Campus safety officer increase
- Public semi-annual reporting on progress of implementing agreement for 3 years



Enforcement Posture: Trump Proposals and Agreements

Brown University Agreement

- External party to conduct a campus climate survey for Brown students, including related to Jewish shared ancestry and to evaluate social media harassment
- Reporting of all incidents in a spreadsheet to federal government for two years (Oct. 2025 & 2026)
 - Includes providing copies of investigative files and all records at Government's request
- Review of student course evaluations for complaints of antisemitism



Enforcement Posture: Trump Proposals and Agreements

**UCLA &
George Washington
University Agreements**

Stay tuned!



Enforcement Strategy: What Can We Learn From Private Litigation?

Gartenberg v. Cooper Union ***(S.D.N.Y. 2025)***

Timing and context

Physical threats

Vandalism and Graffiti as part of Time, Place, and Manner

Students do not have an obligation to hide or leave to avoid harassment

First Amendment analysis

Frankel v. University of California (9th Cir. August 26, 2024)

Limitations or denials of equal physical access

Impeded educational opportunities (final exams)

Role of third parties/outside protesters

Private litigants did the work; DOJ followed with findings

Landau v. Haverford ***(E.D. Pa. 2025)***

“College administrators need not be perfect. They need not even be good. They just need to behave in a way that is not clearly unreasonable in light of the circumstances known at the time. Here, amidst a period of extreme unrest on college campuses across the country, it was not clearly unreasonable for administrators to allow protestors to freely express themselves for three days. It is also a defensible conclusion that intervention could have triggered an even larger and more disruptive backlash. Plaintiffs’ dissatisfaction does not state a claim for violation of their civil rights.”

Stand with US Center for Legal Justice v. MIT (1st Cir. October 21, 2025)

Protected political speech: hostile-environment liability cannot be built on protected political speech—even when heated, upsetting, or deeply divisive

Antisemitic: context dependent

Severe, pervasive, systemic: isolated incidents of conduct not protected by the First Amendment

Requiring MIT to restrict students' expression merely because those students opposed Israel and favored the Palestinian cause would **infringe upon MIT's freedom to encourage, rather than suppress, a vigorous exchange of ideas**

Title VI and the First Amendment

First Amendment

- Nothing in Title VI or its regulations **requires or authorizes** a school to restrict any rights otherwise protected by the First Amendment to the U.S. Constitution.
- **Public Schools:** Must respect First Amendment rights of students and employees; case law provides guidance on limits
- **Public and Private Schools:** Government must construe Title VI to avoid burdening core First Amendment rights; federal agencies cannot construe Title VI to require recipients to censor protected speech (see disclaimers in all guidance documents!)

First Amendment – Public vs. Private

Public	Private
Bound by the U.S. Constitution	Incorporated by contract
Government interference in the right to free speech restricted	More latitude on policies
Heightened protections	More latitude on campus property
Cannot fully restrict third parties from property	

Title VI and the First Amendment: Focus on Protests and Encampments

- Context
- Allegations
- Challenges for Campus Leaders
- First Amendment Considerations
- Application of Hostile Environment Analysis



Balancing First Amendment Considerations

- **Institutions must take immediate and effective action to respond to harassment that creates a hostile environment.**
- However, all actions must be taken consistent with the First Amendment. What does that mean practically?
 - Cannot treat speech differently based on content
 - Discipline or formal action may not be taken against speakers where offensive or demeaning speech is protected, BUT such protected speech may still create a hostile environment for protected groups or individuals.
- ***There are ways an institution can respond even if conduct discipline is not available, and it requires being creative.***
 - Public statements (institutions can use their speech rights too!)
 - Provision of resources to support affected students
 - Educational programs and services; counterbalancing programming

Expression of Views About A Particular Country

- Speech expressing views regarding a particular country's policies or practices is protected by the First Amendment
- ***However***, if harassing conduct that otherwise appears to be based on views about a country's policies or practices is **targeted at or infused with discriminatory comments about persons from or associated with a particular country**, then it may implicate Title VI and should be analyzed on a fact-dependent basis.



Expression of Views About A Particular Country

Likely would NOT implicate TVI:	Likely WOULD implicate TVI:
<p>A professor teaching a class on international politics makes a one-off remark criticizing or referencing the government of Israel's treatment of non-Jewish people, the nation of Saudi Arabia's response to religious extremism, or the government of India's promotion of Hinduism, so long as such comments do not target Israeli, Jewish, Saudi, Arab, or Indian students based on race, color or national origin.</p>	<p>A professor teaching about international politics refers to Jewish people, Muslim people, or Hindu people using offensive stereotypes based on perceived shared ethnic characteristics or shared ancestry.</p> <p><i>U.S. Dep't of Education, OCR, May 7, 2024 Dear Colleague Letter</i></p>

Practical Takeaways & Tips

Key Takeaways

Counsel is a key part of response and compliance

Prepare in advance for known events

- Clients struggle with blinking cursors
- Consider a checklist that covers the responses your client should be thinking about both for protests and overall response to incidents/reports

Follow social media to keep updated on planned events/times

Protests vs. Incidents/other events: require different responses

Ensure your client has a protocol

Documentation is the most important thing your client can have in relation to all responses and outreach

Document your hostile environment analysis both initially when any reports come in and after any investigations have concluded

Key Takeaways: Protests/Encampment

- Secure area with police
 - Have a plan for working with off-campus law enforcement
 - Monitoring, closing, locking certain buildings
- Prepare designated space for counter protests with equivalent visibility near main protest
- Utilize cameras and tech in the area for police/security purposes
- Administration should be reaching out to protest planners if known



Key Takeaways: Hostile Environment

- Respond promptly and reasonably to allegations of harassment (interview complainant, identify witnesses, document, discipline where appropriate)
- Don't ignore larger context and timing of incidents; responsible for totality of the known circumstances
- Burden is not on students to avoid harassment
- Know the law in your circuit



Key Takeaways: First Amendment

- Clarify relationship between free speech policies and student conduct expectations
- Enforce time, place, and manner policies
- Educate students on the value of robust debate
- Address conduct neutrally (chalking, graffiti)
- Avoid changing the rules mid-stream
- Protect students' right to access all areas of campus and all courses without impediment



Practical Tips Checklist



Does your institution have clear procedures on how to investigate reports of discrimination/harassment?

Are those procedures consistently applied across reports?



Does your institution document a hostile environment analysis in writing?



Does your institution have policies on time/place/manner, camping/tents, chalking/posting, identification?



Does your institution have protocols for protests and response to protests?



Has your institution avoided silos in discussing response?



Does your institution provide training to faculty/staff/students?



Does your institution provide training to staff who touch any Title VI related reporting processes?



Do your institutional partners understand the importance of applying policies equitably?



Questions?

Scenarios

Facts



Artea and Resoland are bordering countries that have had periodic conflict for decades. Recently, an attack happened across the border of Resoland that resulted in the death of 2,000 innocent civilians at a cultural festival that was world renowned because it celebrated an important religious holiday for the Resolandian people. People of the Resolandian religion live all over the world, and this is major religious festival that people of this religion and heritage from all over the world travel to. While many of the lives lost were those of people who resided in Resoland, there were also individuals who were lost that came from other countries, including Artea.

This attack resulted in a protracted conflict currently ongoing, where Resoland invaded Artea because a splinter group associated with the Artean government took credit for the attack. Artea is a small country, and many Arteans travel across the border to work in Resoland. Due to this attack, Resoland secured the border with Artea and closed it to all Artean civilians.



Scenario 1: Protest



Early in the Fall semester, an unrecognized group at your public college, Students for Artean Rights, put out a social media blast that they are planning to protest in the main quad on your campus. Students for Artean Rights have previously posted statements about a conflict in the State of Artea, where another country, Resoland, has militarily engaged because of an attack by a splinter group that led to significant casualties in its own country, which borders Artea. Those statements have criticized the Resolandian government for its escalation of the conflict, and claimed that Resoland is attempting to take over Artea to expand its territory. Several students of Resolandian heritage have complained to the administration about the protest and have asked the institution to stop the protest.

What policies on the campus might be implicated?

Are there any policies/procedures that the campus should have?

Is the protest able to go forward?

Scenario 1: Protest



The protest goes forward. The campus prepared in advance for the protest and had appropriate campus police presence for the information it had about the size of the protest. However, physical altercations broke out between students protesting and counterprotestors, which resulted in the arrest of several students. Also, some individuals that were part of the protest but had no relationship to the institution as students, staff or faculty (third party community members) blocked areas around the protest, which took place during the daytime when classes were happening, and asked anyone attempting to pass the protest whether they denounced Resoland's self-determination as a country before they could get through that area of the quad. Several students reported to the administration that they felt unsafe based on that question and felt like they had to avoid access to parts of the campus because word spread quickly of the human "barriers."

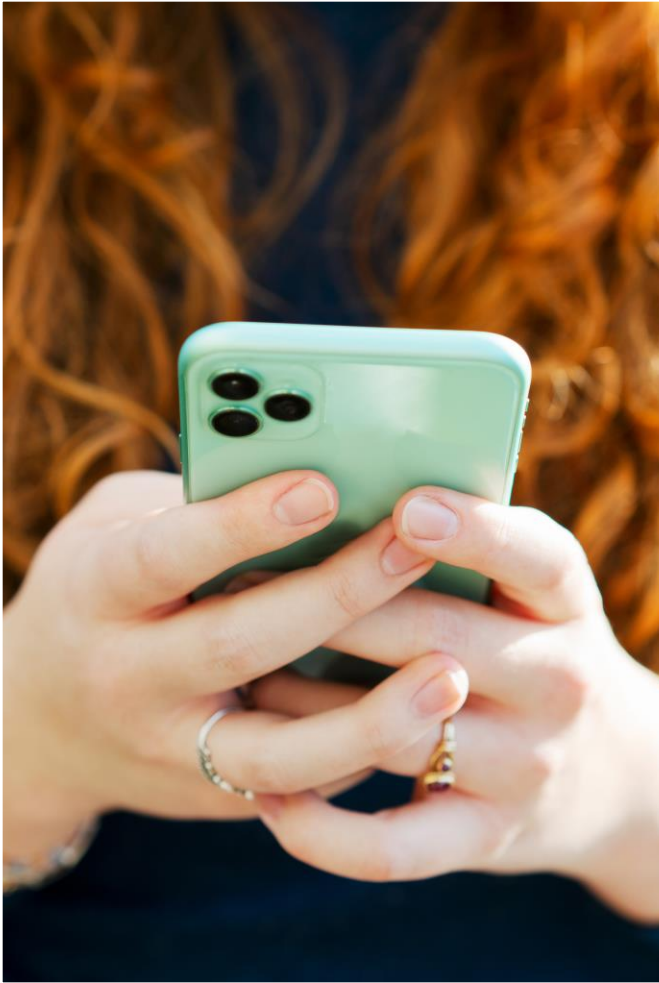
Who should be involved in the planning from the institution?

What kinds of discussions do you think need to be had by the major stakeholders at the institution?

What should the institution do next from a Title VI perspective, if anything?

Is this one event severe enough to create a hostile environment under TVI?

Scenario 2: Social Media



Student A from the unrecognized group at your institution, Students for Artean Rights, posts on her social media that students from Resoland need to "go back to their home country because no one wants to associate with anyone from Resoland on this campus because of the genocide that Resoland is committing against Artean people to avenge itself." This student proceeds to criticize the Resolandian government for its role in the continued destruction of two major cities in Artea, which have resulted in a humanitarian crisis for the civilians who reside in those cities. Her post called out the Prime Minister of Resoland by name, and also posted all the major donations the Prime Minister received from factions supporting the current conflict, including military contractors who are supplying arms to Resoland. The student also called for a boycott of all Resolandian artists, musicians and businesses, stating that starving their economy would teach Resolandians "a lesson." A faculty member reports to the Provost of the institution that **Student B** in her class who is of Resolandian heritage provided her this post and reported that she felt unsafe being in the same class with **Student A**. Both students are Political Science majors, and are in the same concentration, Peace Studies, which is a smaller concentration with a smaller cohort of students.

Scenario 2: Social Media

What should the provost do next with this report?

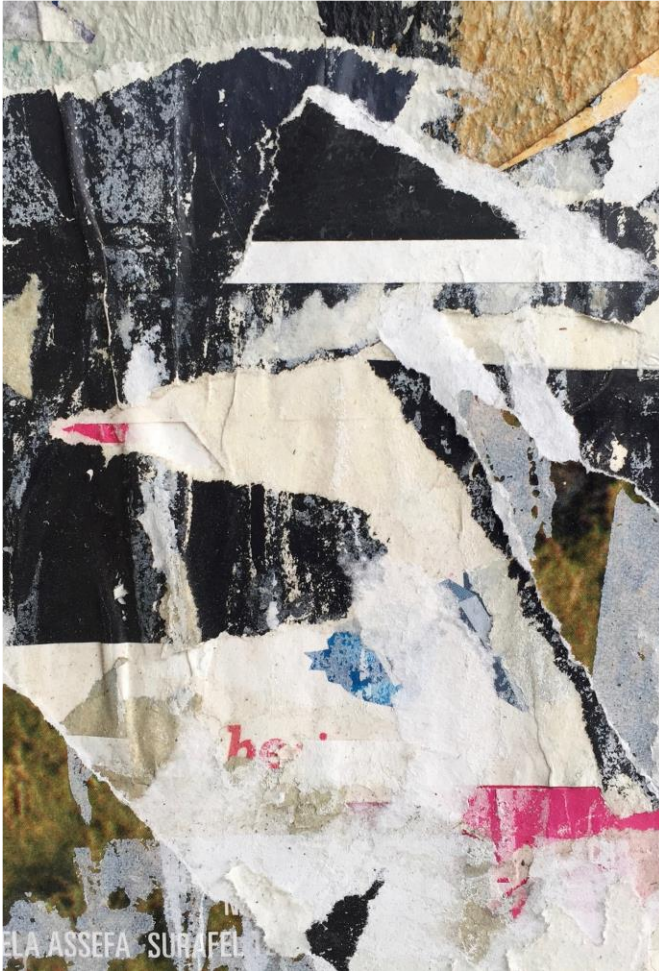
Should the faculty member be involved in this process?

What should the institution do with this report?

Is there a hostile environment based on this social media post?

Are there any First Amendment concerns?

Scenario 3: Incident



Student C, a student of Artean heritage, reports to his residence hall director that he is being harassed by students he believes to be international students from Resoland that are also at the institution. He stated that unsigned notes have been slipped under his door every day for a week that state various things like the death toll of Arteans that day from the conflict; printouts of graphic photos of deceased Arteans from news outlets; and notes that accuse him of supporting the splinter group behind the attack in Resoland, and that his whiteboard on his dorm room door has been defaced several times with slurs related to his nationality and someone writing "GO HOME HAHA SIKE YOU DON'T HAVE ONE." **Student C**, distressed, reports to his residence hall director that he is considering transferring. Student C also states that he thinks he has an idea who might be behind this, but there is nothing that directly ties this to any student.

Scenario 3: Incident

What should the residence hall director do with this report?

Should someone at the institution offer this student any supportive measures? If so, what are some options?

Can the institution investigate this report?

How would the institution investigate?

Would this create a hostile environment under Title VI?



Questions?

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