

HIGHER EDUCATION

INFORMATION MEMO

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OCR Adds New Fact Sheet to Growing Library of Title VI Guidance

On July 2, 2024, the U.S. Department of Education's Office for Civil Rights (OCR) released a new [Fact Sheet](#). This document aims to help faculty, staff, students and families understand their rights and obligations under Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, color or national origin, including shared ancestry or ethnic characteristics. Nearly all public elementary and secondary schools, as well as public and most private colleges and universities (IHE), are subject to Title VI due to their acceptance of federal financial assistance, such as federal financial aid.

Harassing Conduct and Hostile Environments

OCR determines that a hostile environment exists when harassing conduct is both subjectively and objectively offensive, and so severe and pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. Harassing conduct can include verbal abuse, physical assault, graphic or written statements, or other conduct that is threatening, harmful or humiliating. Such conduct can occur in various places beyond the classroom, including residence halls, athletic fields, locker rooms or online.

Establishing a Title VI Violation

For a Title VI violation to be established, OCR must find that:

1. A hostile environment based on race, color or national origin existed.
2. The IHE had actual or constructive knowledge (knew or should have known) of the hostile environment. IHE officials can become aware of harassing conduct through formal complaints, observations by employees, or awareness shared by community members or the media.
3. The IHE failed to take prompt, effective, and reasonably calculated steps to end the harassment, eliminate the hostile environment and its effects, and prevent recurring harassment. OCR assesses the reasonableness, timeliness, and effectiveness of a IHE's response, emphasizing that an appropriate response must fully address the specific problems caused by the harassment.

Examples of Harassing Conduct

OCR provides additional hypothetical examples¹ of situations where an investigation could be initiated for IHE receiving federal financial assistance:

1. Students repeatedly using racial slurs, mocking Black power, and creating the "Kool Kids Klub" (KKK) with a displayed confederate flag. The IHE, after interviewing the students involved, takes

¹ The Department released a [Dear Colleague Letter](#) in May 2024 that also contains hypothetical examples.

no further steps and advises the reporting students that there is no concern.

2. A Lebanese student files a harassment complaint alleging discriminatory treatment in a clinical placement. The IHE does not investigate, claiming it is out of their hands since the incidents occurred at the clinic.
3. An indigenous student on a football team is mocked as "the Redskin" with videos posted involving a fake ritualistic Native chant. The student informs the principal, but the only action taken is a warning to the football coach to control his players.

Conclusion

The Fact Sheet clarifies for IHE officials what constitutes harassing conduct and how the OCR assesses Title VI violations. It is crucial for IHE officials to take appropriate steps when aware of harassing conduct, either through formal complaints or other means. Failure to act can lead to further OCR involvement and potentially result in the loss of financial assistance from the Department of Education.

For any questions on how this information may affect your institution, please contact any attorney in Bond's [higher education practice](#), or the Bond attorney with whom you are regularly in contact.

**Special thanks to Summer Law Clerk Grant Haffenden for his assistance in the preparation of this memo.*

