



Rolling Back Title IX and Pushing Forward on Title VI: What's Next for HR Professionals

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CUPA-HR Webinar

Presenters



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Rights Services,*
D. Stafford & Associates



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Objectives



- Understand the impact of *Tennessee v. Cardona* and our requirement to resume use of the 2020 Title IX rule.
- Understand the current state of institutional compliance with Title VI of the Civil Rights Act of 1964.
- Evaluate institutional policies and procedures to ensure compliance with both Title IX and Title VI.

Poll Question

Was your institution injuncted from moving to the 2024 rule?

- Yes
- No
- I'm not sure

TITLE IX- ROLLBACK TO THE 2020 REGULATIONS

Tennessee v. Cardona, No. 24-0072-
DCR, 2025 WL 63795, at *6 (E.D.
Ky. Jan. 9, 2025)



Discrimination
“because of”
sex in Title VII
and
discrimination
“on the basis of
sex” in Title IX

Title IX

Title VII

Tennessee v. Cardona, No. 24-0072-DCR, 2025 WL 63795,
at *6 (E.D. Ky. Jan. 9, 2025)

Executive Orders and DCLs

**DEFENDING WOMEN FROM GENDER IDEOLOGY
EXTREMISM AND RESTORING BIOLOGICAL TRUTH
TO THE FEDERAL GOVERNMENT**

EXECUTIVE ORDER

January 20, 2025





The 2020 Regs focused on “Sexual Harassment” and the Due Process Rights of Respondents

- Signed formal complaints initiating procedures
- Sexual harassment, including sexual violence, was focus
- “Actual Knowledge” = duty
- Only incidents that occurred on-campus or within the institution’s education program fell under Title IX
- Since many, many complaints did not meet threshold to come in, most schools had parallel “non-Title IX process”

And the most adversarial part of the 2020 regs, which was live hearings with cross examination through advisors, including counsel.



Title IX Sexual Harassment Grievance Procedure Application

Location within the
educational program or activities and in the United States

Jurisdiction of Parties

Alleged Conduct

Jurisdiction of Location:

SCOPE OF PROGRAM AND ACTIVITY

The term “program or activity” and the term “program” mean all of the operations of -

- *a college, university, or other postsecondary institution, or a public system of higher education...*
- *any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 1681 of this title to such operation would not be consistent with the religious tenets of such organization.*

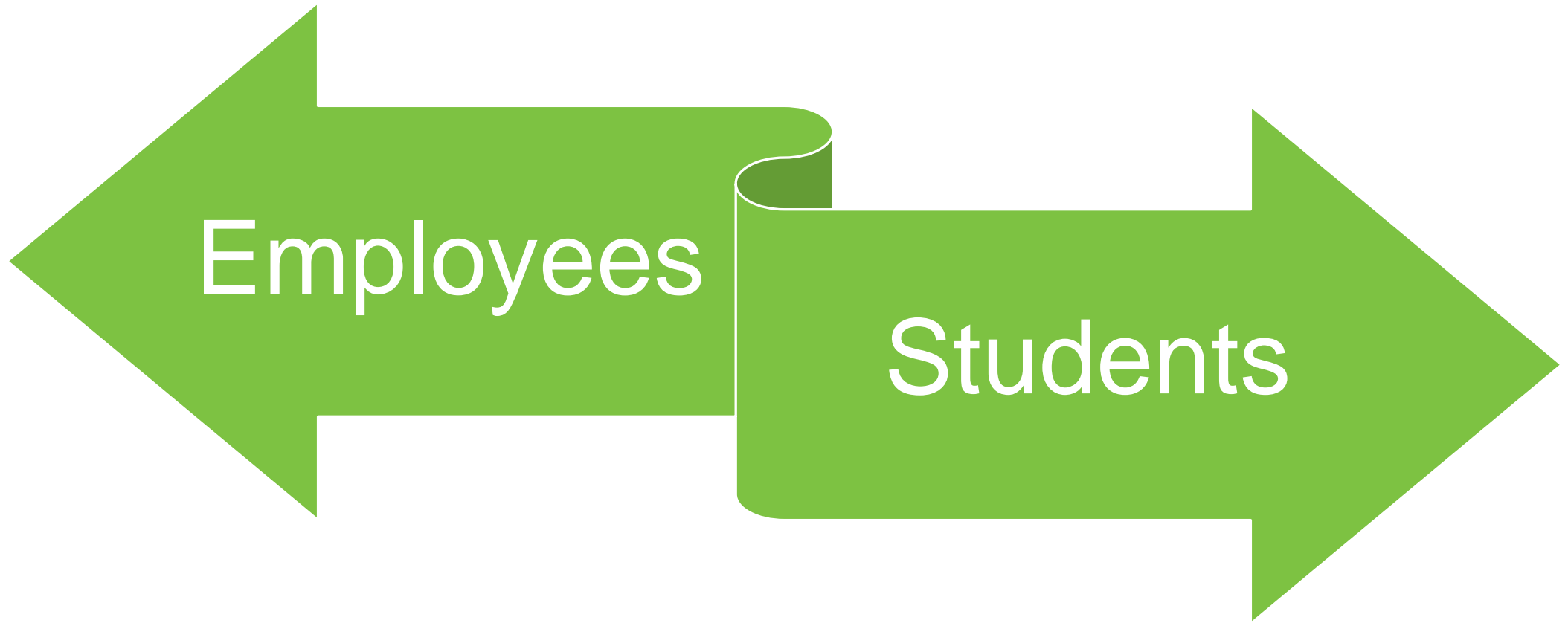
Jurisdiction of Parties

“At the time of filing a formal complaint...the complainant must be participating in or attempting to participate in the education program or activity”

The institution must exercise control over the Respondent

All regulations apply to students and employees

Same Rights, Same Requirements



Definitions - Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

- 1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;*

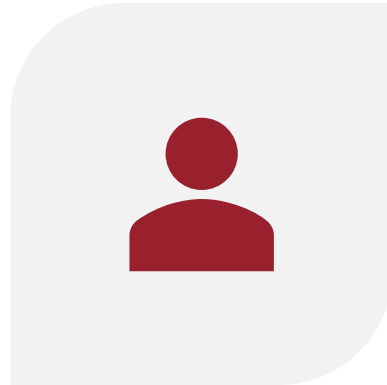
 - 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;*

 - 3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).*
-

Definitions: Key Terms



**ACTUAL
KNOWLEDGE**



**FORMAL
COMPLAINT**



**SUPPORTIVE
MEASURES**

Formal Complaint



Signed formal complaint



Complainant or
Title IX Coordinator



Complainant **MUST** be
participating in the education
activity at the time of filing

Dismissal of Formal Complaints



Must Dismiss

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity or not in the US



May Dismiss

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence

Investigations and Evidence Gathering



Burden of proof on the recipient

Equal opportunity to present witnesses and facts

No restrictions on discussing allegations

Right to inspect evidence and respond

Right to a final investigative report

Hearings



Live hearing



Cross-examination

Evidentiary Standard

Clear and Convincing

Substantially more likely than not to have occurred

High probability that a particular fact is true

Higher than preponderance, but not as high as “beyond a reasonable doubt”

Preponderance of the Evidence

More likely than not
50% and a feather

Appeals

MUST have

- Procedure
- New evidence
- Conflict or bias that impacted outcome

Additional grounds permitted

Decision-maker can have no other role

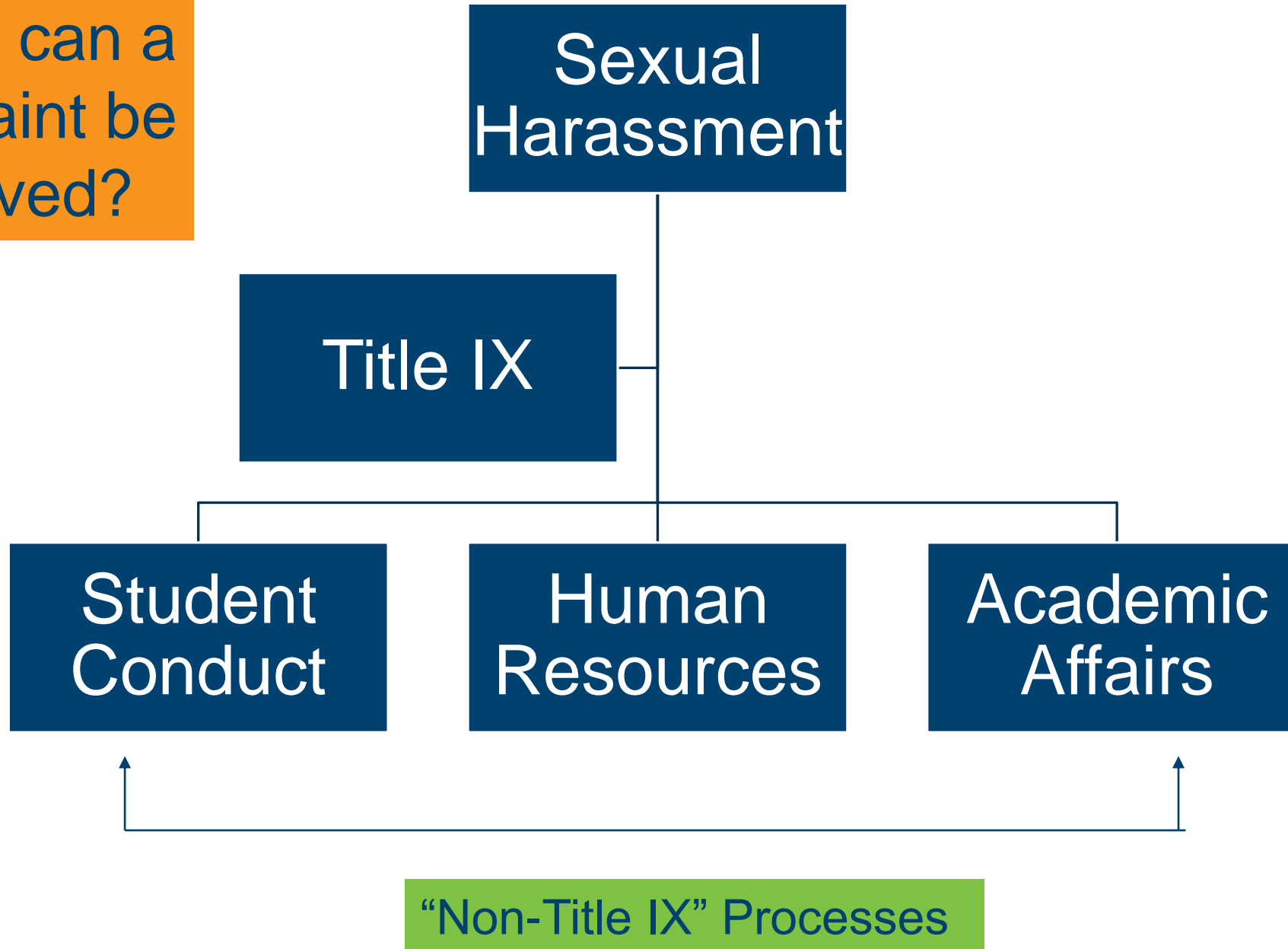
Reasonably prompt time frame

Can't we just take it
through HR?

The short answer is
maybe.



Where can a complaint be resolved?





Key Takeaways on Title IX...

- Update your institutional nondiscrimination policy to account for non-Title IX misconduct, including sex discrimination (think pregnancy)
- There is a ton of written notice throughout this process and it's mandatory
- Must give same process to students and employees including option to have an advisor of choice
- Written determination letters require many required items be addressed
- Extensive training required of Title IX Personnel
- Student complainants are entitled to know outcomes of employee as the respondent complaints
- Much conduct will not fall under the jurisdiction of Title IX—HR is back in the game (if you ever left...)

Mini Case Study- Antisemitism

A college student files a complaint with the Student Conduct Officer alleging that she was subjected to a hostile environment because she is Jewish. In support of her complaint, she alleges that the dry-erase board on her residence hall room door was defaced with swastikas. Additionally, she alleges that epithets referencing poor hygiene and racial impurity of Jewish people and white supremacist slogans stating conspiracy theories about Jewish people, were scrawled on the door a few days after the dry-erase board incident. She learned from her roommate that a student in her residence hall named Beau was bragging to others about defacing her door and dry-erase board. The student informed the Student Conduct Officer that she no longer feels comfortable going to her residence hall. The Student Conduct Officer interviews Beau as part of the investigative follow-up and he admits responsibility and indicates he has a strong animus toward Jewish people.



Should this go to your Student Conduct Officer?

Which policy governs response to discrimination on the basis of race, color, or national origin at your institution?

(My favorite response...we have a Bias Response Team—we're FINE! Are you?)

OCR has upped investigations into Title VI



Title VI

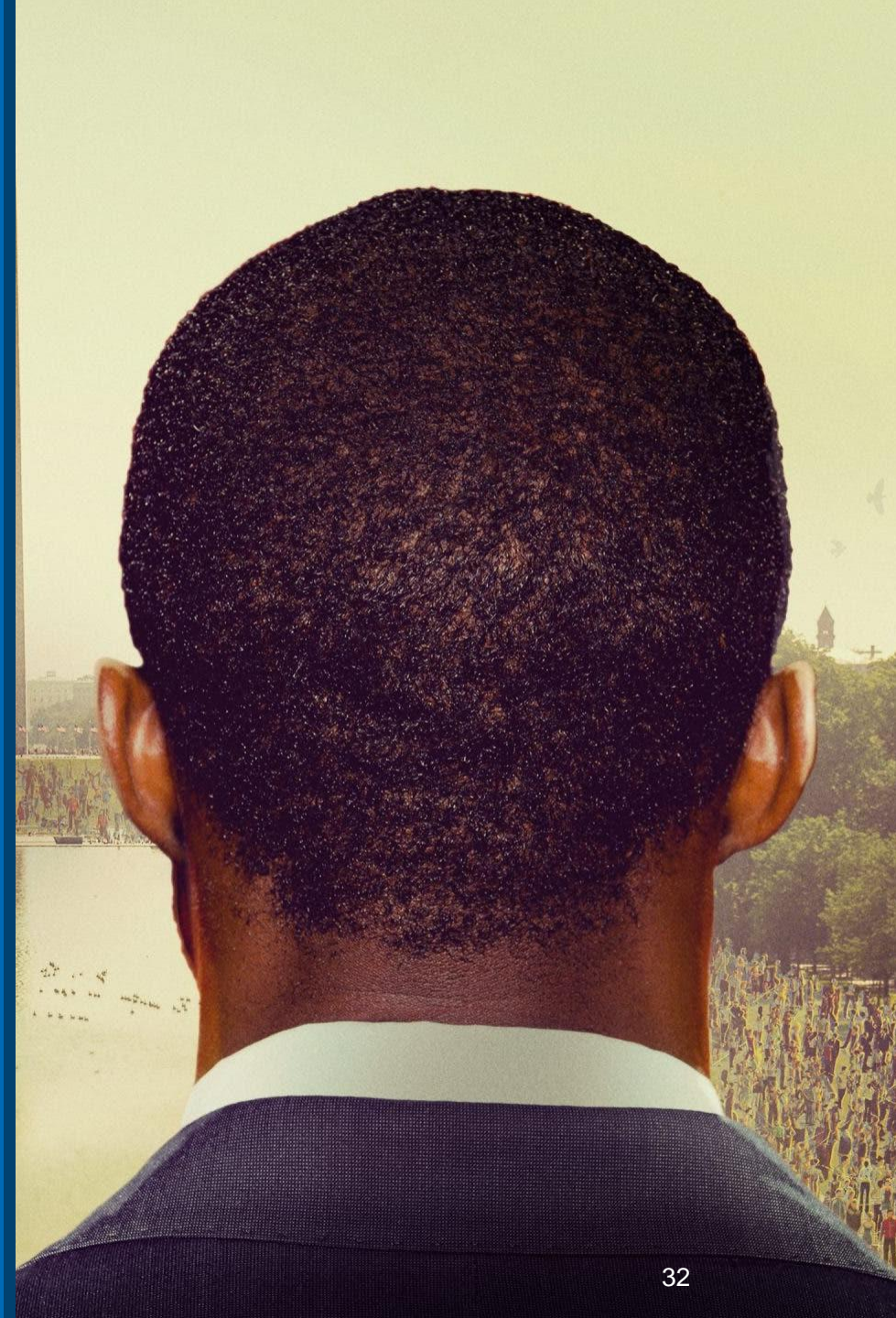


Title IX

The Civil Rights Act of 1964 (July 2, 1964)

The Civil Rights Act of 1964, a pivotal legislative triumph of the civil rights movement, brought an end to segregation in public places and prohibited employment discrimination based on race, color, religion, sex, or national origin.

Initially proposed by President John F. Kennedy, the Act faced formidable resistance from southern legislators before being enacted into law by his successor, President Lyndon B. Johnson. In the years that followed, Congress broadened the scope of the Act and enacted additional civil rights laws, including the Voting Rights Act of 1965.



THE 11 TITLES WITHIN THE CIVIL RIGHTS ACT OF 1964

Title I: Voting Rights

Title II: Public Accommodations

Title III: Desegregation of Public Facilities

Title IV: Desegregation of Public Education

Title V: Commission on Civil Rights

Title VI: Nondiscrimination in Federally Assisted Programs

Title VII: Equal Employment Opportunity

Title VIII: Registration and Voting Statistics

Title IX: Intervention and Removal of Cases

Title X: Community Relations Service

Title XI: Miscellaneous Provisions

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

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.1

Poll Question

Does your institution have a designated Title VI Coordinator?

- Yes
- No
- Is this a thing???



What does “race, color, or national origin” mean within the context of Title VI?

Discrimination on the basis of race, color, or national origin includes discrimination based on a person’s actual or perceived race, color, national origin, ethnicity, or ancestry.

This includes discrimination based on the country, world region, or place where a person or his or her ancestors come from; a person’s limited English proficiency or English learner status; or a person’s actual or perceived shared ancestry or ethnic characteristics, including membership in a religion that may be perceived to exhibit such characteristics (such as Hindu, Jewish, Muslim, and Sikh individuals).

SHARED ANCESTRY

Title VI's protection from race, color, and national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived:

- ❑ shared ancestry or ethnic characteristics; or
- ❑ citizenship or residency in a country with a dominant religion or distinct religious identity.

(Title VI does not protect students from discrimination based solely on religion. OCR refers complaints of discrimination based exclusively on religion to the U.S. Department of Justice, which has jurisdiction to respond to certain complaints of religious discrimination in public schools.)



“Shared Ancestry”

For example, OCR can investigate complaints that students were subjected to ethnic or ancestral slurs; harassed for how they look, dress, or speak in ways linked to ethnicity or ancestry (e.g. skin color, religious attire, language spoken); or stereotyped based on perceived shared ancestral or ethnic characteristics. Hindu, Jewish, Muslim, and Sikh students are examples of individuals who may be discriminated against based on shared ancestry or ethnic characteristics.

HARASSMENT UNDER TITLE VI

“Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that OCR enforces.”

Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability, 2010.

Violating Title VI

A recipient violates Title VI if one of its agents, acting within the scope of their official duties, has treated an individual differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the individual to participate in or benefit from the services, activities, or privileges provided by the recipient.

To establish a violation of Title VI under the hostile environment theory, OCR must find that:

- (1) a hostile environment based on national origin existed;
- (2) the recipient had actual or constructive notice of a hostile environment based on national origin; and
- (3) the recipient failed to respond adequately to redress the hostile environment based on national origin.

When determining whether an agent or employee was acting within the scope of their official duties such that the individual has actual or apparent authority over the individuals involved, OCR takes into account such factors as the relationship between the parties and the time, location, and context of the alleged conduct.

RESPONSE

“When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in a school’s investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial.”

Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on the Basis of Sex; Race, Color and National Origin; and Disability, 2010.



Minimum Requirements under Title VI

Respond

- Respond to the discriminatory conduct

Eliminate

- Eliminate any hostile environment and its effects

Prevent

- Prevent the harassment from recurring

Takeaways for Title VI

- Update your institutional nondiscrimination policy to ensure shared ancestry is addressed.
- Train employees to recognize incidents of harassment or discrimination under Title VI
- Provide key information on your website on how to report and to whom
- Ensure the response process and resolution procedures are clear and publicly available

NACCOP TITLE IX & EQUITY ALLIANCE

The Alliance is a dedicated affinity group through which Title IX and Equity Professionals, and the practitioners who support and/or supervise them, can benefit from NACCOP's expertise in complying with the Clery Act, Title IX, and other civil rights laws that affect their work.





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- Tier 1 Class: Law and Policy

Tier

- Tier 2 Class: Sex Discrimination Response

Tier

- Tier 3 Class: Safety & Risk Analyses for Sex-Based Harassment Emergency Removals

Tier

- Tier 4 Class: Title IX for Human Resources Professionals

Tier

- Tier 5 Class: Pregnancy and Related Conditions

Tier

- Tier 6 Class: The Clery Act for Title IX Coordinators (and Deputies)



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Tier	Tier 2 Class: Dating/Domestic Violence and Stalking DVDVS Investigations
Tier	Tier 3 Class: Case Study and Simulation
Tier	Tier 4 Class: Statement Analysis
Tier	Tier 5 Class: Report Writing
Tier	Tier 6 Class: Technology and Investigations
Tier	Tier 7 Class: Violence Against Men

Have a Question?



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