2025 YEAR-END COMPLIANCE REVIEW

INSTITUTIONAL
COMPLIANCE SOLUTIONS

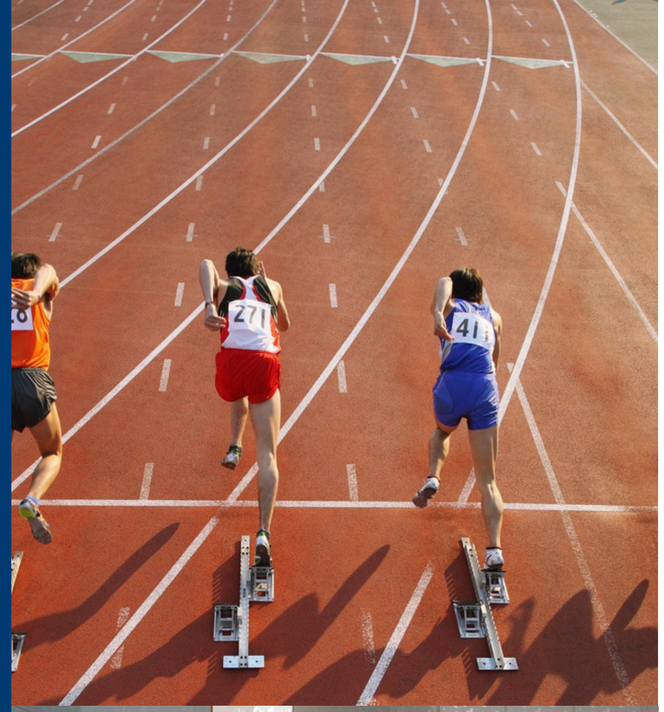
YOUR PRESENTERS

Courtney Bullard
ICS Founder/CEO

Steven Richard
Partner, Nixon Peabody

BEFORE WE GET STARTED

- Agenda
- Materials
- Overview
- Virtual environment
- Recording
- Not legal advice
- Questions



2025 ADMINISTRATIVE CHANGE = NEW CORE ADMINISTRATIVE PRIORITIES

01 Transgender participation in athletics

02 Access to sex-segregated facilities

03 Interpretation of "sex" under Title IX

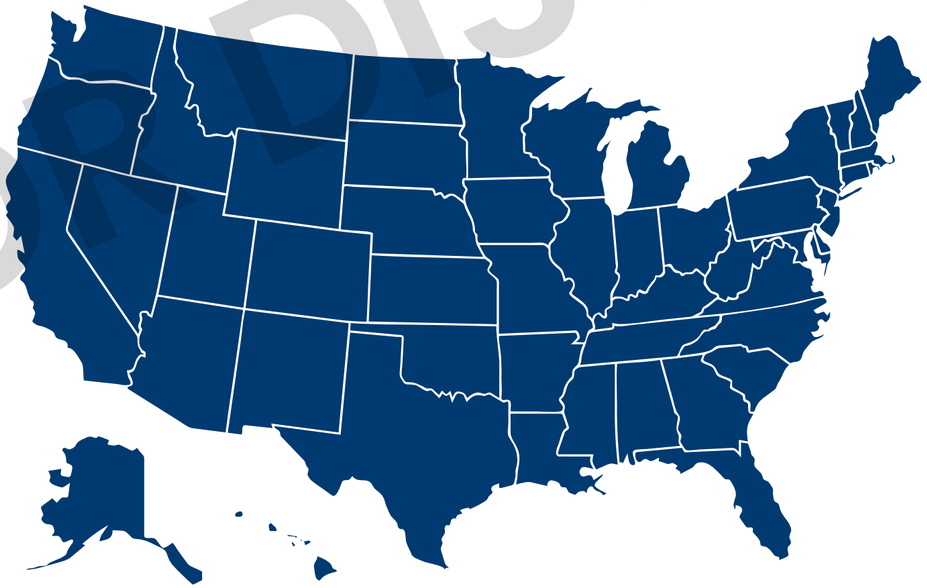
04 Title VI: Antisemitism and national origin discrimination

EXECUTIVE ORDERS RESHAPED ENFORCEMENT STANDARDS AND PRIORITIES

- Eliminated disparate impact analysis
- Heightened scrutiny of DEI-adjacent policies
- Created uncertainty that did not slow enforcement
- Agencies continued acting while litigation played out in parallel

WHAT WAS NOT IN THE FOREFRONT: TITLE IX SEXUAL HARASSMENT

- 2020 Regulations back in effect for all



Federal civil rights laws are enforced by the agency that provides the federal funding - not just the Department of Education.

Many agencies have always had civil rights authority on paper, but active enforcement outside ED OCR has historically been limited and sporadic. What has changed is coordination, expectations, and willingness to enforce.

5 TRENDS WITH ADMINISTRATIVE ENFORCEMENT

1.ENFORCEMENT IS FASTER EVEN WHEN GUIDANCE IS THIN

Main DOE (Title IX): OCR launched a directed investigation, issued a noncompliance finding, offered a short resolution window, then simultaneously referred the case to the DOJ and initiated administrative funding proceedings - all within roughly 7 weeks.

Denver Public Schools (Title IX): OCR initiated an investigation without a complaint, citing media coverage regarding gender-neutral bathrooms.

2026 Signal: Speed itself is now an enforcement expectation.

2.ENFORCEMENT IS NO LONGER CENTRALIZED – IT FOLLOWS THE MONEY

HHS Title VI enforcement: HHS referred institutions for potential grant suspension and debarment tied to antisemitism and campus climate concerns.

USDA Title VI activity: USDA exercised Title VI authority connected to school nutrition programs, land-grant institutions, and cooperative extension funding.

Multi-agency settlements: ED, DOJ, and other agencies acted together tying research funding restoration to wide-ranging civil rights compliance obligations.

2026 Signal: Any agency that controls federal funds can and will initiate civil rights enforcement and are doing so independently.

TITLE VI DOMINANT

Across higher-ed and K-12, Title VI eclipsed other civil rights statutes in visibility and consequence.

Enforcement focused on:

- Antisemitism and Islamophobia
- Campus climate/protests
- Institutional responses

Funding no longer a threat, it was used:

- HHS referrals for suspension or disbarment
- Freezing and restoration of federal research funds
- Settlement agreements conditioned on compliance reforms *i.e.*, *Harvard, Northwestern, Columbia*

DISPARATE IMPACT

Department of Justice released a new rule citing that

"The Title VI regulations do not prohibit conduct or activities that have a disparate impact and prohibit only intentional discrimination, and the Department will thus not pursue Title VI disparate impact liability against its Federal-funding recipients."

HAVE YOU APPOINTED A TITLE VI COORDINATOR?

- New York enacted law requiring institutions to designate a Title VI Coordinator
- Other states considering moving in same direction
- Expectation of federal government following suit similar to 2020 Title IX Regs; currently active bill in 119th Congress (HR 6857) - Protecting Students on Campus Act of 2025 but it only requires instituitons to share information about Title VI and how to file complaints with OCR

3.COMPLIANCE IS EVALUATED INSTITUTION-WIDE, NOT OFFICE-BY-OFFICE

Northwestern Settlement:

Compliance obligations spanned Title VI, IX, admissions, hiring, protest management, housing, athletics, and leadership certifications… all in one agreement.

Title IX Athletics Enforcement:

Minnesota and Maine actions required coordination between state education agencies, athletic associations, facilities management, and school leadership.

Clery Reviews:

Federal reviewers examine campus police, dispatch, emergency management, senior leadership decisions, and communications together - not as silos.

2026 Signal:

Agencies are evaluating whether an institution/district functions as a coordinated system, not whether a single office followed its checklist.

4.DOCUMENTATION HAS BECOME ITS OWN RISK CATEGORY

2026 Signal:

Inconsistent or incomplete documentation can itself become the basis for a finding, even when substantive responses were reasonable.

Title VI Investigations:

Agencies scrutinized whether institutions could show when leaders knew about incidents, what decisions were made, and how responses were documented.

Title IX Enforcement:

Institutions faced exposure where records across athletics, student affairs, and Title IX offices did not align.

Clery Act Reviews:

Focus heavily on timelines, dispatch logs, emergency notifications, and after-action documentation… not just policy language.

5.FUNDING, PUBLIC ACCOUNTABILITY, AND LEADERSHIP OVERSIGHT ARE PRIMARY LEVERS

Harvard and Northwestern:
Federal agencies froze or threatened research funding, then tied restoration to formal agreements, monitoring, and leadership certifications.

Columbia Settlement:
Massive financial settlement accompanied by institutional reform obligations.

Leadership Certifications:
Senior leaders were required to attest to compliance under penalty, elevating accountability beyond compliance offices.

Public Announcements of Enforcement Actions:
Agencies increasingly announced investigations, reviews, and settlements publicly, often early in the process.

2026 Signal:
Consequences increasingly affect funding, reputation, and board and executive leadership.

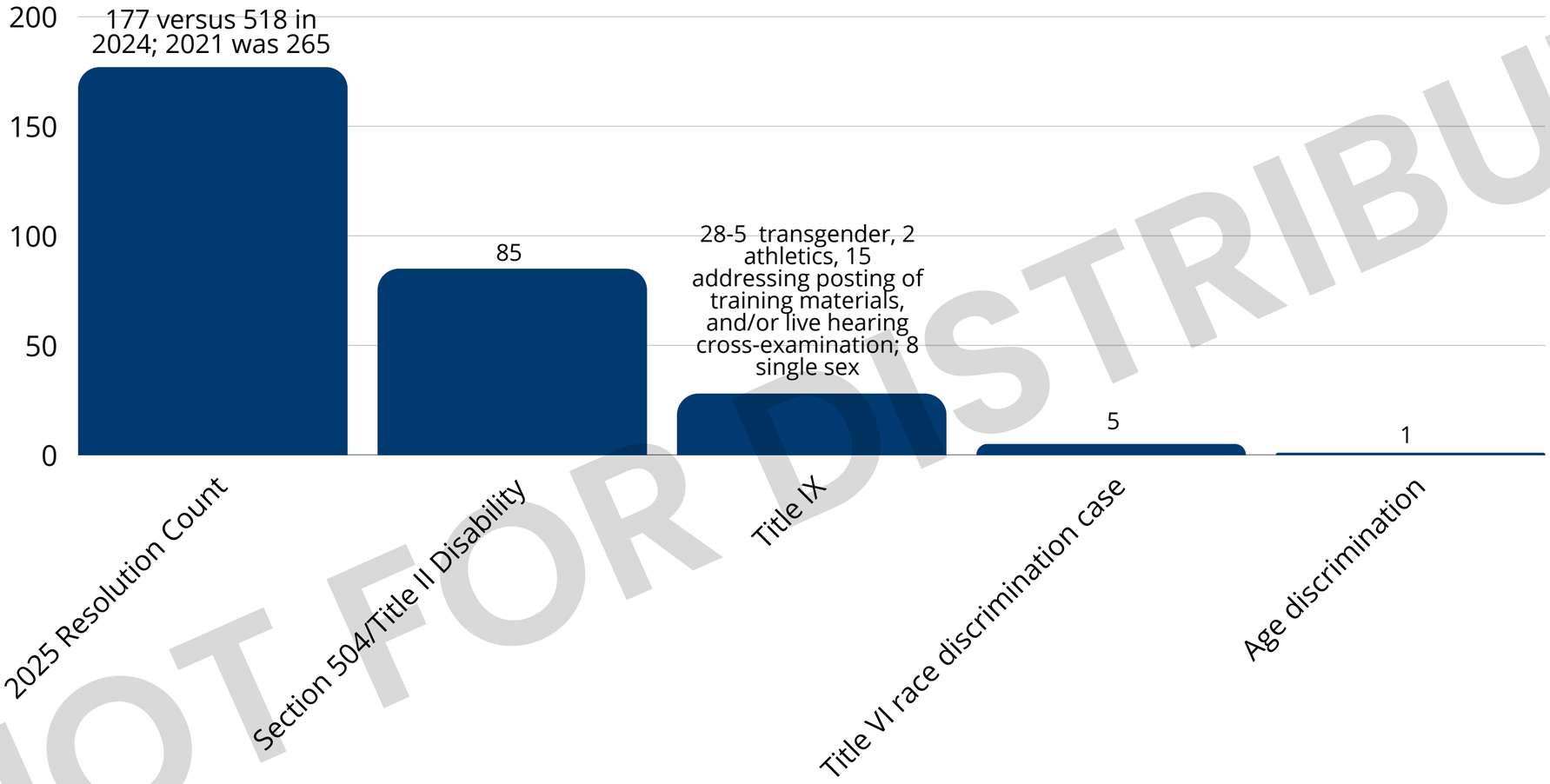
MULTI-AGENCY CLOSER LOOK

What you provide to one agency may be reviewed by another.

In multi-agency actions, institutions/schools were asked to reconcile:

- Different versions of events
- Different document sets
- Different decision rationales

DEPARTMENT OF EDUCATION/ OFFICE FOR CIVIL RIGHTS CLOSER LOOK



***2026 Signal:** December 2025 reinstatement of staff may produce an increase in volume and variety of resolutions.

ADMINISTRATIVE ACTION DID NOT WAIT FOR THE COURTS

- Executive orders and agency directives were immediately operational
- Litigation challenged authority, scope, and process but did not pause enforcement

SUPREME COURT CONSIDERS TRANSGENDER ATHLETIC BANS/DEFINITION OF "SEX"

SUPREME COURT AND FEDERAL COURTS

- Conflicts among federal circuit and district courts regarding the scope and definition of "sex" under Title IX and Equal Protection Clause

- *Bostock v. Clayton County, 590 U.S. 644 (2020)* (Federal employment discrimination laws protect LGBTQ employees) (Justice Gorsuch authored majority's opinion)

- *United States v. Skrmetti, 605 U.S. 495 (2025)* (TN's law prohibiting certain medical treatments for transgender minors is not subject to heightened scrutiny under Equal Protection Clause of the 14th Amendment and satisfies rational basis review)

- *Childs v. Salzar* (argued on 10/7/25) (Challenging Colorado's ban on conversion therapy – treatment intended to change a client's sexual orientation or gender identity – for young people)

TRUMP ADMINISTRATION

- Executive Order (1/20/25) (“Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government”) (The federal government will only recognize two sexes (male and female) based upon a person’s gender as it is defined by their biological sex at birth)

- Resolution Agreement Between UPenn and U.S. Dept. of Education’s Office for Civil Rights (6/30/25) (Title IX investigation regarding participation in female athletic programs and access to female facilities)

- Certifications and representations required for federal funding – read closely to determine whether you can attest to compliance

STATE LAWS

- Twenty-seven states have enacted laws barring transgender participation in sports
- *West Virginia v. B.P.J.* (West Va. Statute) and *Little v. Hecox* (Idaho Statute) (both argued before the Supreme Court on January 13, 2026)
  - 4th Circuit: West Virginia law violates Title IX because it discriminates against B.P.J. on the basis of sex
  - 9th Circuit: Idaho law violates the Equal Protection Clause because it was intended "to categorically ban transgender women and girls from public school sports teams that correspond with their gender identity"
- Vexing issues facing schools in "Blue States" – state laws affording gender identity protection contradict Administration's interpretation of "sex"

WHAT DID WE LEARN FROM ORAL ARGUMENT?

- Split 6-3 along ideological lines, the Court's conservative majority appears likely to uphold transgender athletic bans
- What will the ruling say about definition of "sex" and how will the definition be applied to other education programs or activities? (Implications include bathroom access and treatment in classrooms)
- The questions from the Justices were wide-ranging. (Key question by Justice Kavanagh: "Do you think sex and Title IX can reasonably be interpreted to allow different states to take different understandings of that in their sports leagues?")
- Will the Court limit the scope of holding due to mootness grounds or through a remand for more fact-finding?

WILL THE SUPREME COURT REVISIT STUDENT SPEECH STANDARDS?

L.M. v. Town of Middleborough,
103 F.4th 854 (1st Cir. 2024), cert. denied, 145 S.Ct. 1489 (2025)

L.M. wore a shirt to a public middle school with the words "There Are Only Two Genders." After he was sent home, he returned with another shirt that read "There are CENSORED Genders," which he was also asked to remove.

The First Circuit applied *Tinker* and concluded that there was a sufficient showing of a material disruption caused by the "demeaning message."

The Supreme Court denied the petition for a writ of certiorari with Justices Thomas and Alito dissenting.

- **Justice Thomas: Contended that First Circuit overextended Tinker analysis and further called for the dispensing of Tinker's holding altogether.**
- **Justice Alito: The School's action constituted unconstitutional viewpoint discrimination of the student's message on gender, noting by contrast that the school had sponsored a "PRIDE Spirit Week." The dissent warned of a "heckler's veto."**

DO BIAS RESPONSE TEAMS CHILL STUDENT SPEECH?

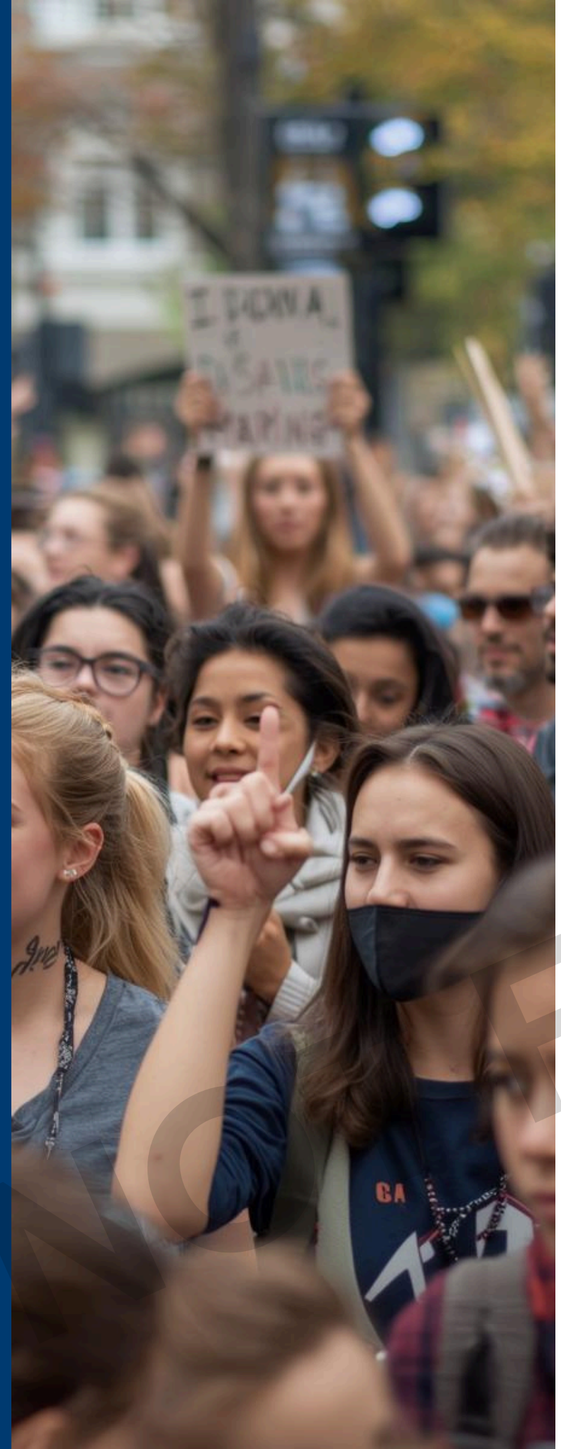
Speech First, Inc. v. Whitten,
2024 WL 4363740 (7th Cir. Sept. 5, 2024), cert. denied, 145 S. Ct. 701 (2025)

Approximately 450 colleges and universities have utilized "bias response teams".

Federal circuit courts have split whether bias response teams may be utilized consistently with the First Amendment.

The Supreme Court has declined twice to address this split.

The dissenting justices (Thomas and Alito) believe that bias response policies and procedures may cause "students to self-censor" and think that their "speech is no longer worth the trouble.

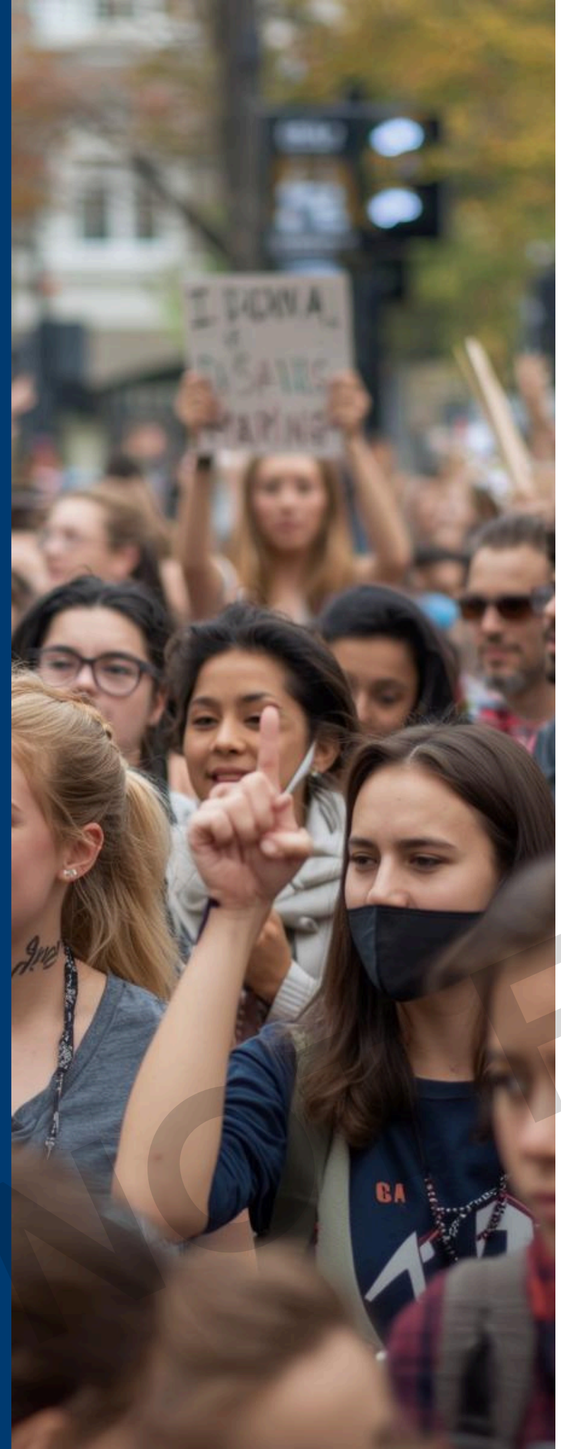


FIRST CIRCUIT AFFIRMS DISMISSAL OF TITLE VI HARASSMENT CLAIM

Stand With US Ctr. for Legal Justice v. M.I.T., 158 F.4th 1 (1st Cir. 2025)

Weighing Title VI Concerns Against 1st Amendment

- Two students and student membership group sue university under Title VI alleging failure to address antisemitic harassment resulting from pro-Palestinian protests on campus.
- First Circuit stressed that university should allow robust and open exchange of ideas, especially on matters of public concern.
- Court held that using Title VI to punish speech based on a viewpoint could violate the First Amendment.



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Title VI "Deliberate Indifference Analysis"

- Addressing Title VI, First Circuit applied the "deliberate indifference" framework of *Davis v. Monroe Cty. Bd. of Ed*. (Title IX case).
- University's response to protests and alleged harassment on campus was not "clearly unreasonable in light of the known circumstances".
- Deliberate indifference is not a static concept, and response will be assessed based upon how it evolves of time.

CIRCUIT COURTS APPLY GARCETTI'S ACADEMIC EXCEPTION

Garcetti v. Ceballos, 547 U.S. 410 (2006) (addressing speech in public workplace, with carve-out for teaching and scholarship).

Kilborn v. Amiridis, 131 F.4th 550 (7th Cir. 2025) (addressing a professor's exam question, out-of-class statements, and in-class remarks that raised racial matters of public concern).

Garcetti exception expressly applied by Second, Fourth, Sixth, Seventh, Ninth Circuits, and implicitly by Fifth Circuit.

Courts broadly define protected teaching and scholarship speech within the exception.

COURTS REACHING DIFFERENT DETERMINATIONS ABOUT SPEECH

Jorjani v. N.J. Inst. of Tech.

The institution declined to renew a lecturer's contract based on his private comments about race, politics, and immigration, which caused student complaints and faculty statements criticizing the lecture's controversial comments.

District court judge ruled that while the school did not assert any protests or demonstrations resulting from the lecturer's speech, it made a sufficient showing of student apprehension and disruption within the administration and faculty relationships (which it believed was likely to continue) in response to the lecturer's speech. 2024 WL 3594401, at *10 (D.N.J. July 31, 2024)

Reversing the judgment, the Third Circuit stressed that a campus environment should promote students' ability (however unpleasant or uncomfortable) to hear and consider "contrarian views." 151 F.4th 135, 143 (3rd Cir. 2025)

KEY TITLE IX CASE TO WATCH

Arana v. Bd. of Regents (7th Cir.)

Seventh Circuit Panel Decision

- Single incident of “egregious” student-on-student harassment may be sufficiently “pervasive” to create Title IX liability
- Deprivation of educational access can occur even if academic performance does not suffer
- Subsequent action (here, reinstatement of accused) can nullify the propriety of a prior responsive action
- Scope of ruling could drastically expand Title IX liability for higher education institutions
- Seventh Circuit has vacated the panel ruling and set the appeal for an en banc review

KEY TAKEAWAY

- *Is Your Compliance House in Order?*

COLUMBIA AS A WARNING

Underinvestment in civil rights infrastructure can create significant exposure

Title VI should be treated as an enterprise risk by Leadership, not just a niche legal function

Columbia is not an outlier but a warning signal

Need to demonstrate credible Title VI infrastructure - more than just policies (Coordinator, training, etc.)

PRESSURE TESTING YOUR STRUCTURE

How quickly can your school pivot if funds are frozen or conditioned?

Yellow Flag: Your policies, procedures, laws are not in line with federal enforcement priorities

QUESTION IS NO LONGER "WILL OCR INVESTIGATE?" BUT RATHER "WHICH AGENCY CONTROLS THE FUNDING TIED TO THIS ISSUE AND WHAT STANDARDS WILL THEY APPLY?"

Institutions/Districts that will struggle:

- Treat compliance as Education Department only
- Rely on siloed offices
- Document after the fact
- Wait for certainty before acting

Institutions/Districts that will be ready:

- Track all federal funding sources
- Understand which civil rights statutes attach to each
- Map compliance to funding
- Prepare for multi-agency scrutiny
- Centralize documentation
- Engage leadership early
- Treat compliance as an operational infrastructure

As federal enforcement has decentralized across agencies, institutions/schools now need to centralize compliance more than ever.

CENTRALIZED COMPLIANCE

...does not mean consolidation into one single role. It means coordination, visibility, and accountability. Effective models will include:

- Clear ownership for IX, VI, ADA, Clery
- A central compliance function or framework that aligns policies, tracks incidents and responses, coordinates documentation, briefs leadership regularly
- Same message as always - compliance cannot live in silos

INSTITUTIONAL COMPLIANCE SOLUTIONS

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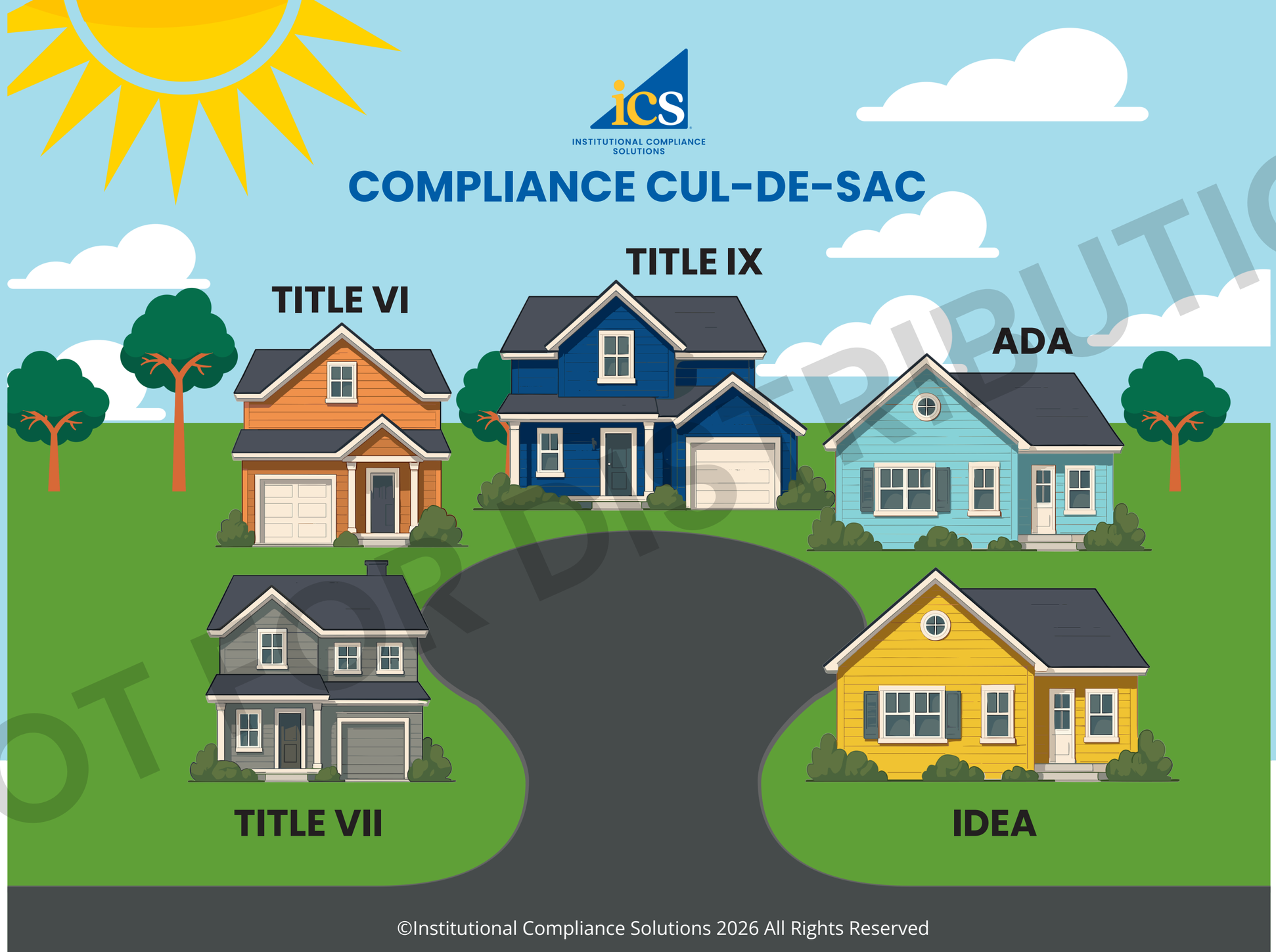

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QUESTIONS?