

HIGHER EDUCATION INFORMATION MEMO

MAY 9, 2024

Navigating Compliance with OCR's New Guidance on Title VI

In the midst of antiwar protests and a rise in antisemitic incidents at institutions of higher education (IHE) across the country, the Office for Civil Rights (OCR) issued a [Dear Colleague Letter](#) (DCL) on May 7, 2024 reiterating its commitment to enforcing Title VI of the Civil Rights Act of 1964. Title VI ensures nondiscrimination on the basis of race, color or national origin, encompassing shared ancestry or ethnic characteristics. In OCR's view, adhering to these standards not only fulfills legal obligations but also enhances the educational environment for all students. Below we suggest some key considerations and strategic advice for campuses and administrators as they navigate these turbulent regulatory waters.

Understanding OCR's Guidance

- **Broad Protection Scope:** OCR's guidance makes it clear that Title VI protections are broad, covering discrimination not only based on race, color and national origin but also on shared ancestry and ethnic characteristics. This includes protection for individuals who are perceived to belong to various ethnic or national groups, such as Jewish, Israeli, Muslim, Arab and others. OCR reinforces its broad interpretation of Title VI by giving nine examples of hypothetical complaints in the DCL. According to OCR, the facts provided in every one of its examples would lead to an investigation.
- **Hostile Environment Prohibition:** A critical aspect of OCR's enforcement is the prevention of a "hostile environment" which occurs when harassment related to race, color or national origin is so severe, pervasive or persistent that it interferes with or limits the ability of a student to participate in or benefit from the services, programs, or activities provided by the IHE.
- **Different Treatment Analysis:** Institutions must ensure that no student is treated differently based on race, color or national origin. OCR evaluates cases of alleged discrimination with a fact-specific analysis to determine if differential treatment occurred without a legitimate, nondiscriminatory reason.

Strategic Advice for Compliance

- **Policy Review and Training:** Regularly review and update policies and training programs to ensure they are in line with current OCR standards. This includes developing clear policies against harassment and discrimination and providing training for faculty, staff and students on these policies.
- **Proactive Engagement:** Maintain an active stance in monitoring the campus environment to quickly identify and address potential issues of discrimination or harassment. This proactive approach not only prevents incidents but also demonstrates the IHE's commitment to a

nondiscriminatory educational environment.

- **Effective Reporting Mechanisms:** Establish and publicize effective mechanisms for reporting discrimination and harassment. Ensure that these mechanisms are accessible to all students and employees and that reports are taken seriously and investigated promptly and thoroughly.
- **Supportive Measures:** Implement supportive measures for victims of harassment and discrimination. These might include counseling services, academic support and modifications to class schedules or housing arrangements, as necessary.
- **Free Speech Considerations:** Balance the enforcement of nondiscrimination policies with respect for the First Amendment, academic freedom and free speech rights of faculty, students and staff. While IHE must address behaviors that contribute to a hostile environment, they must also respect free speech rights. This is perhaps the greatest challenge to Title VI compliance for many campuses experiencing turmoil. While OCR's guidance regarding the appropriate balance between these competing priorities is vague, OCR does at least acknowledge the difficulties faced by administrators.
- **Inclusive Community Initiatives:** Foster an inclusive campus environment through regular diversity and inclusion initiatives that celebrate and educate about different cultures and perspectives. Such efforts can enrich the educational experience and build a culture of tolerance to divergent views and even controversial speech. Evidence of a commitment to multiculturalism and may also give OCR investigators a reason to defer to an IHE's well-intentioned efforts to balance speech and protection.

Conclusion

Although it does not provide any new information or specific guidance on responding to the current climate of campus unrest, the new DCL does offer some clarity on what OCR expects from IHE regarding Title VI compliance. In particular, IHE are encouraged to review the DCL's illustrative examples as they provide an indication of OCR's potential response to occurrences currently arising on many campuses. As administrators contend with a bevy of challenges and demands in these unsettled and contentious times, we encourage clients to make time to consider preventative measures such as policy updating and staff training to fortify compliance with Title VI. Failing to do so seems more likely than ever to result in regulatory and enforcement scrutiny.

If you have any questions on how the information presented here 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.

