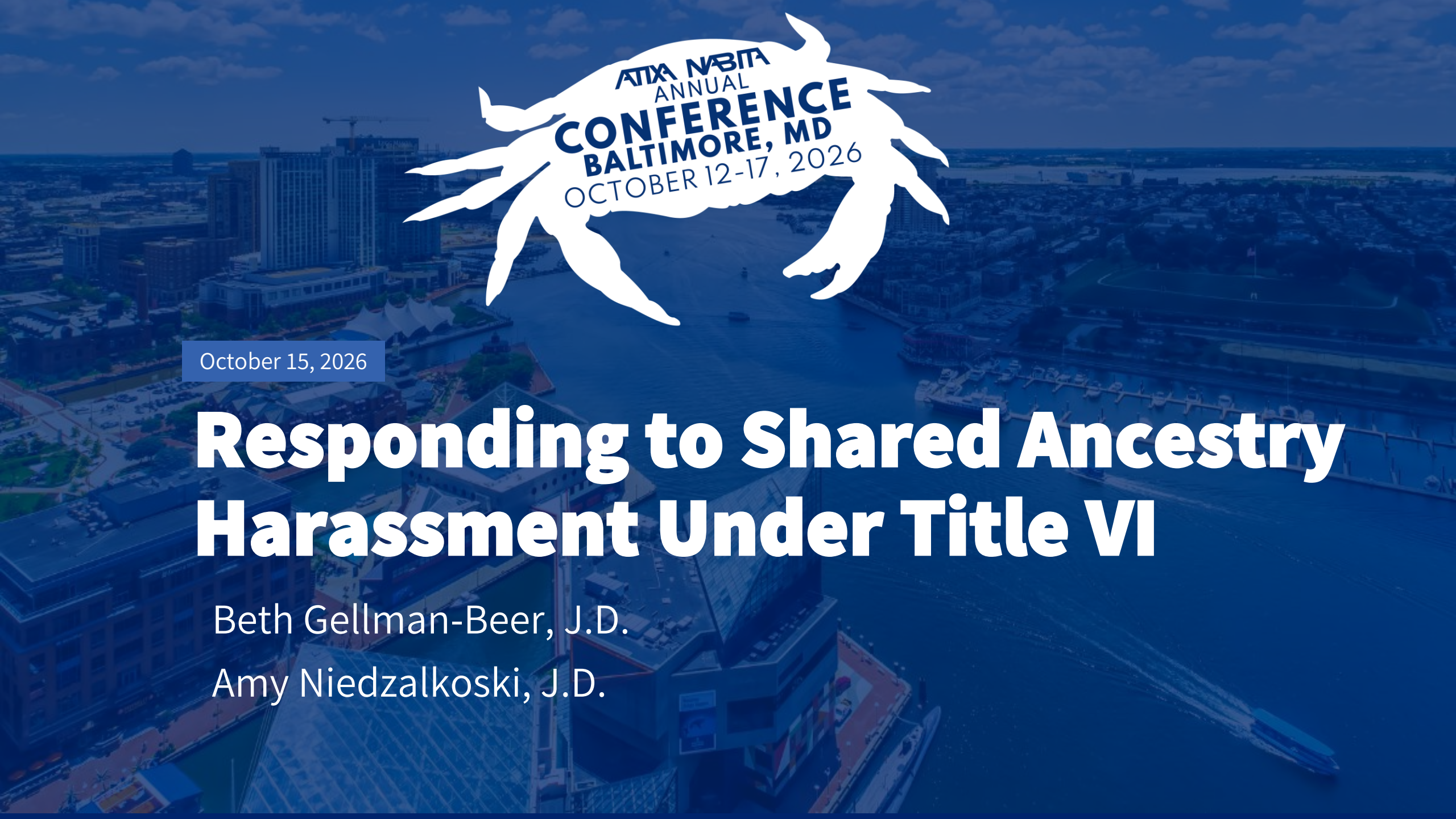


October 15, 2026

Responding to Shared Ancestry Harassment Under Title VI

Beth Gellman-Beer, J.D.

Amy Niedzalkoski, J.D.



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Responding to Shared Ancestry Harassment Under Title VI

EVERGREEN
EDUCATION SOLUTIONS

Beth Gellman-Beer

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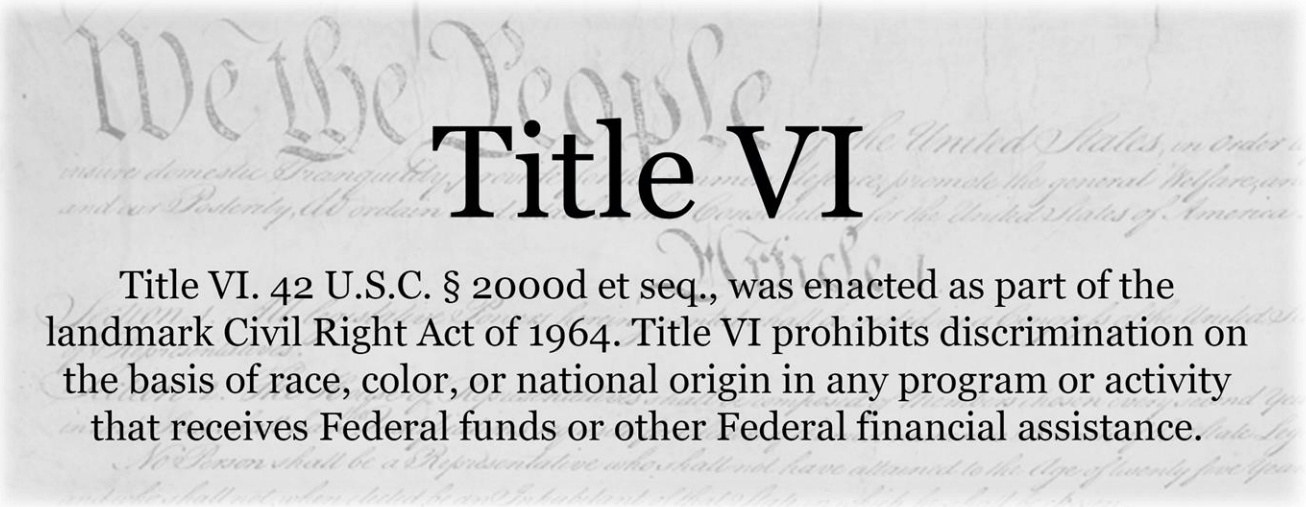
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AGENDA

- What is Title VI
- What is Title VI Harassment
- How must a school respond to harassment
- Title VI Coordinator Role
- Free Speech Considerations
- Case Review
- Institution Policies
- Current Title VI Legal and Enforcement Landscape
- Q&A

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INTRODUCTION



- OCR INTRODUCTION
- FOCUS TODAY IS ON STUDENTS AND EMPLOYEES OF POST-SECONDARY INSTITUTIONS WHO PARTICIPATE IN THE FEDERAL FINANCIAL AID PROGRAM OR OTHERWISE RECEIVE FUNDING FROM THE U.S. DEPARTMENT OF EDUCATION
- IMPORTANCE OF KNOWING HOW TO IDENTIFY AND ADDRESS TITLE VI HARASSMENT

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WHAT IS TITLE VI?

Title VI was enacted as part of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d, et seq.

Title VI's implementing regulations are found at 34 C.F.R. Part 100.

Title VI prohibits discrimination against any person based on race, color, or national origin in any program or activity receiving federal financial assistance.

Title VI's prohibition of discrimination on the bases of race, color, and national origin, includes actual or perceived shared ancestry and ethnic characteristics (e.g., antisemitism and Islamophobia).

Harassment based on shared ancestry and ethnic characteristics is a type of national origin discrimination.

COVERAGE: *ASSOCIATION*



DISCRIMINATION AND HARASSMENT CAN ALSO BE TARGETED TO SOMEONE BASED ON THEIR ASSOCIATION WITH SOMEBODY OF AN ACTUAL OR PERCEIVED RACE, COLOR, OR NATIONAL ORIGIN.

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COVERAGE: *PROGRAMS AND ACTIVITIES*

- Admissions
- Recruitment
- Financial aid
- Academic programs
- Student services
- Counseling and guidance
- Health services
- University sponsored social media
- Classroom assignment
- Grading
- Clubs and activities
- Recreation
- Athletics
- Housing
- Dining Services
- Greek Life

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TITLE VI - *DEFINITIONS*

RACE

Membership in a group based on physical or cultural characteristics associated with a certain race, ancestry, or ethnic heritage.

COLOR

Skin color, tone, pigmentation, shade, or complexion, regardless of racial or ethnic background

NATIONAL ORIGIN

Ancestry, ethnicity, or country of origin; includes linguistic and cultural characteristics

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WHAT DOES SHARED ANCESTRY AND/OR ETHNIC CHARACTERISTICS MEAN?

- Citizenship in a country with a dominant religion or distinct religious identity or perceived to be of a particular citizenship or national origin.
- How a person looks, including skin color, physical features, or style of dress that reflects both ethnic and religious traditions.
- Foreign accent or name, including names commonly associated with a particular shared ancestry or ethnic characteristic.
- Speaking a foreign language .

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TITLE VI HARASSMENT: DEFINITION

OCR Definition Prior to May 2025:

Unwelcome conduct 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 recipient's education program or activity.

To establish a violation of Title VI, OCR would look at whether (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to take prompt an effective action to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

Court Definition and OCR Definition Post-May 2025

Harassment based on race, color, or national origin that is so severe or pervasive that it effectively bars the victim's access to an educational opportunity or benefit.

A school may be held civilly liable for its deliberate indifference to Title VI harassment. Under the deliberate indifference standard, an institution is liable only when its response to known instances of harassment was clearly unreasonable in light of the known circumstances.

How does your institution define Title VI harassment?

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DISCRIMINATORY HARASSMENT

WHAT IS IT?



- Conduct, whether verbal, physical, written, graphic, or electronic that threatens, intimidates, offends, belittles, denigrates, or shows an aversion toward an individual or group;
- Epithets, slurs, or negative stereotyping, jokes, or nicknames;
- Written, printed, or graphic material that contains offensive, denigrating, or demeaning comments, or pictures; and
- The display of offensive, denigrating, or demeaning objects, e-mails, text messages, or cell phone pictures.

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DISCRIMINATORY HARASSMENT

WHERE DOES IT OCCUR?

Harassing conduct can also occur off-campus, online, or on social media if it creates or contributes to a hostile environment on campus or in an educational program or activity.

- ✓ Classrooms
- ✓ School buildings
- ✓ Open spaces on campus
- ✓ School trips
- ✓ Study abroad
- ✓ Residence halls
- ✓ Locker rooms
- ✓ Dining halls

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LEGAL STANDARD TO DETERMINE IF A VIOLATION OF TITLE VI HAS OCCURRED:

As of May 22, 2025 joint HHS OCR and Ed OCR letter to Columbia University

(1) individuals associated with the institution were subject to severe or pervasive harassment that was motivated, at least in part, by race, color, or national origin;

(2) the institution had actual knowledge of the harassment;

(3) the institution had the ability to exercise substantial control over the harassers; and

(4) the institution was **deliberately indifferent** to the harassment;

(5) the harassment deprived the student of educational benefits or opportunities.

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.

REQUIRED RESPONSE TO TITLE VI HARASSMENT



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When a school determines the conduct created a hostile environment, it should take steps to

1) *End the harassment*
2) *Prevent its recurrence*
3) *Mitigate its effects*



Policy driven discipline



Message from the president/ superintendent



Education for the respondent



Counseling or reimbursement for counseling



No contact order; safety plan; separation



Training



Climate survey



Revise policies/procedure (if necessary)

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THE TITLE VI COORDINATOR ROLE

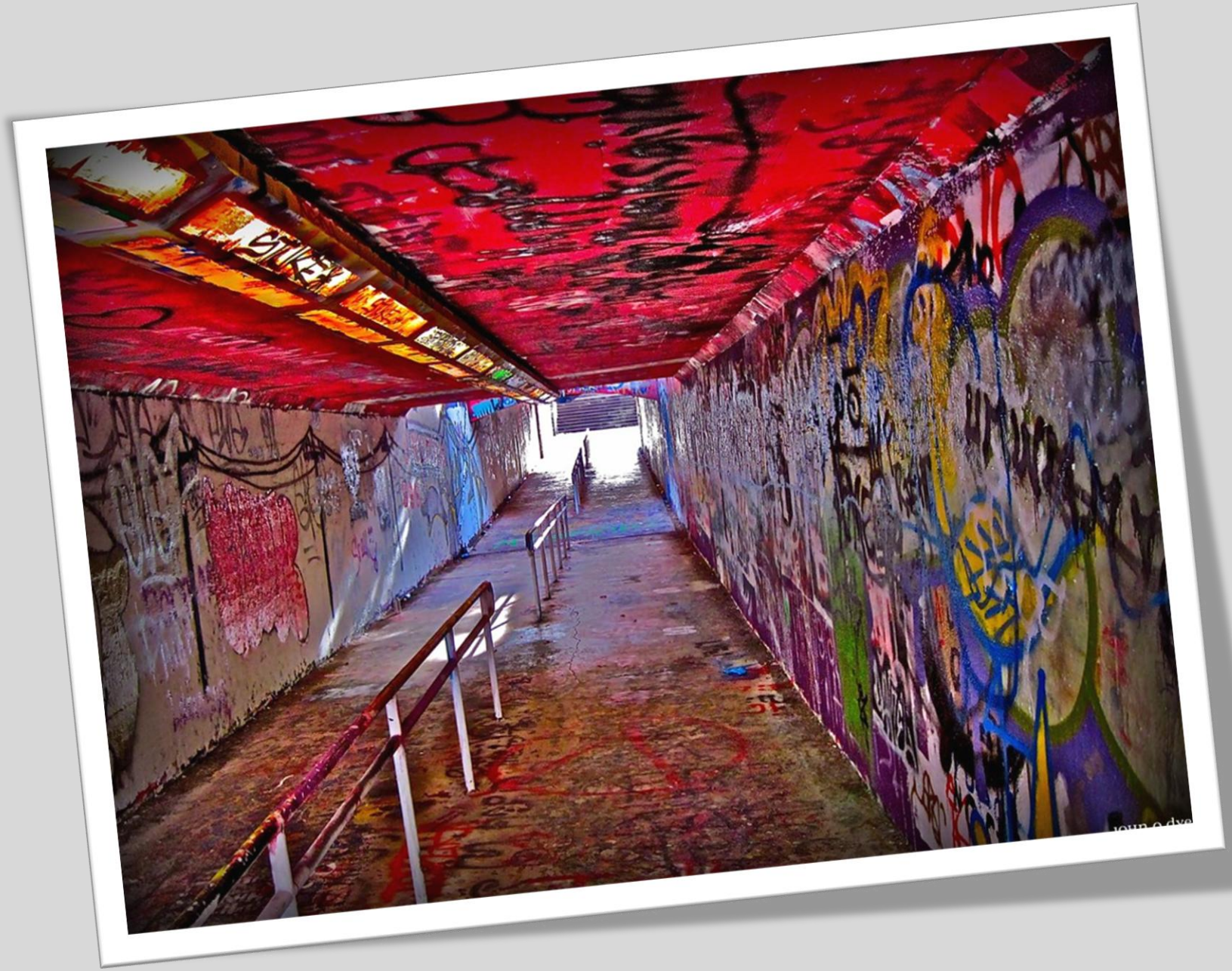
- Oversee the receipt of reports of race, color, national origin discrimination/harassment
- Coordinate the response to reports across offices, including housing, law enforcement, conduct, etc
- Monitor outcomes, identify any patterns, and assess their effects on the campus/school climate related to discrimination/harassment
- Identify and offer support to individuals that may have experienced discrimination/harassment
- Oversees all hostile environment assessments, using the appropriate legal standard, in response to all complaints whether the conduct occurs on campus, off campus, or on social media
- Provide training on race, color, and national origin discrimination/harassment to students and employees
- Publication of Notice of Non-Discrimination and dissemination of the Non-Discrimination Policy
- Policy review and updates

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Title VI Coordinator Best Practices

- ❑ A “Title VI Coordinator” title is not yet required, but how does your campus community know where to report concerns?
  - ✓ Maintain, publish and disseminate Notice of Non-Discrimination and Non-Discrimination Policy
  - ✓ Contact information should be widely disseminated and consistent across all policies
- ❑ Ensure centralized recordkeeping and record retention
- ❑ Develop a workflow to ensure reports are routed to the correct office in a timely fashion
- ❑ Title VI training for the Title VI Coordinator
- ❑ Document determinations for every complaint
- ❑ Review reports with other offices on a regular basis to identify potential patterns – in a particular location, class, student group, professor, residence, etc.
- ❑ Coordinate climate surveys and review the results to identify patterns and action plans

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“WHAT ABOUT FREE SPEECH?”

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"WHAT ABOUT FREE SPEECH?"

FIRST AMENDMENT CONSIDERATIONS…

Schools may not restrict rights otherwise protected by the First Amendment, including the freedom of speech, but must also comply with Title VI even when protected speech is involved.

Even where an incident invokes free speech, schools still must conduct an assessment to determine if the conduct – even if free speech – has created or contributed to a hostile environment.

A key consideration, following the Supreme Court decision in Tinker, is whether the conduct materially and substantially interfered with the educational environment.

If the school determines that the incident created or contributed to a hostile environment- even where free speech is involved – the school needs to take remedial actions, other than discipline, to address the effects of the hostile environment.

What are the limits of Political Speech?

Gartenberg v. Cooper Union

- The courts place significant value on the free exchange of ideas, particularly in higher education.
- By the same token, non-discrimination laws exist to ensure that the free exchange of ideas do not create ahostile environment that impedes the educational environment.
- Speech on matters of "**public concern, directed to the college community through generally acceptedmethods of communication**" is entitled to "special protection" under the First Amendment.

  Acceptable: Debate in the classroom
  Acceptable: Flier pinned to a bulletin board
  Not Acceptable: Vandalizing a hallway
  Not Acceptable: Disrupting a class with a bullhorn

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What are the limits of Political Speech?

Gartenberg v. Cooper Union

The critical question: *Is the speech or expressive conduct reasonably designed or intended to contribute to a reasoned debate on issues of public concern?*

Applying federal anti-discrimination law consistent with First Amendment principles does not, in other words, require courts to shield all "derogatory epithets" of **marginal value** or to protect or to protect speech "even about political matters, that is so **persistent or patently harassing** that it could not be reasonably designed to contribute to reasoned debate."

What are the limits of Political Speech?

Gartenberg v. Cooper Union

Examples that the Court gave of pure speech on matters of public concern:

- Pro-Palestinian students demonstrated on the sidewalk, chanting slogans concerning the Israeli-Palestinian conflict
- Flier distributed on campus inviting students to celebrate the First Intifada
- Vigil hosted by the SJP chapter to grieve and honor those killed by "decades of Israeli occupation and imperial violence"
- College newspaper articles criticizing the conflation of Zionism with Judaism
- Mandatory attendance at a speech about the misuses of holocaust memory

What are the limits of Political Speech?

Gartenberg v. Cooper Union

Examples that the Court gave of conduct that goes beyond pure speech:

- Protestors forced their way past campus security into a college building, obstructed the hallway and disrupted classes
- The protestors attempted to enter the library where Jewish students were sheltering, banging on and rattling the locked doors while shouting while waiving a Palestinian flag, holding signs critical of Israel, chanting, all plausibly directed at the visibly Jewish students inside the library.
- Antisemitic vandalism and graffiti that violated college disciplinary policies.

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FREE SPEECH:

PERMISSIBLE REMEDIAL ACTIONS - EXAMPLES



Messaging



Meet with student groups



Counseling and support



Education



Training



Climate survey

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Title VI SHARED ANCESTRY

HARASSMENT EXAMPLES

A Jewish student has her dry-erase board on her dorm room door defaced with swastikas and epithets referencing poor hygiene and racial impurity of Jewish people and white supremacist slogans. Mezuzah is also removed from the doorframe.

Students remove the hijab of an Arab Muslim student, throw it on the ground, stomp on it and call her a terrorist.

Students protest an Israeli filmmaker invited to campus. They block the entrance to the venue, yelling that they do not want Israelis on campus with posters depicting the Israeli flag associated with swastikas and other hate symbols. When students wearing Kippas attempt to enter, protestors chant “colonizers aren’t welcome here”.

A Muslim student of Saudi Arabian descent is followed and taunted by classmates for not eating pork, mock her accent and limited English proficiency and traditional Saudi clothing.

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CASE REVIEWS AND CURRENT LANDSCAPE:

OCR RESOLUTIONS

Muhlenberg College
(Professor engaged in harassment)

Lafayette College
(Interplay of Title VI and First Amendment rights)

Columbia University
(Deliberate indifference standard)

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What Are Your Institution's Policies?

- Non-Discrimination Policy addressing Title VI shared ancestry discrimination and harassment
  - Includes definition for harassment
  - Identifies the Title VI Coordinator/Officer
- Free Speech Policy
- Academic Freedom Policy
- Time, Place and Manner Restrictions Policy
- Demonstrations Policy
- Postering Policy
- Social Media Guidelines/Policy

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LEGAL IMPLICATIONS

Even with reduced OCR enforcement, it is still in a school's best interest to follow the mandates of Title VI and other civil rights statutes because:

- Schools should be safe and inclusive for all students
- State human relations/civil rights laws
- State and federal lawsuits, which unlike OCR may include punitive damages
- High profile accusations in the press

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Questions?



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