University of Vermont

36th Annual Legal Issues in Higher Education Conference

Civil Rights:
Trends in Federal Enforcement

COZEN O'CONNOR

HEALY+
Solutions for Organizational Excellence

BOWDITCH
ATTORNEYS

Silver Maple Ballroom

Monday, October 19, 2026

10:45 AM - 12:00 PM

LEGAL ISSUES IN HIGHER EDUCATION · THE UNIVERSITY OF VERMONT ·

Civil Rights: Trends in Federal Enforcement

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MODERATOR: Sonia Jurado, *Associate Vice-President, Equal Opportunity & Compliance, Title IX, Title VI, and ADA/Section 504 Coordinator, Emerson College*

October 19, 2026

Abstract

This session will present an **update on current administrative priorities and trends** in federal civil rights enforcement regulatory actions under Title VI, Title IX, Title II/Section 504, as well as the intersections with Title VII and the Clery Act.

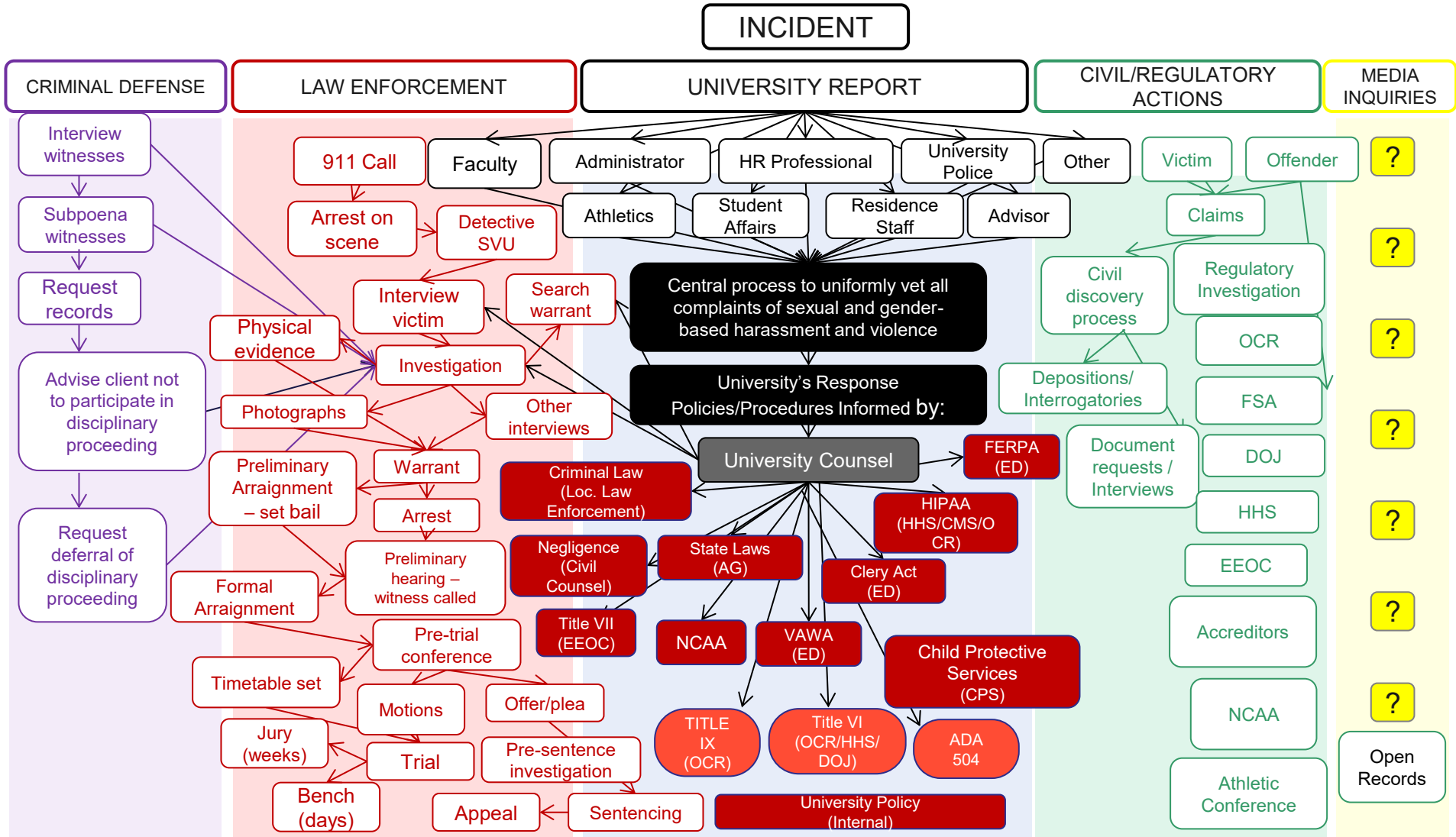
Experienced civil rights attorneys (former OCR, DOJ, and outside counsel) will share insights about federal investigation approaches and recent findings and resolutions from the U.S. Department of Education, Office for Civil Rights; Department of Health and Human Services, Office for Civil Rights; and the U.S. Department of Justice.

Panelists will share a roadmap of **historical approaches, the current environment, and practical implementation advice** to help schools find stable moorings, **navigate regulatory obligations, and prepare for known risks and unexpected challenges.**

Civil Rights: Navigating Current Administrative Priorities and Trends

INTRODUCTION

The Challenge of the Higher Education Context



Note: Lists of report recipients, relevant laws, and regulators not exhaustive.

Avalanche of Federal Actions

Since January of 2025 complexities facing higher education increased due to an unprecedented number of Executive Actions

- Executive Orders
- Dear Colleague Letters
- Press Releases
- Guidance Letters, Directives, and Memoranda
- Federal Compacts
- False Claims Act
- Borrower Defense Fund Actions
- OCR Directed Investigations
- Joint Inquiries (DOJ, HHS, ED, EEOC)
- Clery Act Investigations
- Federal Funding: Pauses, Removal, Reductions
- Agenda Driven Dismantling of Agencies, Workforce
- Off-label Use of Federal Enforcement Authority

6

TRUMP ADMINISTRATION KEY PRIORITIES MOST IMPACTING HIGHER EDUCATION

- Title VI – Anti-Semitism
- Title IX – Transgender rights
- DEI Programs – Race-conscious admissions, scholarships, and programing
- RESEARCH – Foreign funding of and ties to research enterprise
- IMMIGRATION – Travel bans, visa revocations, increased visa vetting, significant fees for H-1B visas
- Endowments

2025 - Fortified Polarization: Crisis Accelerants

- International Conflicts
- National Political Division
- Campus Violence, Protests and Demonstrations
- Diversity Equity and Inclusion
- Gender Identity
- Antisemitism
- Immigration
- Higher Education Under Siege

Laws and Enforcement Overview

Title VI, Title IX
ADA/504

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

Title VI through the Years: July 1964-Sept. 2023

Title VI passed as part of the Civil Rights Act of 1964

1964-1993

1994

Mar.10,1994: Office for Civil Rights (OCR) releases **Investigative Guidance: Racial Incidents and Harassment**, ushering in the first substantive era of federal enforcement

2003-2004

July 28, 2003: OCR releases its "Dear Colleague Letter" (DCL) regarding Title VI and the First Amendment

Sept. 13, 2004: OCR releases the first DCL categorizing antisemitism and islamophobia as discrimination under Title VI

2010-2015

Sept. 8, 2010: DOJ releases a letter to **OCR** reaffirming the 2004 DCL

Oct. 26, 2010: OCR releases DCL re Harassment & Bullying

Dec. 31, 2015: OCR releases DCL re Race, Religion, and National Origin Tolerance

2017-2019

Jan 2017: OCR releases Guidance: Combatting Discrimination Against Jewish Students

Jan 2017: OCR releases Guidance: Know Your Rights: Title VI and Religion

Dec. 2019: White House (WH) releases Executive Order (EO) 13899, "Combatting Anti-Semitism"; encourages IHRA definition

2020-2021

Sept. 25, 2020: NYU Resolution Agreement, marking the first OCR agreement post EO 13899

Jan. 2021: OCR issues Q&As reaffirming EO 13899, "Combatting Anti-Semitism"

Jan. 2023-Sept. 2023

May 25, 2023: WH announces first ever National Strategy to Counter Anti-Semitism

May 25, 2023: OCR releases DCL Addressing Discrimination Against Jewish Students

Jan. 2023: OCR releases Fact Sheet re Shared Ancestry or Ethnic Characteristics

Apr. 3, 2023: OCR announces resolution with University of Vermont, signaling a new era of heightened enforcement against antisemitism

Aug. 24, 2023: OCR releases DCL re Race & School Programming

OCR Resolution Agreement with NYU (9/25/20)

- Required NYU to include a statement that the University prohibits discrimination on the bases of shared ancestry and ethnic characteristics, including anti-Semitism under the IHRA definition (as defined in EO 13899)
  - "Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities“
- First instance where OCR required anti-discrimination policy specifically reference shared ancestry and ethnic characteristics as a form of national origin discrimination

2019 Executive Order on Combating Antisemitism

- On December 11, 2019, OCR Executive Order 13899 (Combating Anti-Semitism), which explicitly addressed OCR's commitment "to combating the rise of anti-Semitism and anti-Semitic incidents in the United States and around the world."
- The Executive Order noted,
  - Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin.
  - It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.

Title VI through the Years: Oct 2023 – June 2025

Oct. 7, 2023: Israel-Gaza Conflict Begins

Nov. 1, 2023: WH announces establishment of first-ever National Strategy to Counter Islamophobia

Nov. 7, 2023: OCR releases DCL clarifying that harassment need not be directed at an individual to violate Title VI

Nov. 2023: Assist. Secretary for Civil Rights, **Catherine Lhamon,** releases guidance to help schools improve their Title VI investigatory procedures

Mar. 14, 2024: OCR releases DCL clarifying that Title VI protects Muslim, Arab, Sikh, South Asian, Hindu and Palestinian students

May 7, 2024: OCR releases DCL, Protecting Students from Discrimination & Harassment

June 16, 2024: Biden WH releases fact sheet detailing his administration's steps to combat Islamophobia

June 18, 2024: Catherine Lhamon releases guidance re free speech and the standard for creating a hostile environment

June 10, 2024 –Jan. 17, 2025 OCR closed 25 IHE TVI matters – Using Voluntary Resolution Process

Change in Federal Enforcement Approach
Jan 20 - June 2025
EOs, OCR Investigations, DOJ Taskforce, Federal Funding Freezes

Jan. 29, 2025: EO 14188 – Additional Measures to Combat Anti-Semitism

Feb. 3, 2025: **OCR** announces directed investigations into five institutions & **DOJ** announces Anti-Semitism Task Force

Feb. 27, 2025: DOJ press release: "Pro-Palestine" protesters could face "years in prison"

Feb. 28, 2025: DOJ task force announces site visits at 10 schools

Mar. 10, 2025: Department of Education sends letters to 60 institutions

Mar. 13, 2025: Trump administration issues demand letter to Columbia University

May 22, 2025: HHS and **OCR** release findings against Columbia University, refers to DOJ

June 4, 2025: Department of Education accreditor letter re Columbia University

Apr. 2025: WH begins freezing federal funding to institutions

2023 | 2024 | 2025

Title VI through the Years: July 2025 - Present

June 30, 2025: HHS-OCR issues notice of violations of Title VI against Harvard University for being deliberately indifferent and creating a hostile environment for Jewish students.

July 30, 2025: HHS-OCR and ED-OCR announces Resolution Agreement with Brown University for antisemitism/national origin and shared Jewish ancestry, discrimination based on race and on gender (in women's sports) (Title VI and Title IX)

Sept. 23, 2025: ED-OCR releases Guidance clarifying that while religion is not expressly covered in Title VI protects students from discrim. based on shared ancestry or ethnic characteristics, citizenships or residency in a country with a dominant religion.

Nov. 7, 2025: ED-OCR, HHS-OCR, and DOJ announce a Resolution Agreement with Cornell University for violating Title VI obligations to Jewish students.

Feb. 19, 2026: US Commission on Civil Rights briefing on antisemitism on college campuses since Oct. 7, while also protecting free speech.

May 19, 2026: DOJ Federal Task Force on Antisemitism announces campus tour.

June 10, 2026: DOJ announces findings against UC Davis Med School intentionally discriminates against applicants by denying admission based on race in violation of *SFFA*.

July 23, 2026: ED-OCR announces removal of disparate impact liability from Title VI regulations.

2025

2026

July 22, 2025: U.S. Commission on Civil Rights announces plan to initiate investigations in response to alleged Title VI civil rights violations involving antisemitism on college campuses.

Aug. 12, 2025: DOJ issues notice of findings for being deliberately indifferent to a hostile environment for Jewish, American-Israeli, and Israeli students and faculty and George Washington University.

Nov. 28., 2025: ED-OCR, HHS-OCR, and DOJ announce a Resolution Agreement with Northwestern University for violating Title VI, Title IX, and Section 1557 of ACA.

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Oct 7, 2026 – Swarthmore

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Section 504 of the Rehabilitation Act of 1973

"No otherwise qualified individual with a disability in the United States [...] shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance [...]"

Title II of the Americans with Disabilities Act

"Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

Title IX Basics

No sex discrimination in any federally funded education program — preschool through graduate school

Covers every part of the program | 34 C.F.R. Part 106

Admissions	**Athletics**	**Pregnancy**
Sexual Harassment	**Scholarships**	**Retaliation**

2020 Rule
Focused on sexual harassment; narrowed definition; formalized grievance procedures

→

2024 Rule
Covered SOGI and sex stereotypes; more flexibility; first pregnancy update since 1975

→

Today
2024 rule vacated — back to the 2020 rule

Enforcement Overview
Current Landscape

Enforcement Overview: Then & …

- Predictable - ish
- Clear – ish process (manuals)
- Usually judicious triage, review, before opening
- Focus on bringing institutions into compliance
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- Federal funds impact – theoretical
- Case Processing Manual

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2025 Shift in Federal Enforcement

- Executive Order: Additional Measures to Combat Anti-Semitism and DOJ Task Force
  - 5 OCR directed investigations
  - 10 DOJ Task Force inquiries
  - 60 Universities on Notice re: Title VI investigations (open and closed)
  - Multi-Agency Shared Ancestry Investigations – expanded scope
- 45 PhD Project investigations (31 Resolutions – 14 in negotiation)
- Race In admissions – 8 findings of violation; 15 active investigations

OCR Investigations

≅160+ Open Title VI - Shared Ancestry



OCR INVESTIGATIONS

99 involving IHEs

20 RESOLUTION AGREEMENTS

- New York University
- University of Vermont
- University of Michigan
- City University of New York
- Lafayette College
- Brown University++ (Biden & Trump)
- Drexel University
- University of Illinois Urbana-Champaign
- Muhlenberg College
- Temple University
- University of California System
- University of Cincinnati
- Rutgers University
- Johns Hopkins University
- Lehigh University
- University of Washington
- Harvard University
- Emory University
- Columbia University ++ (Trump)
- Cornell (ED-OCR, HHS-OCR, and DOJ) (Trump)
- Northwestern (ED-OCR, HHS-OCR, and DOJ) (Trump)

Notice of Violation: Harvard (HHS-OCR), UCLA (DOJ), GW (DOJ)

Executive Branch Activity Continues

- On **April 23, 2025**, President Trump issued an Executive Order, *Restoring Equality of Opportunity and Meritocracy*, which set for the expectation to eliminate the use of disparate-impact liability
- On **December 9, 2025**, DOJ issued a final rule updating its regulations under Title VI and eliminating the use of disparate impact liability
- On **July 23, 2026**, ED-OCR announced it was rescinding several disparate-impact provisions from the regulations. Separately, HHR-OCR announced a final rule updating its regulations to end disparate-impact liability.

Antisemitism Advisory Committee (5.19.26)

- Department of Justice announced "continued efforts to combat antisemitism nationwide" through the Anti-Semitism Advisory Committee (ASAC)
- ASAC: this new advisory body will provide recommendations to the Attorney General and the DOJ on "strategies to address the rising tide of antisemitism across the United States," including "coordinated, timely, and effective responses"
  - "The initiative builds on President Donald Trump's historic and unwavering efforts to combat antisemitism, including his directive that the federal government use every available legal tool to protect Jewish Americans and confront antisemitic discrimination and violence."
  - "This Administration is using every tool available to confront antisemitic threats, support local communities, and ensure that radical activists and violent extremists do not intimidate law-abiding Americans. The Department of Justice will act aggressively to protect civil rights and uphold public safety."

Discipline and Title VI:

U.S. Department of Education Dear Colleague Letter | **August 18, 2026**

Core legal standard	Discipline policies and decisions	Institutional takeaway
• **Title VI and the Constitution prohibit intentional race discrimination, not unintentional disparate impact.** • Racial disparities may be evidence, but disparities alone generally do not establish discriminatory intent or unequal treatment.	• Facially neutral mandatory, flexible, or discretionary standards are permissible when adopted and applied evenhandedly without regard to race. • Discipline should be based on individual conduct and circumstances, not racial targets, quotas, balancing, or outcome-based adjustments.	• Do not increase, reduce, or forego discipline because of a student's race or to alter racial discipline statistics. • Any use of race is subject to strict scrutiny and, according to the guidance, lawful only in extraordinarily rare circumstances. • The letter is interpretive guidance and does not create new legal standards or determine rights or obligations.

Source: U.S. Department of Education, Office for Civil Rights, Guidance on Pupil Discipline and Compliance with Title VI (Aug. 18, 2026).

OCR Dear Colleague Letter on Civil Rights Protections Against Antisemitic Discrimination

- September 3, 2026 Guidance
- HHS+ (health care, medical education, clinical training, research, higher education, or human services)
- Legal Standards
  - Harassment
  - Totality of Circumstances
  - Enforcement
  - Compliance
- *“Issued consistent with Executive Order 14188, which declares it "the policy of the United States to combat anti-Semitism vigorously.”*

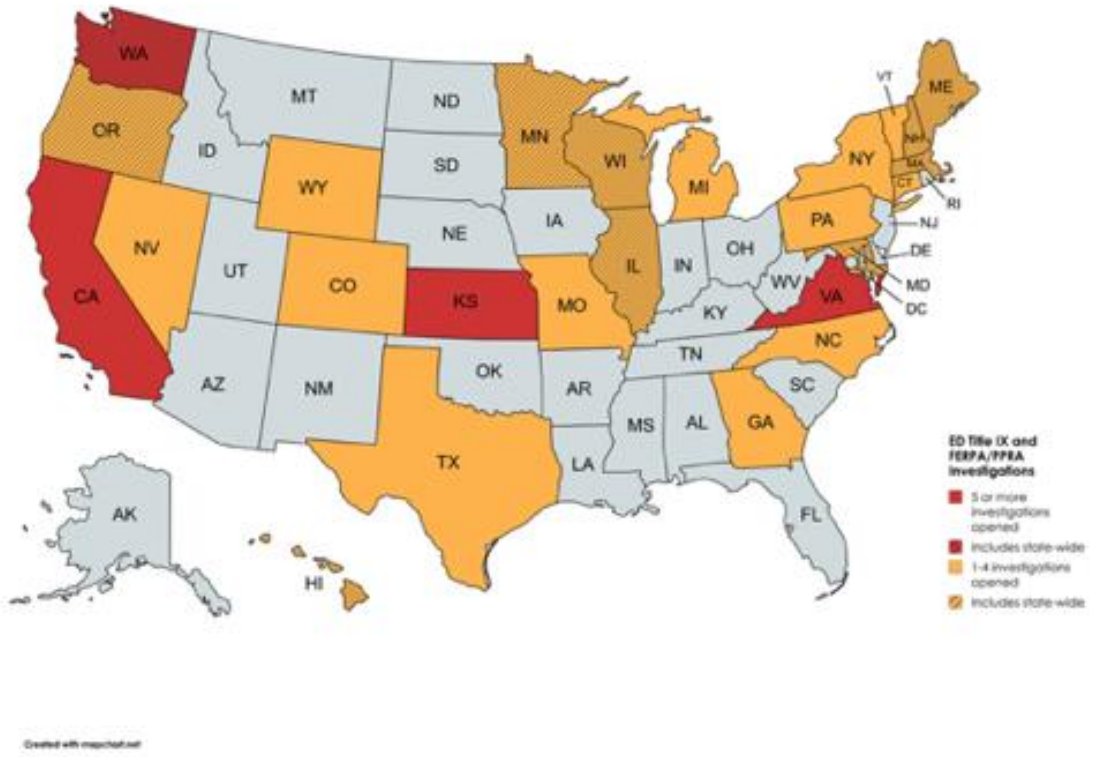
TIX Enforcement Beyond ED OCR

- **DOJ:** Title IX Special Investigations Team with ED (April 2025); lawsuits against Maine, California, Minnesota, and Kansas City (Sept. 1)
- **Student Privacy Policy Office:** Working with OCR and DOJ on gender identity issues
  - Argues FERPA requires proactive parent notice of a student's gender identity, but FERPA only requires disclosure on request
  - First-of-its-kind FERPA finding against California Department of Education (Jan. 2026)
  - Using PPRA against surveys that touch on gender identity
- **Curriculum:** April 2026 DOJ compliance review letters to 36 Illinois districts on sexual orientation and gender content, despite GEPA and agency regulations barring federal curriculum control

Title IX Enforcement Focus Since January 2025

- **Focus:** Policies protecting transgender students, especially access to girls' bathrooms, locker rooms, and sports teams
- **Scale:** ~60 investigations in 20+ states, including statewide investigations of state education agencies
- **Theory:** Inclusive policies recharacterized as discrimination against other girls
- **Toolbox:** Directed investigations, Letters of Finding, high-risk/reimbursement status, grant discontinuations and rescissions, DOJ referrals
- **Proposed resolution terms:** Categorical exclusion, public statement, birth-sex definitions of "boy" and "girl," rescission of inclusive policies, personalized apology letters, staff training
- **Parent notification:** OCR, SPPO, and DOJ argue gender support plans without parental notice violate FERPA

Map of ED Enforcement Actions (Title IX and Parental Rights)



60+

Enforcement Actions

20+

States Targeted

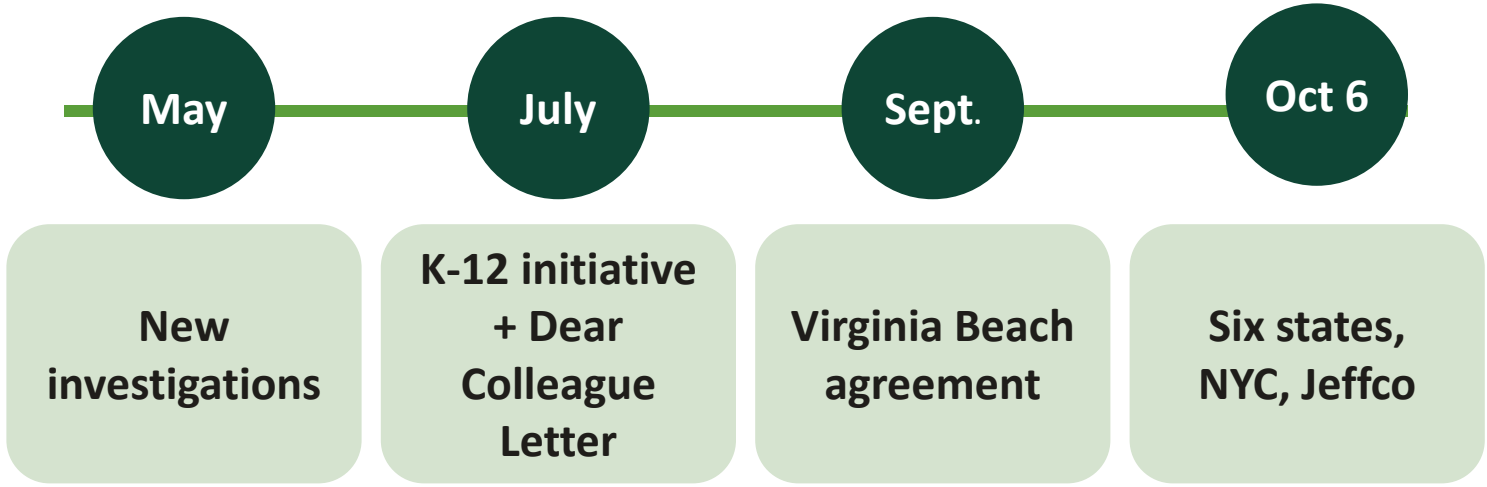
Sexual Misconduct: Sidelined, Then Revisited

2025

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resolution agreements on sexual harassment or sexual violence

2026: The pivot

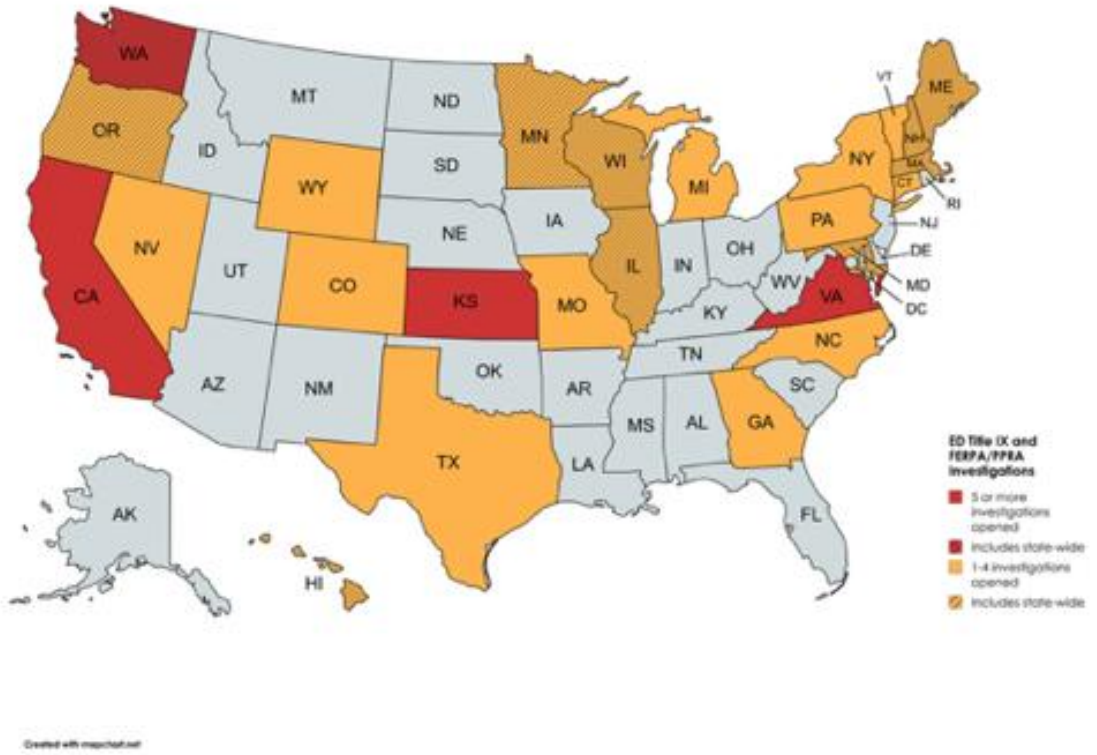


TITLE IX: Navigating Guidance vs. Law

Constants: Comply	Variables: Navigate Strategically
Statute and regulations	Executive orders
Due process protections	Dear Colleague Letters
State law obligations	Press releases

- No court has held Title IX requires excluding transgender girls; B.P.J. left inclusion open and did not address bathrooms or locker rooms
- ED preemption argument rests on EOs, which lack force of law
- Aug. 31: court dismissed DOJ's California suit for lack of clear Spending Clause notice
- Every completed case has gone against ED: NYC won three rounds on magnet school grants; Chicago settled with funds restored

States and Districts Are Fighting Back



- Every completed case has gone against ED
- **NYC:** Won three rounds over its magnet school grants
- **Chicago:** Settled with its funds restored
- **California:** Aug. 31 dismissal of DOJ suit for lack of clear Spending Clause notice

Administration Trends: Section 504/Title II

- Interactive process for academic adjustments
- Implementation of academic adjustments by faculty
- Housing accommodations for students with disabilities
- Physical accessibility, including parking, accessible route, stadium seating and parking
- Service animal violations
- Section 504/Title II grievance procedures

OCR Resolution Comparisons

	2017	2024	2025	2026
Total Resolutions	1303	518	120*	209**

*Total number does not include 57 resolutions from January 1-19, 2025

**As of October 11, 2026

OCR Resolution Comparisons Section 504/Title II

	2017	2024	2025	2026
Total	1132	390	85	118
Web accessibility	623	155	1	2
Physical Accessibility	566	188	22	26
Restraint and Seclusion	15	6	0	5
FAPE	239	138	40	49
Academic Adjustments	60	24	2	6
Disability Harassment	45	14	1	11

Current Enforcement Priorities

Title VI

Title IX

Title II, III, 504

Changes in Enforcement Practices

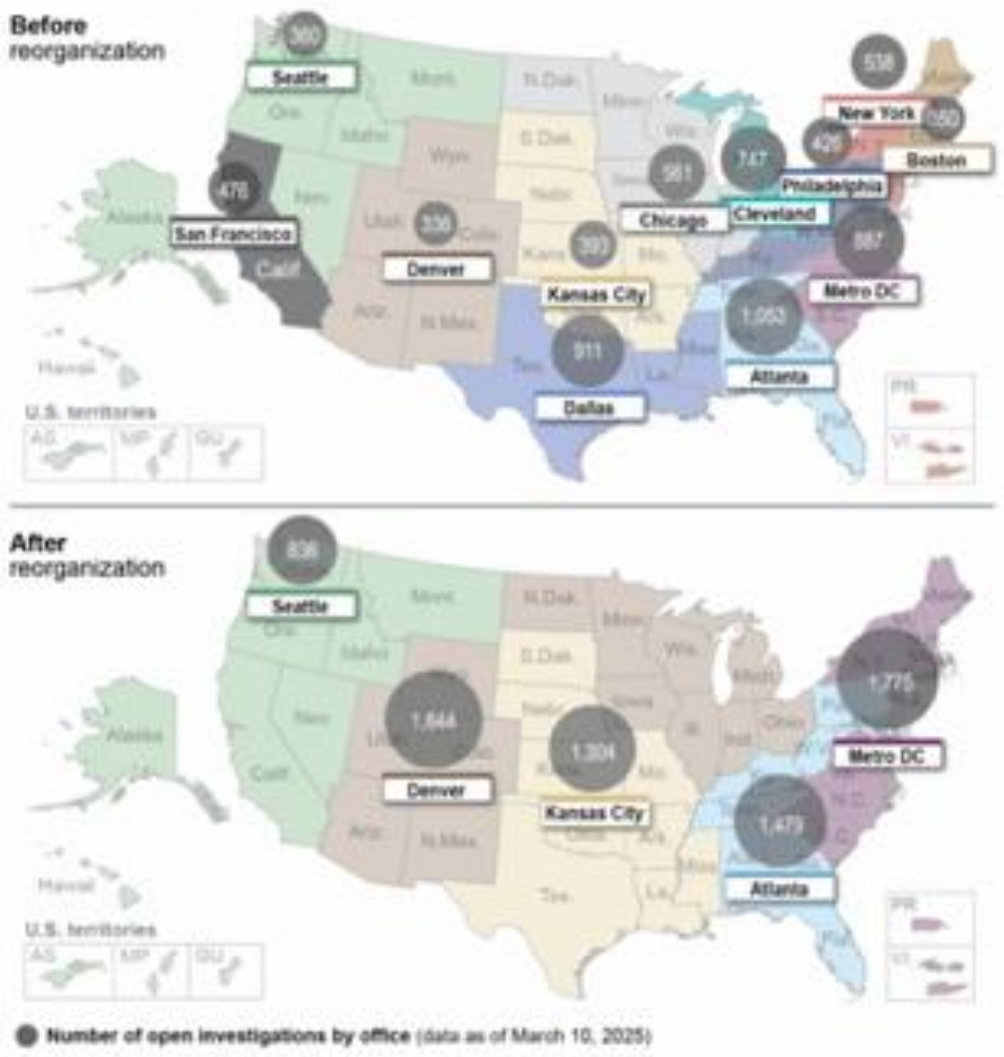
Title VI

Title IX

Title II, III, 504

Department of Education Office for Civil Rights

Figure 4.1. OCR's Regional Office Structure and Estimated Number of Open Investigations Before and After Planned Reorganization in March 2025



Department of Education Office for Civil Rights

Date/Action	OCR Staff/Office Effects
Jan–Feb 2025: DEI-Related Administrative Leave	≈175 ED employees, including many OCR staff
Jan–March 2025: "Fork," VSIP, VERA	≈600 staff, including many OCR staff
March 2025: EO to Close ED; and extensive RIFs	≈50% of all OCR staff terminated; 7 of 12 enforcement offices closed
October 2025: Shutdown RIFs	Nearly all of OCR staff terminated, many subsequently rehired
June 2026: Interagency Agreements	Approx. 75 OCR staff detailed to DOJ

- A couple hundred OCR staff remain in 5 regional offices and 3 "multi-regional teams" – some fired multiple times and re-hired after litigation
- Continued flow of resignations amid drastic mission shift
- In March 2026, ED announced it would vacate LBJ, where ED was headquartered since 1980
- In June 2026, ED entered into interagency agreement to parcel out core OCR enforcement duties to DOJ
- AAG: DOJ will take over OCR's work "from soup to nuts"
- Last month, 1 regional office and at least 1 multi-regional team were detailed to DOJ to ostensibly fulfill the IAA

How Complaint Processing Has Changed

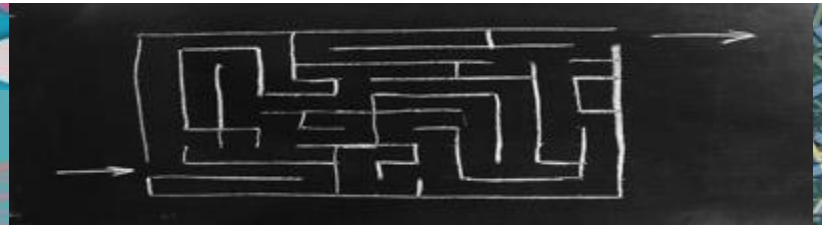
As It Used To Be	As It Is Now
Notice of allegations and a data request	Paper reviews with no interviews or site visits
Interviews and often a site visit	No checking data with the district (Jeffco “61 boys” were male managers and trainers)
Chance to respond; voluntary resolution	~90% of cases resolved Mar.–Sept. 2025 were dismissed (9,000+ complaints)
Up to 90 days to negotiate after a finding	As little as 10 days to sign resolution agreements
Funding termination as last resort	Maine: investigation (Feb.) → finding (Mar.) → DOJ lawsuit (Apr. 2025)

Enforcement Overview – Then and Now

- Predictable - ish
- Clear – ish process (manuals)
- Usually judicious triage, review, before opening
- Focus on bringing institutions into compliance
- Predictable pace
- Federal funds impact – theoretical

- Unpredictable
- Off label use of federal law
- Ad hoc processes/enforcers
- Impetuous review
- Punishment
- Unpredictable pace at times both swift and sluggish
- Federal fund removal - real

UNPREDICTABLE - LABYRYNTHIAN - COSTLY


COMMON THREADS:

- Lack of notice
- Low/minimal thresholds for opening inquiries/investigations
- Lack of process
- Inconsistency with prior practices (i.e. Case Processing Manual)

Changes in Enforcement Practices: *Cross-Sectional Views*

- Title VI
- Title IX
- ADA/504

Prevention and Institutional Readiness

PREPARATION RUBRIC

- Law & Regulation
- Guidance & Significant Guidance
- Executive Orders, MEMOS
- Compound Agency Activity
- Swift Enforcement Actions
- Policy and Institutional Values
- Higher education experience
- Informed Expertise/Systems





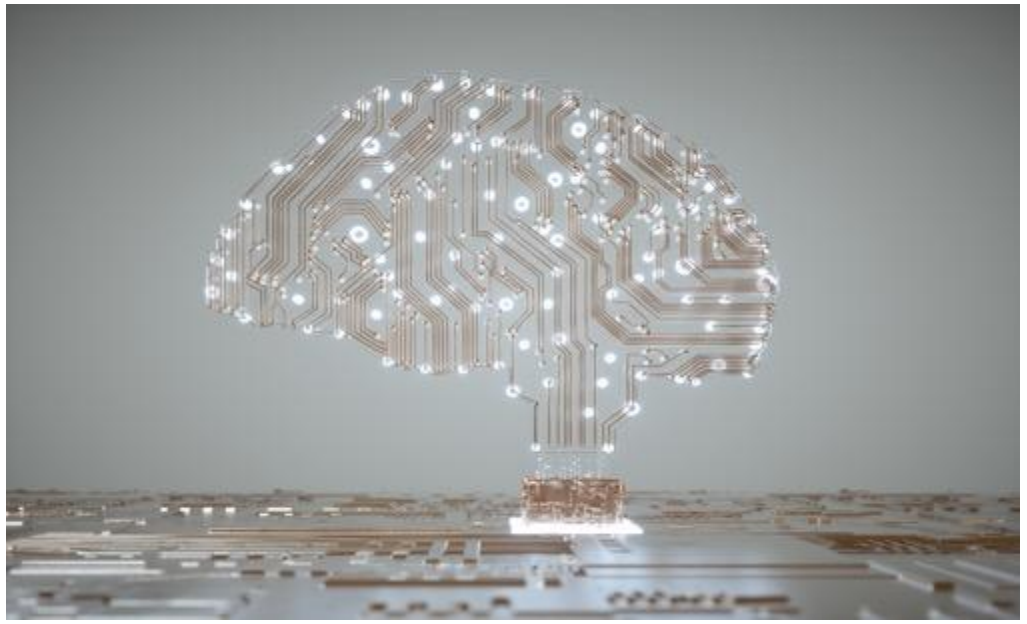


What Should Institutions Be Doing Today

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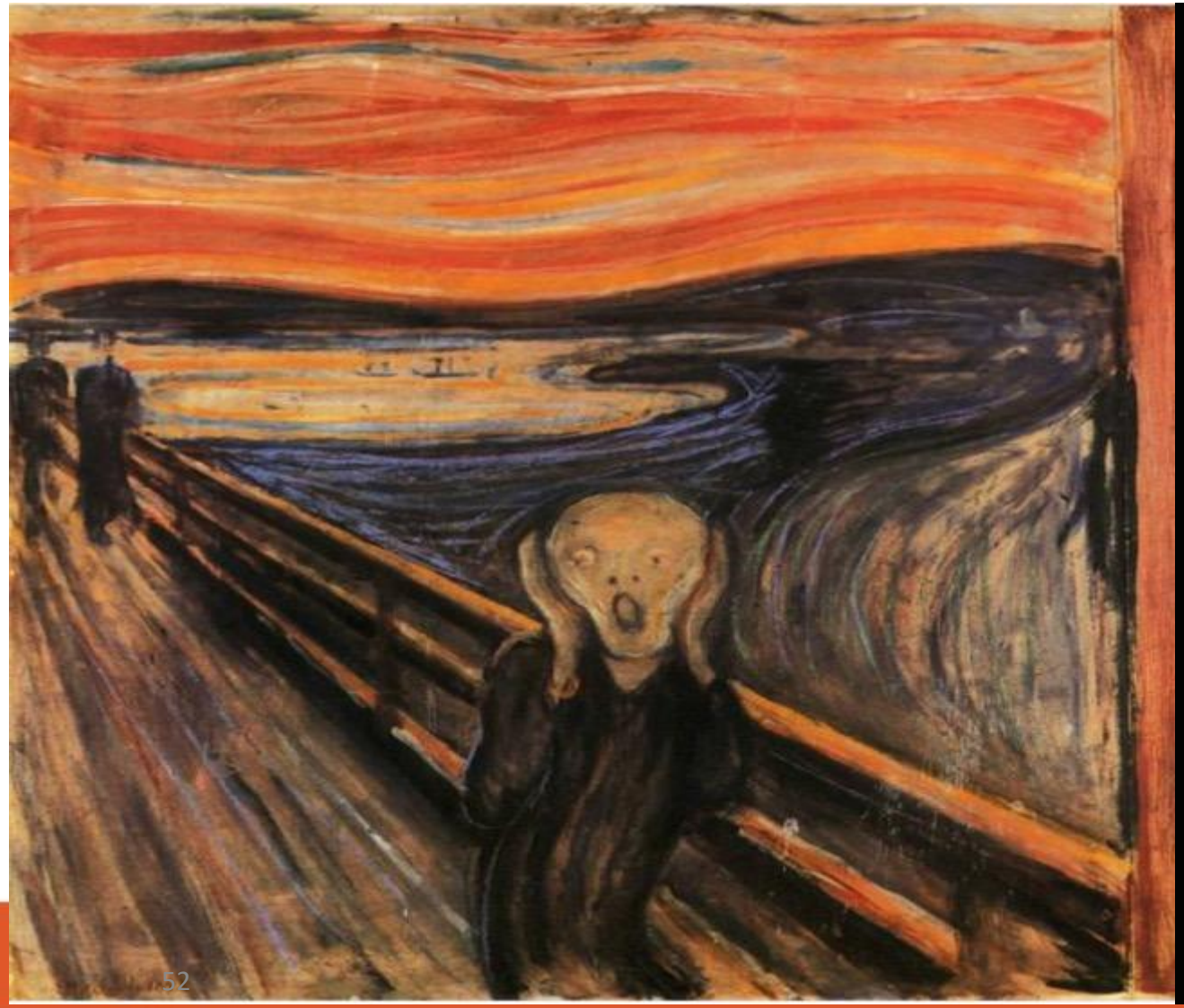
- Improve legal fluency - rule of law still matters
- Identify gaps in process
- Maintain higher ed awareness of trends/investigations/findings
- Track Resolution Agreements
- Stable moorings
  - Systems – coordination/data/documentation
  - Training and education
  - Communications
  - Risk Assessments

What You Can Do



- Maintain Executive Action Awareness
- Utilize Colleague Networks
- Increase Compliance Fluency
- Elevate Response Management
- Clock Management
- Show your work – improve processes and uses for documentation
- Audit Select and/or Intersecting Functions (Title VI, DEI, Title IX)
- Communicate with Constituents/Trust-Building
- See combine elements resolution agreements – move toward compliance
  Title VI traditionally not well structured compared to Title ix –

Federal Enforcement Comes Knocking: Readiness



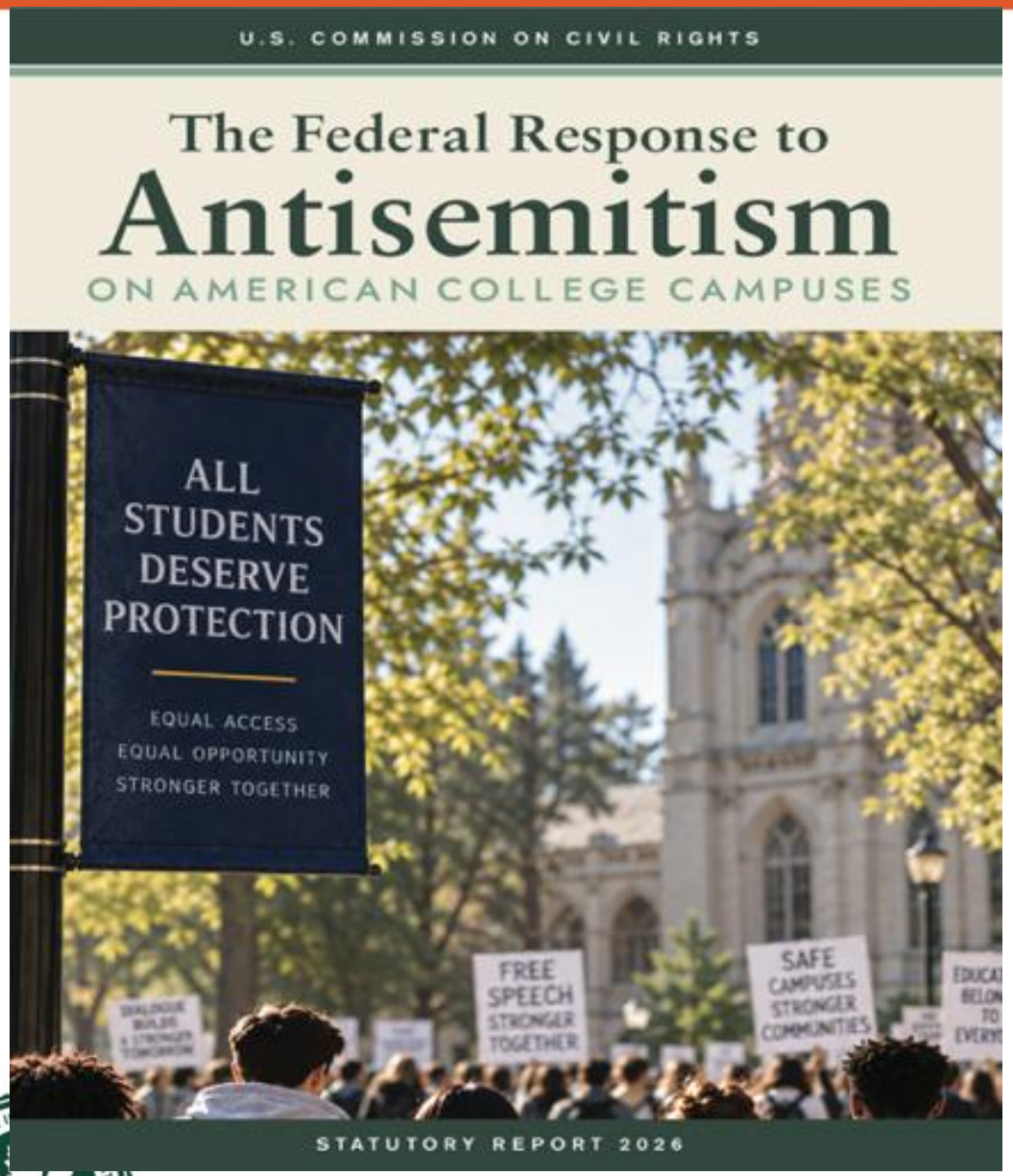


Practical Takeaways

1. **If investigated**
2. **Don’t overcorrect**
3. **Don’t overread press releases**
4. **Plan before the letter arrives**

On the Horizon

- Continued compliance environment and enforcement actions
- Uncertainty related to policy changes under the new administration
- Increased litigation
- New federal and state legislation
- Increased mass and social media attention
- Unrelenting off-label and compound use of federal toolkit
- The resource and trust gap is expanding
- Expectations related to digital capabilities



Cozen O'Connor Title VI Compendium

Below, we provide an overview of the legal and regulatory framework related to Title VI protections, as issued by the U.S. Department of Education, Office for Civil Rights, and the Biden and Trump Administrations. The documents included in this compendium include law, regulations, guidance, Executive Orders, regulatory investigations, executive branch activity, and related material. For more information, see the U.S. Department of Education, Office for Civil Rights Shared Ancestry and Ethnic Characteristics Webpage.

Document	Summary of Guidance
42 U.S.C. § 2000d Implementing regulations (July 2, 1964)	Title VI: ***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.***
Investigative Guidance: Racial Incidents and Harassment (March 10, 1994) PDF	Purpose and Scope of Guidance: **This Guidance outlines OCR's approach to Title VI investigations as to discrimination by agents or employees, hostile environment allegations, and also outlines its analysis of whether recipients' responses are adequate under Title VI.** Defining the Title VI obligation to respond: *Under Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, no individual may be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination on the ground of race, color or national origin under any program or activity that receives Federal funds. Racially based conduct that has such an effect and that consists of different treatment of students on the basis of race by recipients' agents or employees, acting within the scope of their official duties, violates Title VI. In addition, the existence of a racially hostile environment that is created, encouraged, accepted, tolerated or left uncorrected by a recipient also constitutes different treatment on the basis of race in violation of Title VI. These forms of race discrimination are discussed further below…For the sake of simplicity and clarity, the term ``race" shall be used throughout this guidance to refer to all forms of discrimination prohibited by Title VI--i.e., race, color, and national origin.*
	Substantive Guidance: **With respect to discrimination by agents or employees, the guidance reads:** *As with other types of discrimination claims, OCR will first apply a standard different treatment analysis to allegations involving racial incidents perpetrated by representatives of recipients. Under this analysis, a recipient violates Title VI if one of its agents or employees, acting within the scope of his or her official duties, has treated a student differently on the basis of race, color, or national origin in the context of an educational program or activity without a legitim ate, nondiscriminatory reason so as to interfere with or limit the ability of the student to participate in or benefit from the services, activities or privileges provided by the recipient.4 In applying this standard different treatment analysis, OCR will ask the following questions—*

72%

	(1) Did an official or representative (agent or employee) of a recipient treat someone differently in a way that interfered with or limited the ability of a student to participate in or benefit from a program or activity of the recipient? *(2) Did the different treatment occur in the course of authorized or assigned duties or responsibilities of the agent or employee?* *(3) Was the different treatment based on race, color, or national origin?* *(4) Did the context or circumstances of the incident provide a legitimate, nondiscriminatory, nonpretextual basis for the different treatment?* **With respect to defining a hostile environment, the Guidance reads:** *A violation of Title VI may also be found if a recipient has created or is responsible for a racially hostile environment—i.e., **harassing conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient.** A recipient has subjected an individual to different treatment on the basis of race if it has **effectively caused, encouraged, accepted, tolerated or failed to correct a racially hostile environment of which it has actual or constructive notice**…To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) A racially hostile environment existed; (2) the recipient had actual or constructive notice of the racially hostile environment; and (3) the recipient failed to respond adequately to redress the racially hostile environment. Whether conduct constitutes a hostile environment must be determined from the totality of the circumstances, with particular attention paid to the factors discussed below."* **The "severe, pervasive, or persistent" standard is explained as follows:** *OCR will examine the context, nature, scope, frequency, duration, and location of racial incidents, as well as the identity, number, and relationships of the persons involved. The harassment must in most cases consist of more than casual or isolated racial incidents to establish a Title VI violation. [. . . When OCR evaluates the severity of racial harassment, the unique setting and mission of an educational institution must be taken into account [. . .] the type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students. This is especially true for younger, less mature children, who are generally more impressionable than older students or adults. Thus, an incident that might not be considered extremely harmful to an older student plight nevertheless be found severe and harmful to a younger student.* *[. . .]* *As with other forms of harassment, OCR must take into account the relevant particularized characteristics and circumstances of the victim — especially the victim 's race and age—when evaluating the severity of racial incidents at an educational institution.* *[. . .]*

TITLE VI RESOURCES

Questions, Answers, & Closing Thoughts



Thank You!


LEGAL ISSUES IN HIGHER EDUCATION
THE UNIVERSITY OF VERMONT

The Only Constant in Life is Change*



***Heraclitus: "You cannot step into the same river twice."**

Use of Slides

- This PowerPoint presentation is not intended to be used as a stand-alone teaching tool.
- These materials are meant to provide a framework for informed discussion, not to provide legal advice regarding specific institutions or contexts.