



I'm Supposed to Fix This???
Title VI Investigations for 2026 and Beyond

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Agenda

- Review Title VI scope, language
- Review institutions of higher education (IHE)'s obligations under Title VI
 - As determined by courts, federal agencies
- Tips for Title VI compliance
 - Consolidating guidance into actionable steps

Spoiler Alert!

Things you probably cannot fix:

- Tensions in the Middle East
- Racism in America
- Incivility in political discourse

Things you can fix:

- How your university responds when these issues impact the campus environment

Title VI

- Applies to recipients of federal funding
- Prohibits discrimination on the basis of race, color, or national origin
 - Includes shared ancestry
- Applies to students, not generally to employees

Title VI

Discrimination includes:

- Harassment
- Disparate treatment
- Retaliation
- Disparate impact (??)

Title VI: Enforcement

- Private rights of action
- Federal agencies
 - Traditionally, Department of Education, DOJ
 - More recently: HHS, USDA, etc.
 - February 2025: Task Force to Combat Anti-Semitism

Title VI Obligations: The Courts

IHE must respond to allegations of discrimination that are:

- Under its control
- In a manner that is not deliberately indifferent

To be actionable, harassment must be severe, pervasive AND objectively offensive

Claims for disparate impact discrimination may not be brought in a private right of action

Title VI Compliance: Federal Agencies

- No rulemaking since 1980
 - 1980 rules are broad, focus on different treatment in admission, enrollment, eligibility, financial aid
 - Require institutions to maintain data
- 2025 proposed rulemaking: remove disparate impact liability

Title VI Compliance: Federal Agencies / Anti-Semitism

Beginning in 2023: guidance documents and resolution agreements related to anti-Semitism and Islamophobia

- Biden administration: Department of Education Dear Colleague letters dated November 7, 2023; March 14, 2024; May 7, 2024; Department of Education resolution letters
- Trump II administration: Executive Order 14188; resolution agreements with various IHE's

Title VI Compliance: Federal Agencies / DEI

Beginning in 2025: guidance documents related to DEI

- Executive orders 14151, 14173
- DOJ July 29, 2025 memorandum

Title VI Compliance Strategies

Tips for Practitioners

- Assess compliance on a programmatic, not case-by-case level
- Guidance comes quickly, but may be contested
- Court decisions might be less directive, but can be instructive

The goal: IHE sets legally complaint rules, applies them equally

Tip #1: CENTRALIZE TITLE VI COMPLIANCE

- This approach is consistently favored by the courts and federal agencies
- Consider:
 - A Title VI Coordinator
 - Institution-wide policies
 - Institution-wide complaint processes
 - Institution-wide incident tracking

Tip #2: GET RID OF EXPLICIT RACE-BASED PREFERENCES

- Race-based preferences have been disfavored since before the current administration
- Look at:
 - Scholarships
 - Programs
 - Physical spaces
- DOJ memo: enforcement will examine proxies for discrimination

Tip #3: REMEDIATION MEANS MORE THAN DISCIPLINE

- Courts, Biden administration, and Trump II administration have all required schools to remediate a hostile environment through means beyond student discipline
 - Community messaging
 - Outreach to impacted populations

Tip #4: DO NOT HESITATE, INVESTIGATE!

- A student who has alleged harassment should hear from you
- Some amount of investigation is always necessary to determine scope of issue and appropriate remedy
- If you dismiss a complaint, be clear about why you are doing it, and what else you are doing to remedy the alleged conduct

Tip #5: INDIVIDUALIZED SUPPORTS GO A LONG WAY

- Duty to accommodate students based on religious needs
- Duty to offer supportive measures in Title IX context
- Supportive measures can be implemented quickly, to address issues proactively

Tip #6: DON'T FORGET ABOUT FREE SPEECH

- Public vs. private institutions
- Time, place, and manner restrictions can be imposed
 - Protect academic environment
 - Do not allow speakers to block access
- Content of speech cannot generally be the cause for discipline
 - Exceptions: obscenity, true threats, incitement to imminent lawless action, fighting words, defamation

Tip #7: BE CONSISTENT

- Interpretation of rules should be the same for different groups
- If there is a difference, clearly document why that is

Tip #8: DOCUMENT, DOCUMENT, DOCUMENT, DOCUMENT, DOCUMENT, DOCUMENT, DOCUMENT, DOCUMENT, DOCUMENT, DOCUMENT, DOCUMENT

And expect to share your work!

- You don't have to be perfect, you should strive to be reasonable
 - You should be able to explain the reasons for each decision
- Be as transparent as you can be about
 - Reasons for dismissal
 - Actions taken once a report is received
 - Investigative steps
 - Causes for delay

TAKE CARE OF YOURSELF

- Perfection is not the goal
- Meaningful change does not happen overnight
- Other people's actions and emotions are not within your control
- Do the best you can with what you have, and then get yourself a snack!!