

Defining Discriminatory Harassment in 2025: Evolving Standards, Enduring Principles

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**What is
harassment?**

Background

Federal nondiscrimination laws also prohibit harassment on those same bases. Some examples are:

- Title VII (1964) – Prohibits discrimination on the basis of race, color, religion, sex, and national origin in employment
- Title VI (1964) – Prohibits discrimination on the basis of race, color, and national origin in federally funded programs and activities
- Title IX (1972) – Prohibits discrimination on the basis of sex discrimination in federally funded education programs and activities
- Americans with Disabilities Act (1990) – Prohibits discrimination on the basis of disability in employment, public services, etc.

Background

Types of harassment:

- *Quid pro quo* (“this for that”)
- Hostile environment
 - Severe or pervasive
 - Both objectively and subjectively hostile/abusive
 - Affects the terms/conditions of employment or education

The employer or recipient of federal funds (*i.e.* the university) has obligations not to create a hostile environment but also to respond promptly and reasonably if others create the hostile environment.

Title IX's Recent History

- 2011-2017: Various guidance documents from U.S. Dep't of Education's Office for Civil Rights
 - 2011 Dear Colleague Letter on sexual assault
 - 2014 Questions and Answers to clarify the 2011 DCL
 - 2016 Dear Colleague Letter on transgender students
- 2017-2020: Trump administration worked through notice-and-comment rulemaking process
- 2020: Final regulations issued, effective August 14, 2020

Title IX's Recent History

- 2021-2024: Biden administration worked through notice-and-comment rulemaking process
- 2024: Final regulations issued, effective August 1, 2024
- Courts enjoined the regulations in 26 states and additional individual schools/colleges, including UNC Charlotte
- On January 9, 2025, a federal court issued a nationwide injunction against the 2024 regulations

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.”

U.S. Office for Civil Rights guidance

- A lot of Title VI guidance used to focus on:
 - English language learners
 - School discipline
 - Special education services
- Recent guidance has focused on:
 - Shared ancestry/antisemitism
 - DEI programs
 - Admissions and scholarships
 - Using neutral statuses as proxies

Shared ancestry

- Title VI covers race, color, and national origin
 - But what about religion?
- September 2004: Post-9/11 OCR issues guidance that Jewish Americans, Arab Muslims, Sikhs, and others may be protected by Title VI based on shared ethnic characteristics even if they are also religious groups
 - Obama, first Trump, and Biden administrations all reiterate that stance
- 2024: Increase in OCR enforcement actions and additional guidance related to Title VI's coverage of shared ancestry

Shared ancestry under Biden

- May 2024 Dear Colleague Letter
 - “Students should be able to learn, attend class, and go to commencements without fear or disruption of their educational experience. There is no place for violence on campus ever.”
 - Examples of recently reported conduct:
 - Being physically assaulted or harassed while walking on campus, simply for being Jewish;
 - Being subjected to virulently antisemitic statements, such as that Jewish students should “go back to Poland;”
 - Being subjected to verbal abuse, such as while praying for the safety of hostages being held by Hamas; and
 - Coming back to their dorm rooms to find swastikas on their doors.
- Between October 7, 2023 and May 2024, the Biden administration opened more than 100 investigations related to antisemitism and other Title VI issues (compared with 27 in the prior administration’s four years)

Shared ancestry under Trump

- February 2025 multi-agency Task Force to Combat Anti-Semitism whose “first priority will be to root out anti-Semitic harassment in schools and on college campuses”
- In March, 60 colleges were under investigation
- Columbia University example:
 - Investigation announced on March 3
 - \$400 million in funding halted on March 7
 - Gov’t provided pre-conditions for resolution on March 13
 - Columbia agreed to certain action items on March 21

The Current Environment

- Federal investigations into universities are moving quickly.
- Agencies other than the Dep't of Education OCR are also conducting investigations.
- Universities are expected to watch carefully for patterns and/or recognize when minor isolated incidents may have a cumulative effect on a certain population.
- Free speech may be protected, but the effects of that speech still need to be assessed for a possible hostile environment.

UNC Charlotte policy

University Policy 501, Nondiscrimination: Discrimination and discriminatory harassment based on any of the following characteristics is prohibited:

- race;
- color;
- religion, including belief and non-belief;
- sex, including but not limited to
 - pregnancy, childbirth, or related medical condition, and
 - parenting;
- sexual orientation;
- gender identity;
- age;
- national origin;
- physical or mental disability;
- veteran status; and
- genetic information

Enduring Principles

- Supporting impacted groups and individuals
- Protecting First Amendment rights
- Responding when lines are crossed
- Building community
- Promoting a culture of respect

Takeaways

- Title VI prohibits discrimination and discriminatory harassment on the basis of race, color, and national origin
 - Including shared ancestry
- Title VI is a major focus of the federal government right now
- Any type of hostile environment based on a protected status inhibits the educational mission of UNC Charlotte and needs to be addressed
 - Connect with Civil Rights & Title IX!

Questions?