



Association of
Title IX Administrators

VASSAR COLLEGE

Title VI Compliance Foundations

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Introduction to Title VI

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

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

Title VI Increasing Prominence

- Antisemitic and anti-Islamic behavior, comments, and protests
 - Congressional hearings, college president resignations, etc.
- Black Lives Matter
- Wave of anti-DEI laws, initiatives, and political battling
- New administration and the shifting landscape within the Department of Education's Office for Civil Rights (OCR)
- Title VI Coordinator as a key administrative role

TVI Applicability

- Broad applicability
 - “No person”
 - Program or activity receiving federal financial assistance
 - Education program or activity
 - States and public agencies
 - Private agency, institution, organization
 - In the United States



Covered Programs and Activities

- Admissions
- Recruitment
- Financial Aid
- Academic Programs
- Student Treatment and Services
- Counseling and Guidance
- Discipline
- Classroom Assignments
- Grading
- Vocational Education
- Extracurricular Activities
- Clubs and Organizations
- Physical Education
- Athletics
- Housing
- Transportation
- Facilities
- Etc.

OCR's “Key Issues” Under Title VI

- Access to equal education opportunities
- Harassment
- Equal rights to public education regardless of immigration/citizenship status
- Equal education opportunities for English learners
- Race discrimination in school discipline
- Race discrimination in special education
- Retaliation
- Shared ancestry discrimination
- Supporting racial diversity

Source: <https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination/race-color-and-national-origin-discrimination-key-issues>

Title VI Policy and Procedures

Title VI Jurisdiction

- Title VI applies to:
 - Any individual
 - In the “program or activity”
 - In the United States
 - In-program downstream effects
- Important to define the reach of your Title VI policy
 - Consider institutional mission, values, resources, state laws, and relevant federal court cases
 - Recommended to make your Title VI jurisdiction comparable to your Title IX and Title VII jurisdiction, though Title VI jurisdiction is often applied more broadly by courts

Establishing a Title VI Policy

- Unlike Title IX, Title VI does not have a list of prohibited behaviors with definitions to include in policy
 - TVI policy coverage of race, color, and national origin is often simply included in the Recipient's non-discrimination statement, without further details
 - Can provide more detail and define terms
- Establish or designate procedures for resolving complaints under Title VI policy
 - Use existing civil rights procedures or establish something new

Title VI Prohibited Behaviors

- Title VI prohibits discrimination and harassment, generally, on the basis of race, color, and national origin, which according to OCR, also encompasses shared ancestry and ethnic characteristics
- Title VI discrimination and harassment typically manifests as:
 - Disparate Treatment
 - Disparate Impact
 - Hostile Environment
 - Retaliation

Discrimination Defined

The act of treating an individual differently, or less favorably, based upon actual or perceived protected characteristics, or failure to provide reasonable accommodations as required by (disability) law

1

**Can be connected
with prejudice**

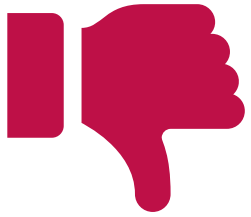
2

**Can be intentional
or unintentional**

3

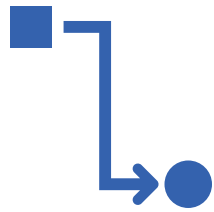
**Always based on a
protected
characteristic(s)**

Types of Discrimination



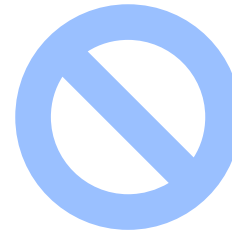
Disparate Treatment

- Intentional
- Usually requires adverse action
- Affiliation or perception of affiliation to protected characteristic



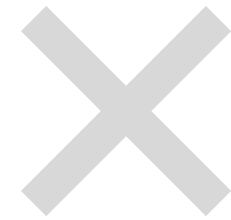
Disparate Impact

- Occurs with unintentional discrimination
- Impact disadvantages certain groups



Harassment

- Hostile Environment



Retaliation

- Prohibited if engaged in protected activity
- Suffered adverse academic or employment action

Disparate Treatment

Disparate Treatment occurs when an individual treats another person **differently**, or takes an **adverse action**, because of that person's identity, such as race, color, or national origin

- Hiring
- Promotion/Performance reviews
- Pay
- Responsibilities/Job assignments
- Shifts
- Access to resources
- Athletics
- Grading
- Program access
- Student conduct outcomes

Disparate Impact

- Stems from “neutral” policies and practices applied evenhandedly, but that have a discriminatory impact
- Typically involves high level statistical analysis
 - Validity studies
 - Programmatic necessity
 - Business necessity defense available
- Focuses on remedies, not sanctions
- Examples: effect of hiring, admissions, or disciplinary processes, even when conducted in a facially neutral way

Title VI Hostile Environment Definition

OCR has provided the following criteria for determining whether a hostile environment may exist:

- **Unwelcome conduct** based on race, color, or national origin creates a hostile environment under Title VI if the conduct, based on the totality of the circumstances, is:
 - subjectively and objectively offensive; **and**
 - so severe **or** pervasive
 - that it **limits or denies** a person's ability to participate in or benefit from the recipient's education program or activity

Hostile Environment Analysis

- To establish a violation of Title VI using this analysis, OCR examines whether
 - A hostile environment based on race, color, or national origin existed in the education program or activity
 - Can include downstream effects of out-of-program conduct (e.g., online)
 - The school had actual or constructive notice (i.e., the school knew or should have known) of the hostile environment; and
 - The school failed to take prompt and effective steps reasonably calculated to:
 - End the harassment
 - Eliminate any hostile environment and its effects
 - Prevent the harassment from recurring

Actual Notice

- Direct knowledge of discrimination or harassment by an official who has the authority to address such issues within the school/institution
 - When a responsible employee is informed of discriminatory conduct, the school/institution is considered to have actual knowledge and is obliged to respond



Constructive Notice

A school/institution is “on notice” of a Title VI hostile environment if:

- The school/institution **knew** of the hostile environment
 - Usually through a report or complaint, or
- The school/institution **should have known** of the hostile environment
 - Constructive notice standard
 - Emphasizes need to monitor program or activity and be proactive
 - Broader standard than Title IX’s actual notice standard

Constructive Notice

“A [R]ecipient is charged with **constructive notice** of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination.

In other words, if the [R]ecipient could have found out about the harassment had it made a proper inquiry, and if the [R]ecipient should have made such an inquiry, knowledge of the harassment will be imputed to the [R]ecipient.”

OCR Resolution Agreement, Park City School District, 03/20/24

Title VI Compliance Enforcement

Enforcement Mechanisms

- Title VI compliance is enforced through the Department of Education's Office for Civil Rights (OCR) and through the Department of Justice (DOJ)
 - OCR/DOJ assesses for compliance with federal law
 - Individuals at schools, districts, or institutions may file complaints with OCR or DOJ
 - OCR/DOJ may investigate complaints and reach resolution agreements with the schools/institutions to remedy discrimination or harassment
- Individuals or the DOJ may also bring lawsuits in federal court
 - Courts develop their own standards for liability that may differ from OCR/DOJ compliance obligations

Administrative Actions vs. Civil Lawsuits

Administrative Action

- Initiated by OCR
- Voluntary compliance or findings
- Requires:
 - Actual **OR** constructive notice (“knew or should have known”)
 - Investigate
 - End harassment
 - Remedy effects
 - Prevent recurrence

Civil Lawsuits

- Filed in federal court
- Monetary damages, injunction
- Requires:
 - Actual notice
 - Employee with authority to take action
 - Deliberate Indifference
- Disparate impact likely non-litigable

OCR Enforcement

OCR administratively enforces Title VI compliance through:

Data Collection
and Publication

Compliant
Investigation and
Resolution

Compliance
Reviews

Technical
Assistance

Regulatory and
Sub-regulatory
Guidance

Inquiry
Response

Policy
Guidance

Sub-Regulatory Guidance

Title VI Sub-Regulatory Guidance

- Sub-regulatory guidance does not have the force of regulations or law
 - Guidance issued through an Agency
 - Though regulations may not have the force of regulations anymore, either, post-*Loper Bright*
 - Enables federal agencies to respond to emerging trends, patterns, or areas of concern
- Can be helpful sources of OCR compliance expectations, though OCR TVI priorities tend to shift with each administration
 - Identify areas to audit, assess



Examples of OCR Title VI Guidance

- **August 2023** – Dear Colleague Letter on Race and School Programming
- **August 2023** – Resources on *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina et al.* (SFFA cases) (released jointly with DOJ)
- **June 2023** – Ensuring Meaningful Participation in Advanced Coursework and Specialized Programs for Students Who are English Learners
- **June 2023** – Protecting Access to Education for Migratory and Unaccompanied Children (released jointly with DOJ)
- **May 2023** – Resource on Confronting Racial Discrimination in Student Discipline (released jointly with DOJ)



OCR Title VI Resolution Agreements

Title VI Resolution Agreements

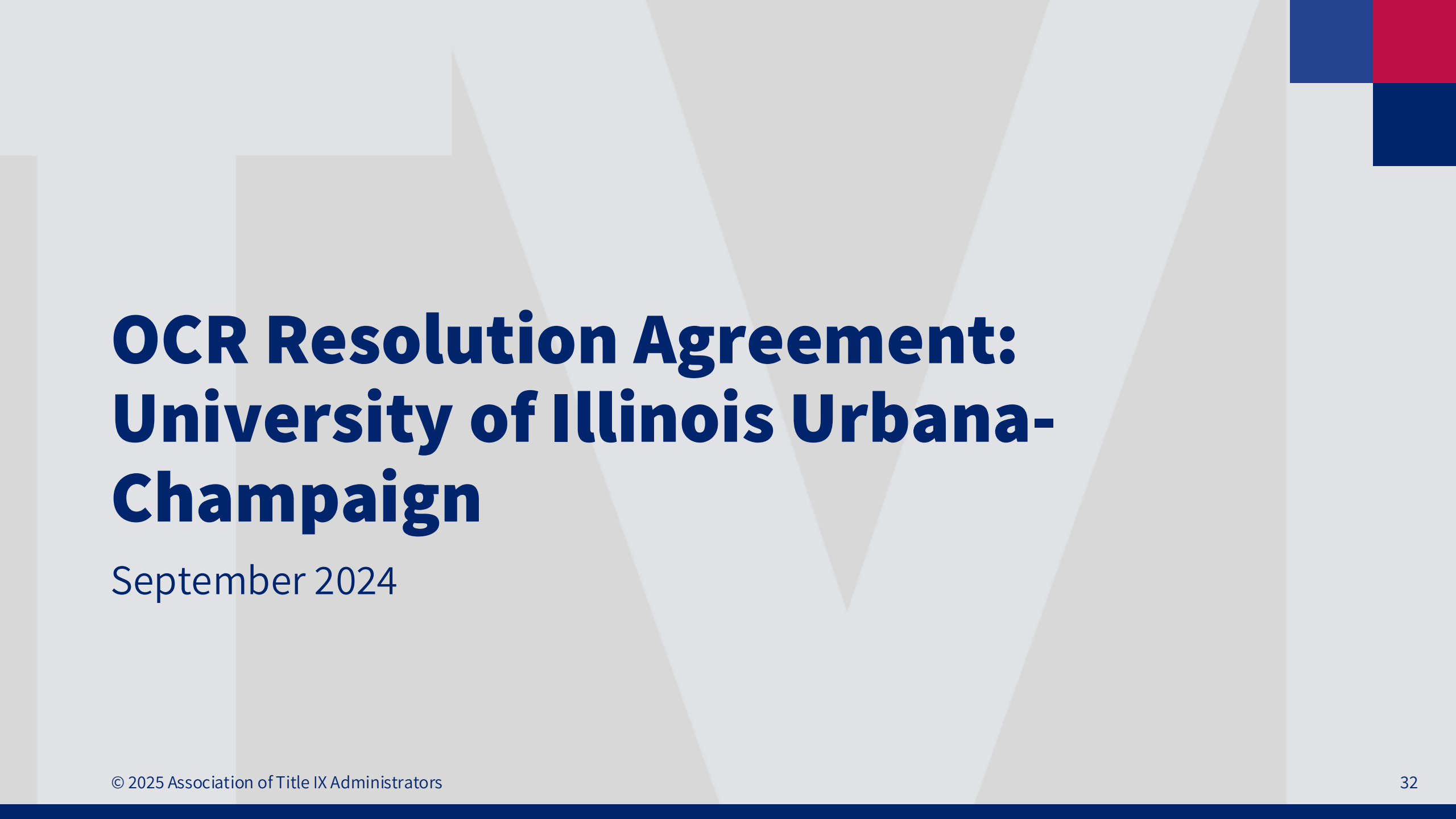
- OCR Resolution Agreements are instructive, like a case study, regarding different elements of Title VI compliance
- In response to a report, OCR may choose to open an investigation
 - Conduct a records review and interviews
 - Draft an investigation report
 - Seek voluntary compliance in the form of an agreement with the school/institution
- Resolution agreements are binding only on the parties, but broadly provide the field with OCR's enforcement priorities and standards

OCR Title VI Standard

“OCR could find a Title VI violation in its enforcement work if it determines that:

- A hostile environment based on race, color, or national origin exists; and
- The school had actual or constructive notice of the hostile environment; and
- The school failed to take prompt and effective steps reasonably calculated
 - End the harassment,
 - Eliminate any hostile environment and its effects, and
 - Prevent the harassment from recurring”

OCR Dear Colleague Letter: Title VI and Shared or Ethnic Characteristics Discrimination, 05/07/24

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OCR Resolution Agreement: University of Illinois Urbana- Champaign

September 2024

Resolution Agreement: UIUC

- OCR investigation prompted by a complaint alleging numerous incidents of antisemitism, including:
 - The recurring appearance of swastikas throughout campus
 - Mezuzahs ripped off students' doors
 - Brick thrown through the window of a Jewish fraternity
- OCR reviewed 139 reports between 2015 – 2023
 - University programs charged with responding to complaints of national origin harassment **lacked coordination** and **inconsistently applied university policies and procedures**
 - Led to gaps in the university's ability to address a hostile environment

Resolution Agreement Example: UIUC

UIUC agreed to take the following actions:

- Review and revise its **nondiscrimination policies and procedures**
- Review and revise its protest and demonstration policy
- **Provide training** to university law enforcement personnel as well as to all employees and staff responsible for investigating complaints
- **Conduct annual training** on discrimination based on national origin, including harassment based on shared ancestry or ethnic characteristics, for all faculty, staff, and students
- **Conduct a review** of the university's response to complaints and reports during the 2023-2024 academic year and **take necessary remedial actions**
- **Provide OCR with information** regarding any complaints alleging discrimination including harassment, on the basis of shared ancestry during the 2024-2025 school year
- **Administer a climate survey** to students and staff and create an action plan

Title VI Resolution Processes

An Equitable Resolution Process

- Equity focuses on providing support and resources to reduce disparities in access to the education program
- To accomplish this, Title VI grievance procedures must be equitable
- **Treat all parties equitably**
 - If the school/institution affords a right, privilege, benefit, or opportunity to one party, consider whether it should be provided to other parties
 - Ensure parties have opportunity to **fully participate** in the resolution process
- Ensure all employees involved in a Title VI resolution process **operate without bias and/or conflict of interest**
- Should be reasonably prompt to enable the school/institution to fulfill its obligations to address hostile environments

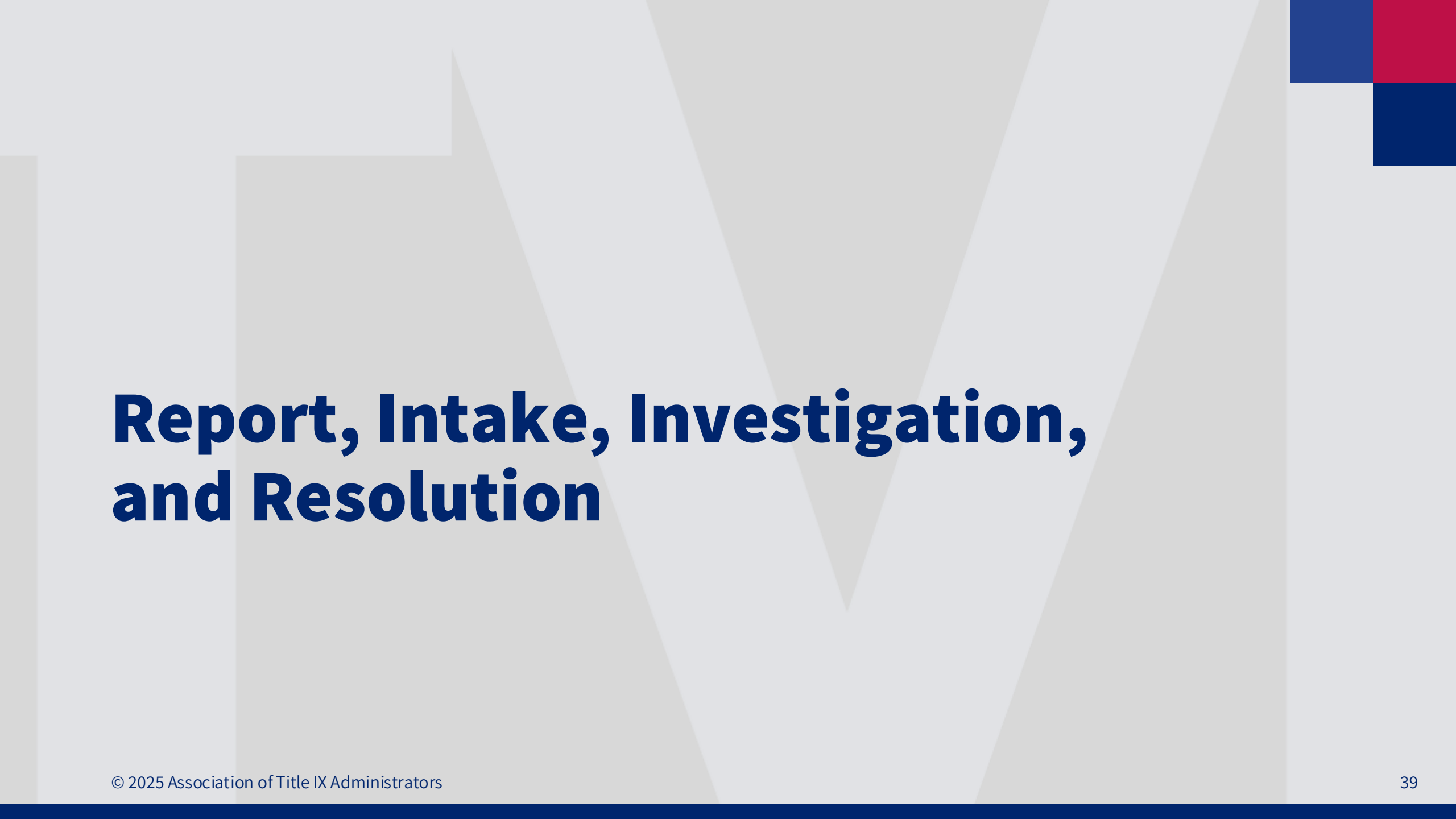
Title VI Resolution Process Options

- Offer a formal grievance process as well as informal resolution
- Formal Process
 - Investigation followed by decision-making phase and appeal
- Informal Process
 - Supportive Measures
 - Accepted Responsibility
 - Educational Conversation
 - Alternative Resolution

Parties' Rights

Parties should have the right to:

- A thorough, fair, and impartial resolution process free of bias or conflicts of interest
- Notice of allegations and, if appropriate, investigation
- Obtain and present evidence and witnesses
- Discuss allegations and consult with family members, confidential resources, or Advisors
- Review relevant evidence the Decision-maker will consider
- Appeal (if offered in other grievance procedures)
- Choose an Advisor (if allowed in other grievance procedures)

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Report, Intake, Investigation, and Resolution

Reports and Complaints

- Any individual can initiate a Title VI complaint
- Institutions should:
 - Develop a reporting system
 - Implement reporting expectations
 - Consider mimicking other reporting expectations
 - Designate a staff member to receive Title VI reports and outreach to impacted individuals



Mandatory Reporting

- ATIXA recommends designating **all employees** (except for **confidential resources**) as **mandated reporters**
 - Ensures information gets to those trained to respond
 - Enables institution to best support individuals
 - Supports tracking patterns
 - Provides for simpler, uniform, and universal training and reporting
- Many employees will also have reporting responsibilities under other state and federal laws or institutional policy
- The school/institution **should** also selectively designate employees as confidential when it makes sense to do so

Understanding Evidence

- Investigators should collect all **relevant** evidence
 - Evidence is any kind of information presented to help determine what occurred
 - Relevant evidence is evidence that tends to prove or disprove the allegations
- Investigators look for **different** types of evidence in discrimination vs. harassment complaints:
 - Similarly situated individuals
 - Statistical evidence
 - Non-discriminatory-rationales
 - Following established policy, the other applicant was more qualified, etc.
 - Pretext
 - Whether the offered rationale for the adverse action is true/legitimate
- Circumstantial evidence may play a larger role in these complaints

Law Enforcement Investigations

- Districts and institutions must fulfill their Title VI obligations regardless of whether any parallel criminal investigation exists
- State laws, local practices, and MOUs may facilitate information sharing with law enforcement
 - Develop a reporting and information-sharing protocol



Decision-Making

- ATIXA recommends a streamlined administrative resolution process without a live hearing
 - A Decision-maker meets with parties and witnesses to ask questions and assess credibility
 - Then the Decision-maker uses the standard of evidence to make findings and issues a written determination
 - **ATIXA recommendation:** Preponderance of the evidence
- **Note:** A live hearing may be required by state law, a collective bargaining agreement, or a federal court case

Appeals

- Offer an opportunity to appeal
 - One level of appeal
 - Short timeframe
- Outline grounds for appeal in policy
 - Procedural irregularity
 - New evidence
 - Conflict of interest or bias
- Appeal Decision-maker should not have another role in the same complaint, to minimize the risk of conflicts of interest or bias



Supportive Measures and Remedies

Supportive Measures

- Individualized, non-punitive measures taken to maintain and/or restore program access to individuals or groups impacted by discrimination
- Offered equitably to Complainant, Respondent, and others
- Use of public statements from leadership

Remedies

- Short- or long-term actions
- OCR has reinforced the Recipients' obligation to implement remedies alongside any grievance process and sanctions
 - For hostile environment complaints, the Recipient must assess whether they owe remedies to **any** impacted individuals
 - May require a response beyond disciplining the bad actor

Supportive Measure Examples

Counseling/ health services	Employee assistance program	Visa and immigration assistance	Community education	Alternate housing
Alternate work arrangements	Safety planning	Mediate with staff or supervisor	Transportation assistance	Contact limitations
Academic support	Policy revision	Training or remediation	Climate/Culture assessment	Alternate course completion options

Remedies



Remedies should seek to restore affected individuals to their pre-deprivation status



Recover any lost work, education time, or economic or access impacts



Restore opportunities, if applicable



Repair damage from misconduct

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OCR Resolution Agreement: Temple University

December 2024

Resolution Agreement: Temple University

Facts

- During the 2022-2023 and 2023-2024 academic years, the University received 50 reports of shared ancestry discrimination and harassment, including incidents of antisemitic, anti-Muslim, and anti-Palestinian conduct, including:
 - Incidents at on-campus protests
 - Vandalism and graffiti
 - Social media posts
- For example, the University received reports that:
 - A Jewish professor experienced harassment based on his shared ancestry
 - An Israeli student's art was vandalized because she is Israeli
 - A university professor called Muslim students "terrorists"

Resolution Agreement: Temple University

Findings

- OCR's investigation found that the University has been proactive in addressing harassment based on shared ancestry
 - Policies offer robust processes for addressing reports of discrimination and harassment
- OCR identified Title VI compliance concerns:
 - University's actions did not consistently include steps to assess whether incidents individually or cumulatively created a hostile environment
 - A concept commonly more applicable to TVI than TVII or TIX
 - Reports were addressed in isolation by multiple campus departments/offices with little to no information sharing

Temple University

University agreed to:

- **Review response to complaints and reports** of shared ancestry discrimination during the 2022-2023 and 2023-2024 academic years, and take remedial actions, if required
- **Provide OCR with information** regarding any complaints during the 2024-2025 and 2025-2026 school years, and address OCR's feedback, if any
- **Develop and administer a climate assessment** for students and staff to evaluate the climate with respect to shared ancestry
 - Analyze the results of the climate survey and create an action plan
- **Provide training** to all employees and staff responsible for investigating complaints and other reports of discrimination or harassment based on shared ancestry or ethnic characteristics
- **Conduct annual training** on race, color, and national origin discrimination or harassment for all faculty, staff, and students

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OCR Resolution Agreement: Muhlenberg College

September 2024

Resolution Agreement: Muhlenberg College (MC)

- OCR identified compliance concerns regarding repeated reports in a single semester regarding a professor's classroom statements and social media posts that created a potential hostile environment for Jewish students
- MC considered whether the professor's conduct had created or contributed to a hostile environment in, at most, only two of those eight incidents
- MC did not evaluate the totality of the circumstances consistently, which is a required element of the Title VI standard
- MC did not redress any hostile environment affecting the education program or activity
 - Even if conduct occurred on private social media and involves political speech, it still must be addressed

Resolution Agreement: Muhlenberg College (MC)

- MC spoke to the professor about this impact; MC did not take steps to communicate to affected students about the College's actions
 - MC secured a commitment from the professor not to enter the Hillel space in the future, but the College did not communicate that commitment to the affected students to ensure their equal access to education

Muhlenberg College

College agreed to:

- **Review all complaints** against the professor and determine whether a hostile environment for Jewish students existed, and whether supportive services are required to redress any hostile environment
- **Review its response to previous reports** of discrimination and/or harassment for the 2023-2024 academic year to ensure the college determined whether the alleged conduct created a hostile environment
- **Provide training** to all employees and staff responsible for investigating complaints and other reports of discrimination and harassment
- **Develop and administer a climate assessment** for students and staff to evaluate the campus climate and the extent individuals are subjected to, or witness discrimination and harassment, based on race, color, and/or national origin



OCR Resolution Agreement: University of Michigan

June, 2024

OCR Resolution Agreement – U. Michigan 2024

- **June 17, 2024:** OCR engaged in a resolution agreement with the University of Michigan based on allegations that the University discriminated against students on the basis of their national origin (shared Jewish ancestry/Israeli) by failing to respond to incidents of harassment during the 2023-24 school year, consistent with Title VI
 - There were 75 reports of alleged harassment and discrimination during this time period, during which the University only investigated one report
 - The reports reflected incidents involving a protest and chanting for removal and death of Jewish people and the state of Israel, posting of swastika symbols, and online antisemitic hate messages as examples

OCR Resolution Agreement – U. Michigan

- The University reached out to students who reported to offer support resources and services
- There was no information provided about how to make a report
- There were no trainings or materials addressing discrimination based on **shared ancestry** or **ethnic characteristics**
- The Resolution Agreement included requirement to:
 - Review or re-investigate reports of discrimination based on shared ancestry or ethnic characteristics
 - Conduct climate surveys
 - Provide training for employees

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OCR Resolution Agreement: CUNY System

June, 2024

OCR Resolution Agreement – CUNY 2024

- **June 17, 2024:** OCR investigation and resolution involves complaints against 9 CUNY schools and colleges as well as the central office involving complaints of discrimination and harassment involving **shared ancestry** discrimination
 - Behavior included students and faculty disrupting college courses to use class time to call for decolonization of Palestine – the college failed to follow up with impacted students
 - The schools failed to investigate complaints
- CUNY agreed to:
 - Reopen or initiate investigations of complaints and report resolutions to OCR
 - Provide Title VI training for investigators and law enforcement
 - Administer climate surveys on each campus, no later than Sept. 30, 2024

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OCR Resolution Agreement: Lafayette College

June, 2024

OCR Resolution – Lafayette College 2024

- **June 21, 2024:** OCR determined that Lafayette misapplied the legal standard with respect to harassment on social media, did not discharge its obligation to take steps designed to address or redress the hostile environment created by the antisemitic and anti-Arab discrimination conduct reported to the College
- Required College to:
 - Review responses to determine if hostile environment existed
 - Document all complaints alleging discrimination on the basis of shared ancestry
 - Review policies and procedures
 - Provide training for all students, staff, and faculty

Title VI Assessment

Compliance Assessment

- OCR Resolution Agreements typically include a commitment to perform an assessment to evaluate climate regarding race, color, or national origin
 - Usually coupled with a mandate to develop an action plan
- Assessment is helpful step to begin Title VI compliance efforts, inform current practices, or guide future planning



Assessing Title VI Efforts

- **Monitoring: Conduct regular needs assessment**
 - Identify strengths
 - Identify program gaps
 - Barrier analysis
 - Address areas of improvement
 - Assess resources
- **Identify patterns and systemic problems**
 - Internal reviews/audits/assessments
 - Climate assessments
- Complaint/investigation debriefing
- Benchmarking



Equity Audits

- Audits are intermittent assessments to measure compliance and to monitor barriers
- Factors such as cost and personnel capacity impact regularity

**Disciplinary/Conduct
Outcomes**

Reports/Complaints

**Hiring,
Compensation,
Evaluation, and
Promotion**

Climate Surveys

- Purpose: to learn about experiences with discrimination or harassment on the basis of **race, color, or national origin**
 - Measure policy, procedure, and resource awareness levels
- Demographic questions
 - Narrow results
 - Basis for comparison
- Experience and perception questions
 - Bulk of the survey
 - Gain a better understanding of the participants' experience
- Identify barriers to reporting or accessing resources

Annual Compliance Report Elements

- Title VI compliance reports demonstrate school/institution's commitment to equity and improvement
- **Common included elements:**
 - Report overview, TVIC information, copy of the non-discrimination statement
 - Data on enrollment and demographics (e.g., students and staff by race, ethnicity, national origin, number of ELL students by language needs)
 - Complaint resolutions (number and nature of complaints, how complaints were investigated and resolved, corrective actions)
 - Programs, services, and trainings provided (descriptions, access, and usage)
 - Resource allocation documentation
 - Monitoring and accountability efforts

Questions

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