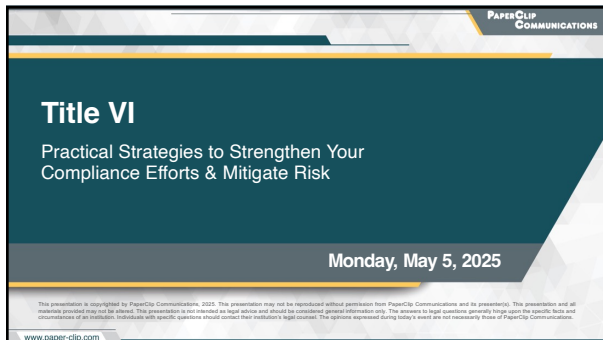




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Title VI of the Civil Rights Act of 1964

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.

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OCR's Title VI Implementing Regulations

34 C.F.R. Part 100.3 (b)(1)(ii)
A recipient ... may not ... provide any service ... or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program on the ground of race, color, or national origin.

34 C.F.R. Part 100.3 (b)(2)-(3)
A recipient ... may not... utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin or have the effect of defeating or substantially impairing accomplishment of the objectives of the program.

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Two Major Theories of Discrimination

- **Disparate/Different Treatment**
 - The factual inquiry in a disparate treatment case is whether the school treated someone less favorably because of a protected class
- **Disparate Impact**
 - A school violates federal law under disparate impact if the school implements facially neutral policies and practices that has an unjustified effect of discriminating on the basis on a protected class.

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Example Scenarios

- Different discipline of **similarly situated students**
- Selective enforcement** of a facially neutral policy against students of a single race
- Adoption of a facially neutral policy with an **intent to target** students of a particular race for invidious reasons
- Disciplinary action taken with **racially discriminatory intent**

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Different Treatment

Three Step Analysis

- Did the university limit or deny educational services, benefits, or opportunities to a student or a group of students of a particular race by **treating them differently** from a similarly situated student or group of students of another race in the disciplinary process?
- Can the university articulate a **legitimate, nondiscriminatory reason** for the different treatment?
- Is the university's articulated reason a **pretext** for discrimination?

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Hypothetical

A Hispanic student and a non-Hispanic student were involved in a fight at a fraternity party. Neither student had been previously disciplined for misconduct. The school conducted an investigation, and the Hispanic student received a one-semester suspension, while the non-Hispanic student received a two-semester suspension.

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Disparate Impact

- A school violates federal law under disparate impact if the school implements **facially neutral policies** and practices that has an unjustified effect of discriminating on the basis of race.
- The Department uses a three-step analysis to determine whether a facially neutral policy has an unlawful disparate impact on the basis of race.

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Disparate Impact

Three Step Analysis

1. Has the discipline policy or practice resulted in an **adverse impact** on students of one race as compared with students of other races?
2. Is the discipline policy or practice **necessary** to meet an **important educational goal**?
3. Are there **comparably effective** policies or practices that would meet the school's stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group, or is the school's proffered justification a **pretext** for discrimination?

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Disparate Impact

Hypo: Eastbay University wants to streamline how student organizations get funding. To make the process more "objective," it sets a new rule-- student clubs must have at least 50 active members and host three public events per semester to qualify for university funding. The policy doesn't mention race, and it's meant to reward clubs that engage the broader campus. Nearly all the cultural and identity-based organizations (e.g., the Black Student Union, the Latinx Cultural Alliance, and the Southeast Asian Student Coalition, etc.) lose their funding. These groups don't always hit the 50-member threshold. In contrast, larger general-interest clubs (like the Hiking Club) easily meet the new requirements.

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Disparate Discipline Based on Race

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What Activities are Covered?

- Students are protected from discrimination on the basis of race in all **academic, educational, extracurricular, athletic and other school activities and programs.**
- Examples:**
 - Expulsions
 - Student Organization Suspensions
 - Campus Housing Suspensions

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Whose Conduct Is Covered?

- Titles IV & VI prohibits discriminatory discipline by **school officials and everyone school officials exercise some control over**, such as school resource officers, school district police officers and security guards.

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A Note on Resource Comparability at the Postsecondary Level

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Now it's time for a short break.

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Racial Harassment

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Racial Harassment

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[illegible]

Racial Harassment *contd.*

A racially hostile environment exists when physical, verbal, graphic or written harassing conduct that is sufficiently **severe, pervasive or persistent** so as to limit a student's ability to participate in school's services

In the context of peer or third party harassment, **school's responsibility is triggered by notice**, and, once the school has notice, it is required to take **prompt and effective action** to end harassment, eliminate hostile environment, and prevent recurrence (i.e., there is no violation if, upon notice, the school takes such prompt, effective action).

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Who Can Be Harassed?

- All ages, **rac**es and **eth**nicities
- Men and women, girls and boys
- People perceived to be of a particular race or sex, or perceived to have a disability
- People who have a relationship or association with a person of a particular race, sex or disability

Who Can Be A Harasser?

- An employee, such as a teacher, professor, or administrator
- Another student
- A third party

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Harassing Conduct


- Conduct which is **unwelcome**, and
- Denies or limits a student's ability to participate** in or receive the benefits, services or opportunities of the institution's programs or activities.
- Examples:**
 - Verbal abuse, such as name-calling
 - Graphic or written statements
 - Threats
 - Physical Assault

Can be done through electronic means

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Unwelcome



- Conduct is unwelcome if the student **did not request or invite it and regarded the conduct as undesirable or offensive.**
- The fact that a **student accepted the conduct** does not mean that he or she welcomed it.
- Also, the fact that a student willingly participated in conduct on one occasion does not prevent him or her from indicating that the same conduct has become unwelcome **on a subsequent occasion.**

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Denies or Limits

- Denies or limits a student's ability to participate** in or receive the benefits, services or opportunities of the school's programs or activities.
- This is a low threshold.**
- Harassment **does not require**
 - intent to harm,
 - a specific target, or
 - repeated incidents.

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Retaliation

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Analytical Framework for Retaliation Cases

- The complainant must establish a **prima facie case** of retaliation.
- The burden then shifts to the school to articulate a **legitimate, non-retaliatory reason** for the adverse action.
- The burden then shifts back for the complainant to prove **pre-text**.

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Prima Facie Case for Retaliation

- The plaintiff must establish a prima facie case of retaliation.
 1. Complainant was engaged in statutorily **protected activity** of which the **school** was aware
 2. Complainant suffered a **materially adverse action** at the hands of the school
 3. A causal link exists between the protected activity and the adverse action

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Practical Strategies to Increase Compliance

- Conduct Regular Equity Audits
- Provide Training to all Staff, Faculty, and Administrators
- Create Transparent Complaint and Resolution Processes
- Track and Analyze Complaint Data to Spot Trends.
- Evaluate Use of Algorithms or Selection Criteria
- Build Early Warning Systems

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Resources and References

- U.S. Department of Education, Race, Color, and National Origin Discrimination. <https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination>
- OCR Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, Including Shared Ancestry or Ethnic Characteristics. <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf>

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Today's Key Takeaways

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Today's Key Takeaways

1. Remember: Title VI applies to all of a recipient's programs and activities.
2. Even facially neutral policies can be discriminatory.
3. Build early warning systems. Monitor data for early signs of disparities.
4. Train faculty, staff, and administrators consistently.
5. Be wary of retaliation.

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Question & Answer Session

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Question & Answer Session

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Thank you for your participation,

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