



**To:** Institutions of Higher Education  
**From:** Office of the Secretary of Higher Education  
**Date:** May 15, 2024  
**Subject:** U.S. Department of Education Dear Colleague Letter

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Please see the attached letter from the U.S. Department of Education Office for Civil Rights (OCR) with information and resources regarding discrimination, including harassment, based on shared ancestry or ethnic characteristics.

The letter provides information on the legal analyses that OCR uses to determine whether discrimination exists, and it provides examples of conduct that, depending on facts and circumstances, could raise concerns under Title VI and its implementing regulations. More information can be found [here](#).

OCR has previously issued other resources to support schools in complying with their obligations under Title VI:

- [Dear Colleague Letter: Addressing Discrimination Against Jewish Students.](#)
- [Dear Colleague Letter on Addressing Discrimination Against Muslim, Arab, Sikh, South Asian, Hindu, and Palestinian Students.](#)
- [Dear Colleague Letter: Discrimination, including Harassment, Based on Shared Ancestry or Ethnic Characteristics Fact Sheet Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics.](#)

Additionally, we would like to remind institutions of the [Addressing Bias on Campus](#) resource produced by OSHE in collaboration with the New Jersey Division on Civil Rights. We also encourage institutions to ensure all students are aware of the mental health and counseling services available on campus and beyond, including the virtual services through the State's [partnership with Uwill](#) that provides students with 24/7/365 access to a diverse network of mental health practitioners with multicultural competency at no cost. As of this month, this partnership has been extended through April 2026.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

May 7, 2024

Dear Colleague:

I write to share information about federal civil rights obligations of schools and other recipients of federal financial assistance from the U.S. Department of Education (Department) to ensure nondiscrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics, under Title VI of the Civil Rights Act of 1964 and its implementing regulations (Title VI). These protections extend to students and school community members who are or are perceived because of their shared ancestry or ethnic characteristics to be Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, Palestinian, or any other faith or ancestry. This guidance responds to recent increases in complaints filed with the Department's Office for Civil Rights (OCR) alleging discrimination on these bases in schools serving students in preschool through grade 12 and colleges and universities,<sup>1</sup> and public reports of such discrimination. To be clear, Title VI's protections against discrimination based on race, color, and national origin encompass antisemitism and other forms of discrimination when based on shared ancestry or ethnic characteristics. OCR vigorously enforces these protections.

This guidance includes examples to help schools carry out Title VI's requirements.<sup>2</sup> These examples are illustrative and do not dictate the outcome of any particular matter OCR may investigate; rather, in each case, OCR engages in an individualized analysis of the particular facts at issue.

The contents of this guidance do not have the force and effect of law and do not bind the public or create new legal standards. This document is designed to provide clarity to the public regarding existing legal requirements under Title VI. The Department has determined that this

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<sup>1</sup> Throughout this letter, "school" is used generally to refer to preschool, elementary, secondary, and postsecondary educational institutions that are recipients of federal financial assistance from the Department.

<sup>2</sup> The examples presented are not exhaustive, and the facts and circumstances of each case are unique. OCR preserves the discretion to investigate and assess the facts of each case individually and apply the law to the facts. OCR also preserves the discretion to determine appropriate remedies based on the specific facts and circumstances of each case.

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document provides significant guidance under the Office of Management and Budget’s Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007).<sup>3</sup>

## **I. Legal Framework for Evaluating Alleged Discrimination, Including Harassment, under Title VI**

Title VI prohibits discrimination on the basis of race, color, or national origin in programs or activities that receive federal financial assistance.<sup>4</sup> All educational institutions, including pre-K, elementary, and secondary public schools and school districts, and public and private colleges, universities, and other postsecondary institutions that receive federal financial assistance, are required to comply with Title VI.

Title VI’s protection from race, color, and national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived: (i) shared ancestry or ethnic characteristics; or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity.<sup>5</sup> Title VI does not protect students from discrimination based solely on religion. OCR refers complaints of discrimination based exclusively on religion to the U.S. Department of Justice, which has jurisdiction to respond to certain complaints of religious discrimination in public schools.<sup>6</sup>

This guidance identifies two legal frameworks that courts and OCR use to determine if schools have engaged in discrimination that violates Title VI—hostile environment and different treatment. It also starts with a section on First Amendment considerations.

### **A. First Amendment Considerations**

Nothing in Title VI or regulations implementing it requires or authorizes a school to restrict any rights otherwise protected by the First Amendment to the U.S. Constitution. OCR enforces the laws within our jurisdiction consistent with the First Amendment.<sup>7</sup>

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<sup>3</sup> If you are interested in commenting on this guidance, please email OCR your comment to [OCR@ed.gov](mailto:OCR@ed.gov) or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. For further information about the Department’s guidance processes, please visit the Department’s [webpage on significant guidance](#).

<sup>4</sup> Title VI provides that: “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, *et seq.*; 34 C.F.R. § 100, *et seq.*

<sup>5</sup> See *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 353-55 (S.D.N.Y. 2014) (holding that discrimination based on shared ancestry and ethnic characteristics is prohibited by Title VI); see also 42 U.S.C. § 2000d; 34 C.F.R. § 100.3(b)(1)(iv) and (vi); OCR, [Dear Colleague Letter: Harassment and Bullying](#), 4-6 (Oct. 2010).

<sup>6</sup> See Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c, *et seq.*

<sup>7</sup> OCR, [Dear Colleague Letter: First Amendment](#) (July 2003).

The fact that harassment may involve conduct that includes speech in a public setting or speech that is also motivated by political or religious beliefs, however, does not relieve a school of its obligation to respond under Title VI as described below, if the harassment creates a hostile environment in school for a student or students.

Schools have a number of tools for responding to a hostile environment—including tools that do not restrict any rights protected by the First Amendment. To meet its obligation, a university can, among other steps, communicate its opposition to stereotypical, derogatory opinions; provide counseling and support for students affected by harassment; or take steps to establish a welcoming and respectful school campus, which could include making clear that the school values, and is determined to fully include in the campus community, students of all races, colors, and national origins.<sup>8</sup> OCR does not interpret Title VI to require any recipient to abridge any rights protected under the First Amendment. For instance, if students at a public university engage in offensive speech about members of a particular ethnic group and that speech contributes to a hostile environment within an education program about which the university knows or should know, the university has a legal obligation to address that hostile environment for students in school.<sup>9</sup> The university may, however, be constrained or limited in how it responds if speech is involved.

The age of the students involved and the location or forum may affect how a school can respond in a manner consistent with the First Amendment. Students of all ages have free speech rights, but courts have afforded greater flexibility to elementary and secondary school administrators as they work to ensure an appropriate learning environment considering a child’s age and maturity. Public elementary and secondary schools have more leeway to regulate student speech, for example, if it could substantially disrupt or interfere with the work of the school or other students’ rights,<sup>10</sup> is lewd or indecent,<sup>11</sup> or is school-sponsored speech.<sup>12</sup>

## **B. Hostile Environment Analysis**

The existence of a hostile environment based on race, color, or national origin that is created, encouraged, accepted, tolerated, or left uncorrected by a school can constitute discrimination in

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<sup>8</sup> See, e.g., *Feminist Majority Foundation v. Hurley*, 911 F.3d 674, 688 (4th Cir. 2018) (to address hostile environment on social media, school administrators “could have more clearly communicated to the student body that the University would not tolerate sexually harassing behavior either in person or online. The University could have conducted mandatory assemblies to explain and discourage cyber bullying and sex discrimination, and it could have provided anti-sexual harassment training to the entire student body and faculty.”). A school cannot meet its obligation to address harassment under federal civil rights laws simply by referring matters to the police.

<sup>9</sup> See *id.* at 688-89 (holding that the university could not ignore “the sexual harassment that pervaded and disrupted its campus solely because the offending conduct took place through cyberspace.”).

<sup>10</sup> See *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503, 506 (1969).

<sup>11</sup> See *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 683 (1986).

<sup>12</sup> See *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 271 (1988).

violation of Title VI.<sup>13</sup> As OCR has articulated many times, OCR could find a Title VI violation in its enforcement work if it determines that: (1) a hostile environment based on race, color, or national origin exists; (2) the school had actual or constructive notice of the hostile environment; and (3) the school failed to take prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.<sup>14</sup>

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome conduct based on race, color, or national origin that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from a school’s education program or activity.<sup>15</sup>

Harassing conduct need not always be targeted at a particular person in order to create a hostile environment for a student or group of students, or for other protected individuals.<sup>16</sup> The conduct

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<sup>13</sup> See, e.g., *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 670-71 & n.14 (2d Cir. 2012) (discussing school district liability for student-to-student racial harassment and failure to address hostile environments under Title VI) (relying on *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 639-44 (1999) (discussing student-on-student harassment standards for damages actions under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.* (Title IX), which prohibits sex discrimination) and *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 280-90 (1998) (discussing teacher-on-student sexual harassment standard for Title IX)); *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1032-35 (9th Cir. 1998) (finding plaintiffs sufficiently alleged a violation of Title VI under a hostile environment theory where students were called racial epithets by their peers and school officials refused to accept complaints and refused to take any action to end the racist misconduct); *Doe v. Los Angeles Unified Sch. Dist.*, 2017 WL 797152, \*10 (C.D. Cal. Feb. 27, 2017) (applying the hostile environment standard in *Monteiro*) (“To prove a violation of Title VI’s prohibition on racially hostile environments, a party must show: (1) the existence of a racially hostile environment, (2) of which a recipient of federal funds had notice and (3) failed to adequately redress.”).

<sup>14</sup> See OCR, [Dear Colleague Letter on Race and School Programming](#), 4 (Aug. 2023); OCR, [Dear Colleague Letter: Harassment and Bullying](#), 2, 4, 6 (Oct. 2010); OCR, [Racial Incidents and Harassment against Students at Educational Institutions: Investigative Guidance](#), 59 Fed. Reg. 11,448, 11,449 (Mar. 1994).

<sup>15</sup> In addition to the guidance cited in note 14, *supra*, see *Davis*, 526 U.S. at 639-44 (discussing student-on-student harassment standards for damages actions under Title IX) and *Gebser*, 524 U.S. at 280-90 (discussing teacher-on-student harassment standard for Title IX). In analyzing harassment claims under Title VI, OCR relies on the legal principles articulated in cases under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (Title VII), which prohibits employment discrimination based on race, color, religion, sex, and national origin, and under Title IX, which prohibits discrimination on the basis of sex in education programs or activities receiving federal financial assistance. See *Cannon v. Univ. of Chicago*, 441 U.S. 677, 694-98 (1979) (stating that Title IX was modeled on Title VI); *Franklin v. Gwinnett Cnty. Public Schs.*, 503 U.S. 60, 75 (1992) (applying Title VII principles to Title IX case).

<sup>16</sup> This standard is well established under Title VII case law, on which courts often rely for interpreting Title VI. See *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 477 (5th Cir. 1989) (all sexual graffiti in office, not just that directed at plaintiff, was relevant to plaintiff’s claim); *Hall v. Gus Construction Co.*, 842 F.2d 1010, 1015 (8th Cir. 1988) (evidence of sexual harassment directed at others is relevant to show hostile environment); *Walker v. Ford Motor Co.*, 684 F.2d 1355, 1358-59 (11th Cir. 1982) (hostile environment established where racial harassment made plaintiff “feel unwanted and uncomfortable in his surroundings,” even though it was not directed at him).

may be directed at anyone, and the harassment may also be based on association with others of a different race (the harassment might be referencing the race of a sibling or parent, for example, that is different from the race of the person being harassed whose access to the school's program is limited or denied).<sup>17</sup> Additionally, a hostile environment may take the form of a single victim and multiple offenders.

The offensiveness of a particular expression as perceived by some students, standing alone, is not a legally sufficient basis to establish a hostile environment under Title VI.<sup>18</sup> OCR evaluates the conduct from the perspective of the student who is allegedly being harassed and from the perspective of a reasonable person in that student's position, considering all the circumstances.<sup>19</sup> In order to create a hostile environment, the harassing conduct, which may include speech or expression, must be so severe or pervasive that it limits or denies a student's ability to participate in or benefit from the school's program or activity.<sup>20</sup>

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The hostile environment analysis summarized in this Dear Colleague letter applies to administrative enforcement of Title VI. *See generally* OCR, [Racial Incidents and Harassment against Students at Educational Institutions: Investigative Guidance](#), 59 Fed. Reg. 11,448 (Mar. 1994) (addressing hostile environment analysis). *See also*, U.S. Dep't of Justice, Civil Rights Division, [Title VI Legal Manual](#), 28-29 (Apr. 2021).

<sup>17</sup> *See Parr v. Woodmen of the World Life Ins. Co.*, 791 F.2d 888, 892 (11th Cir. 1986) (“Where a plaintiff claims employment discrimination under Title VII based upon an interracial marriage or association, he alleges, by definition, that he has been discriminated against because of *his* race.”); *Chacon v. Ochs*, 780 F. Supp. 680, 681 (C.D. Cal. 1991) (Title VII) (applying *Parr* to an incident of racial harassment); U.S. Equal Employment Opportunity Commission (EEOC), [EEOC Compliance Manual](#), Section 15: Race & Color Discrimination (2016). For examples, see OCR, [Dear Colleague Letter: Harassment and Bullying](#) (Oct. 2010).

<sup>18</sup> *See, e.g., Rashdan v. Geissberger*, 764 F.3d 1179, 1183 (9th Cir. 2014) (holding reference to an Egyptian student's work as “Third World”—that the student found subjectively offensive—insufficient to show Title VI national origin discrimination); *see also Sallis v. Univ. of Minnesota*, 408 F.3d 470, 476-77 (8th Cir. 2005) (determining incident of a Black employee being called “tan” and “dark”—that the employee found subjectively offensive—insufficient to create a hostile environment under Title VII). *See also* OCR, [Questions and Answers on Executive Order 13899 \(Combating Anti-Semitism\) and OCR's Enforcement of Title VI of the Civil Rights Act of 1964](#), 2 (Jan. 2021) (“An anti-Semitic incident does not violate Title VI merely because it is anti-Semitic, or because it involves an example of anti-Semitism contemplated by the IHRA [[International Holocaust Remembrance Alliance](#)]... A detailed analysis is required to determine if a particular act constitutes discrimination prohibited by Title VI, as is true with all other Title VI complaints.”) (internal citations and quotations omitted).

<sup>19</sup> *See Davis*, 526 U.S. at 651 (“Whether [harassing] conduct rises to the level of actionable harassment thus depends on a constellation of surrounding circumstances, expectations, and relationships, including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.”) (internal citations and quotations omitted).

<sup>20</sup> *See Zeno*, 702 F.3d at 665-66 (discussing severity threshold for harassment to be actionable under Title VI); *McGinest v. GTE Service Corp.*, 360 F.3d 1103, 1116 (9th Cir. 2004) (explaining that racial incidents that appear “innocent or only mildly offensive...[may] in reality be intolerably abusive or threatening when understood from the perspective of a ... member of the targeted group”). *See also* OCR, [Dear Colleague Letter: Harassment and Bullying](#), 2 (Oct. 2010).

Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances.<sup>21</sup> Relevant factors for consideration may include, but are not limited to, the context, nature, scope, frequency, duration, and location of the harassment based on race, color, or national origin, as well as the identity, number, age, and relationships of the persons involved. Generally, the less pervasive the harassing conduct, the more severe it must be to establish a hostile environment under Title VI. For example, in most cases, a single isolated incident would not be sufficient to establish a Title VI violation. However, in some cases, a hostile environment requiring appropriate responsive action may result from a single severe incident.<sup>22</sup>

The following examples illustrate the ways OCR could, depending on facts and circumstances, apply these standards. These examples do not predict or determine the outcome of any particular complaint that OCR might receive. Each of these examples is purely hypothetical. These examples discuss tentative OCR actions based on limited hypothetical information and, therefore, should not be construed as definitive statements or binding requirements to be applied identically under similar circumstances. For each example, we have identified potential actions OCR could take; however, these examples have no binding effect on how the Department can exercise its enforcement discretion. OCR always analyzes the totality of the factual circumstances presented in each individual case.

- Example 1: A college student files a complaint with OCR alleging that she was subjected to a hostile environment because she is Jewish. In support of her complaint, she alleges that the dry-erase board on her dorm room door was defaced with swastikas. Additionally, she alleges that epithets referencing poor hygiene and racial impurity of Jewish people and white supremacist slogans stating conspiracy theories about Jewish people, were scrawled on the door and posted by fellow students as comments to her social media feed. The student informs her school counselor of these incidents and that she no longer feels comfortable going to her dorm. The counselor has a meeting with the student to discuss her concerns but fails to take any further action.

*OCR would have reason to open an investigation based on this complaint.* The alleged harassment appears to be based on the student’s Jewish ancestry and actual or perceived shared ethnic characteristics of Jewish people, rather than on their religious beliefs or

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<sup>21</sup> See *Hendrichsen v. Ball State Univ.*, 107 F. App’x. 680, 684 (7th Cir. 2004) (Title IX case); *Monteiro*, 158 F.3d at 1033; *Elliott v. Delaware State Univ.*, 879 F. Supp. 2d 438, 446 (D. Del. 2012).

<sup>22</sup> Cf. *Vance v. Spencer County Public Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) (quoting *Doe v. School Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999) (“Within the context of Title IX of the Education Amendments Act of 1972, a student’s claim of hostile environment can arise from a single incident.”)); *Barrett v. Omaha Nat. Bank*, 584 F. Supp. 22 (D. Neb. 1983), *aff’d*, 726 F.2d 424 (8th Cir. 1984) (Title VII) (sexually hostile environment established by sexual assault). See OCR, [Racial Incidents and Harassment against Students at Educational Institutions: Investigative Guidance](#); EEOC, [Enforcement Guidance on Harassment in the Workplace](#), No. N-915.064 (Apr. 29, 2024) (interpreting Title VII).



practices.<sup>23</sup> The use of swastikas and the graffiti/taunts related to hygiene, impurity, and racial hierarchy suggest that the alleged harassing conduct depicts Jewish people as a separate, and inferior, race who share certain characteristics.<sup>24</sup> If OCR’s investigation confirms these allegations, OCR could find that these harassing actions were unwelcome, subjectively and objectively offensive and so severe or pervasive that they limited or denied the student’s ability to participate in or benefit from the services, activities, or opportunities offered by the college, including access to the dorm, *i.e.*, created a hostile environment.<sup>25</sup> If the evidence obtained during the investigation confirmed that the college had notice of this hostile environment and failed to take prompt and effective steps reasonably calculated to (1) end the harassment, (2) eliminate any hostile environment and its effects, and (3) prevent the harassment from recurring, OCR could find a violation of Title VI.

- Example 2: The mother of an Arab Muslim elementary school student files a complaint with OCR alleging her daughter who wears a hijab to school was harassed by other students when several classmates pulled her daughter’s hijab off, threw it on the playground, started stomping on it, and called her a terrorist while teachers witnessed the incidents and did nothing. In a separate incident, a teacher said that because the girl did not wear loose fitting clothing every day, she should not be concerned because she was already being a bad Muslim. For these reasons, the student felt unsafe at school and could not concentrate in class.

*OCR would have reason to open an investigation based on this complaint.* Clothing, such as wearing a hijab, is often both an expression of adherence to standards of dress within an ethnic community and a religious practice. To the extent that the clothing in this instance is not exclusively a religious practice or an expression of faith, but marks membership in a group that shares, or is perceived to share, ancestry and ethnic characteristics, and the student was subjected to slurs (*e.g.*, being called a terrorist) related to her actual or perceived race and national origin, including her shared ancestry, OCR would have reason to open an investigation.

If OCR’s investigation confirms these allegations, OCR could find that the harassing conduct created a hostile environment that limited the student’s ability to participate in

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<sup>23</sup> Because Title VI does not protect students from discrimination based only on religion, OCR may refer complaints of discrimination based exclusively on religion, such as a school’s denial of a student’s request to miss class for a religious holiday, to the U.S. Department of Justice, which has jurisdiction under Title IV to respond to certain complaints of religious discrimination in public schools. *See* 42 U.S.C. § 2000c-6.

<sup>24</sup> *See Shaare Tefila Congregation v. Cobb*, 785 F.2d 523, 529 (4th Cir. 1986) (Wilkinson, J. concurring in part and dissenting in part) (“The paintings found on the synagogue align the defendants with both the Ku Klux Klan and the Nazis, two groups infamous for the persistence in the view that Jews constitute a separate and inferior race.”).

<sup>25</sup> In this example, the conduct, if confirmed by the evidence, could be considered both severe and pervasive.



school, *i.e.*, she felt unsafe and had difficulty concentrating. OCR would then determine whether the school district promptly and effectively took steps reasonably calculated to end the harassment, eliminate its effects, and prevent it from recurring. If it did not, then OCR could find a Title VI violation.

- Example 3: At a public university, a school organization announces that it has invited an Israeli filmmaker to screen a video about his observations from Israel. In response, several dozen students and faculty members gather in the main entryway of the building and refuse to allow anyone to get through, including the event organizers who had arrived for setup, explaining that they do not want to give a “Jewish filmmaker an opportunity to spread their propaganda.” The college does not remove the protesters but arranges for the film to screen in a different college building. Upon learning of the new location, those protesting congregate outside the building, but next to the windows of the room, and begin chanting epithets about Jews. When the film ends, the protesters stand by the door, yelling to those entering or exiting. Some students, including many Israeli and Jewish students, found the yelling from outside distracting and fearsome.

The next day, a group of protesters wrap “Do Not Cross” tape in front of the college building housing the campus chapter of the school organization. The protesters ask every student attempting to enter the building that houses the organization whether they are Jewish. If they are, the protesters run towards the student and prevent them from entering the building. That night, antisemitic graffiti featuring swastikas appears on the organization’s building. The graffiti sparks fear in Jewish students in the college community, who complain to college administrators that they feel unsafe. Jewish students who encounter these protests and the graffiti ask the college’s administrators to provide them security to escort them across campus and to investigate who graffitied the building. The college administrators issue a statement saying that they condemn vandalism of school property. The leader of the organization sends an email to all Jewish students on campus suggesting that they should finish the semester by going home and attending classes remotely since campus is not safe, and many Jewish students begin doing so. The college takes no further actions. A group of Jewish students file a complaint with OCR.

*OCR would have reason to open an investigation based on this complaint.* The use of the term “Jewish” and epithets about Jewish people in the alleged protest of the event makes it appear that the protesters’ conduct was, at least in part, based on the actual or perceived Jewish ancestry of the filmmaker and audience. Additionally, the protesters’ actions the next day, including physically blocking Jewish students from entering a building and posting antisemitic graffiti, were particularly intense and caused many students to feel unsafe on campus. OCR could find that the protesters’ conduct was subjectively and objectively offensive and so severe or pervasive that it limited the ability of the Jewish

students to attend and benefit from educational activities of the college.<sup>26</sup> Although a college has wide discretion in how to respond to harassment that might take place during student protests, OCR could find that the steps taken by the college were not prompt and effective steps that were reasonably calculated to end the hostile environment caused by the protesters, in light of students reasonably feeling unsafe attending class in person. OCR would evaluate whether the college had taken additional steps.

- Example 4: A college experiences widespread incidents of harassment in one semester. Jewish students report being spit at, called antisemitic slurs referencing facial features and materialistic tendencies, having their Star of David jewelry ripped off, having their kippahs snatched off their heads, seeing antisemitic graffiti in the Jewish fraternity house and other campus facilities where Jewish and Israel-related cultural events are routinely held, and discovering the campus center mailboxes of those with stereotypically Jewish last names stamped with the words “Stop stealing Palestinian lands” on International Holocaust Remembrance Day.

During anti-war demonstrations, protest signs list specific Jewish students by name and use epithets that stereotype all Jewish people as racist murderers. In addition, Jewish students find flyers posted throughout campus advocating for the genocide of Jewish people and calling them Nazis. The protesters block many of the main pathways to academic buildings on campus. Several Jewish students are prevented from attending class because protesters state that “no Zionists can pass through” and the protesters accuse any student who they believe is Jewish of supporting genocide. When students wearing kippahs are walking by, protesters chant “Colonizers aren’t welcome here” and “go back to Europe.”

Thereafter, a dozen Jewish students meet with the Dean of Student Services to express that these incidents of harassment during that semester made them feel unsafe, unwelcome, and concerned about continuing their education at the school. No action is taken by the Dean or other college officials, and the harassing conduct continues.

*OCR would have reason to open an investigation based on this complaint.* Most of the alleged incidents of harassing conduct appear to treat Jewish students as members of a group that shares ancestry or ethnic characteristics. Some of the highly offensive taunts and slurs allegedly used against Jewish students refer to stereotypical physical characteristics and personality traits (*e.g.*, materialistic tendencies) that are alleged shared ancestry or ethnic characteristics and are related to race and national origin discrimination. Blocking students from attending classes and accusing them of supporting genocide solely on the basis that the students are perceived to be Jewish are offensive

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<sup>26</sup> In this example, the conduct, if confirmed by the evidence, could be considered both severe and pervasive.

actions grounded in the perceived national origin and shared ancestry of these students. While some of the alleged conduct, such as ripping off jewelry containing a religious symbol and snatching kippahs from students, may also involve potential religious discrimination, the context suggests the alleged incidents are, in part, related to race or national origin discrimination, including shared ancestry or ethnic characteristics. Additional allegations, including the pamphlets calling for the return to a period that led to the mass execution of millions of Jewish people and antisemitic graffiti, are offensive conduct that may refer to a belief that Jewish people are inferior to others. The alleged targeting of students with Jewish-sounding last names appears to target those students based on their actual or perceived race or national origin, including shared ancestry (*i.e.*, their family heritage). Further, although political protest on its own does not typically implicate Title VI, protest signs in this instance allegedly also targeted specific Jewish students using ethnic stereotypes, so OCR could find that the protesters engaged in harassing conduct based on race, color, or national origin, including shared ancestry or ethnic characteristics. If confirmed by OCR's investigation, OCR could find that several incidents, in one semester, of subjectively and objectively offensive harassing conduct based on Jewish students' shared ancestry, that is so severe or pervasive that it limited or denied their access to the school's programs or activities, created a hostile environment.<sup>27</sup>

OCR would evaluate whether the school took prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.

- Example 5: A Muslim eighth grader who is of Saudi Arabian descent is followed and taunted by several classmates every day for several weeks during history class, her last class of the day. These classmates allegedly taunt the student for not eating pork; mock the student's mother's Saudi accent, limited English proficiency, and traditional Saudi clothing; and throw trash in the student's direction. The student tells the teacher that she does not want to work in groups with those particular classmates because they made fun of her mother's accent. The stress is causing her to dread the end of the day, and as a result her attention in history class is waning and causing her grades to suffer. The student's mother complains to the school principal, who checks in with the history teacher. The history teacher speaks with the harassers without addressing the discriminatory nature of their actions. The harassers agree to apologize to the student being harassed and are given after-school detention for two days for the trash-throwing in violation of the school's conduct policy. The principal offered no individualized supports to the student who experienced the harassment. The school re-publicizes its non-discrimination policy and ensures that future annual diversity trainings for employees

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<sup>27</sup> In this example, the conduct, if confirmed by the evidence, could be considered both severe and pervasive.

will include examples of national origin discrimination involving religion. However, the school fails to put in place a method for monitoring whether further incidents happen to the affected student and makes no effort to assess whether there may be a larger school climate problem related to discriminatory harassment. The student's mother feels that the harassers' after-school detention was inadequate for the trash throwing in particular and is upset that they were not transferred to another class because the classmates continue to mock the student's mother's accent, and so complains to OCR that without a harsher punishment, the school is not sufficiently deterring future harassers.

*OCR would have reason to open an investigation based on this complaint.* The alleged harassment related to mocking the student's mother's Saudi accent, limited English proficiency, and traditional Saudi clothing suggests that the harassment is based on the student's national origin, specifically, the student's actual or perceived shared Arab ancestry or ethnic characteristics. If confirmed by OCR's investigation, that harassment would appear to be subjectively and objectively offensive and so severe or pervasive that it limited the student's access to her class, and thus appears to have created a hostile environment.<sup>28</sup>

While the school engaged in good faith efforts to address the incidents, OCR could find that the response does not appear to be sufficient to fully address the hostile environment and prevent recurrence of the harassment. The appropriate steps taken by the school included punishing the harassers for violating school conduct policies and engaging in rudimentary efforts to address the overall school climate, *e.g.*, reposting its nondiscrimination policy. Although the mother's subjective opinion that the discipline imposed on the harassers was insufficient would not be material to OCR's investigation, given the length of time the student was harassed, the fact that some of the harassment happened during history class, and the student's reported disengagement in that class and unwillingness to work in a group with particular classmates, the harassment, if confirmed by OCR's investigation, could have been severe or pervasive enough that the teacher should have been aware of the problem (*i.e.*, the school should have known about the hostile environment). Therefore, OCR could find that the teacher's lack of response before the parent complained was inadequate. Even after the school knew about the alleged hostile environment, the school's reaction may not have adequately addressed the discriminatory nature of the harassment, as the teacher did not address the discriminatory aspects of the behavior with the harassers, and the student continued to be harassed due to her mother's accent and limited English proficiency. A school's response to conduct it concludes is discriminatory must include prompt and effective steps reasonably calculated to end the harassment and prevent its recurrence.

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<sup>28</sup> In this example, the conduct, if confirmed by the evidence, could be considered both severe and pervasive.

It also will be important for a school to monitor whether a student who was harassed experienced further incidents and to investigate or assess whether the harassing incidents were isolated to this one student or whether a hostile environment had a broader impact on the school climate. A school also must address the impact of harassment on a targeted student, which could be accomplished by offering counseling or academic adjustments—including ways to separate the student victim from the student harassers, where appropriate—when a student suffered stress that impacted their ability to learn. If harassing conduct does recur, it also will be important for the school to consider whether different consequences for the harassers or supports for the targeted student are necessary, and whether further efforts to improve school climate may be warranted. Without a mechanism in place to monitor for future incidents and assess its school climate efforts, a school's response may not be reasonably calculated to prevent recurrence.

- **Example 6:** A college student files a complaint with OCR alleging that he was subjected to a hostile environment because he is Israeli. The student alleged that a professor stated during office hours that “Israelis don’t even deserve to live.” The professor and other students make similar comments in subsequent classes. The student’s complaint stated that several Israeli students in the professor’s class, including the complainant, reported the professor’s and classmates’ comments to the college and noted that they felt threatened. The student alleged that although the college had investigated complaints of comments by college staff and students targeting other individuals based on other protected characteristics as required under its nondiscrimination policy, the college declined to speak to any students who indicated they felt threatened by their professor’s or classmates’ conduct. Israeli students in the class stopped attending.

*OCR would have reason to open an investigation based on this complaint.* The alleged harassment appears to be based on Israeli national origin. If OCR confirms that the alleged harassing conduct occurred, then OCR could find that the conduct was subjectively and objectively offensive and so severe or pervasive that they limited the ability of the Israeli student to participate in class.<sup>29</sup> OCR could find that the failure to investigate allegations of harassment allowed for a hostile environment for Israeli students to persist, interfering with or limiting their access to the university’s programs or activities. That failure could indicate that the college did not take prompt and effective steps reasonably calculated to end the harassment and prevent it from recurring.

OCR could also find that the college’s failure to investigate allegations of harassment based on Israeli national origin, while investigating allegations of other forms of harassment, may reflect college officials treating similarly situated individuals differently

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<sup>29</sup> In this example, the conduct, if confirmed by the evidence, could be considered both severe and pervasive.

on the basis of race, color, or national origin without a legitimate, nondiscriminatory reason. (This different treatment legal analysis is discussed in more detail below.)

- Example 7: A group of Arab college students receives university approval to form a new student organization to empower and support Arab students. The organization hosts monthly meetings in the school quad and is open to all students.

As student members begin gathering for one of the meetings, dozens of other students surround the student organization members and refer to them as “terrorists” and “jihad supporters.” The students participating in the meeting become fearful when they realize that they are unable to leave because their fellow students encircle and shove them. The Arab students recognize their classmates in the crowd of harassers and skip class the next day because they fear encountering the harassing students in class.

Members of the student organization complain to university administrators about the harassing conduct they experience during their meeting. The administrators express sympathy and note that “college is difficult and things are tense.” University officials take no further actions.

The student organization members cancel all future meetings because they do not believe that they can safely hold them on campus in light of the university’s failure to take any steps to ensure that the meetings could safely take place. They file a complaint with OCR.

*OCR would have reason to open an investigation based on this complaint.* The alleged harassment—the harassing students calling the students who attended the meeting terrorists, blocking students’ ability to leave the area, and shoving students—appear to be based on the students’ actual or perceived race, color, or national origin, including their Arab shared ancestry or ethnic characteristics. If confirmed by OCR’s investigation, OCR could find that calling the students terrorists and supporters of Jihad was subjectively and objectively offensive and related to the students’ shared ancestry or ethnic characteristics. Additionally, the alleged threatening behavior of the harassers, including shoving some students and physically restricting students from leaving the event, caused the students to fear for their safety. Such harassing conduct, if confirmed by OCR’s investigation, could be so severe that it limited or denied members of the student organization the ability to participate in or benefit from the university’s education activities, because, for example, students did not attend class the next day due to fear of encountering fellow students who had harassed them and the students in the group cancelled all future events due to reasonable safety concerns.

If OCR’s investigation confirms that the harassing conduct based on the students’ shared ancestry or ethnic characteristic created a hostile environment about which the university

knew or should have known, then OCR would evaluate whether the university took prompt and effective steps to end the harassment, eliminate the hostile environment and its effects, and prevent the harassment from recurring.

- Example 8: At a public university, a group of approximately 100 students, including Jewish, Arab, Muslim, and other students, gather to “show solidarity with Gaza.” Several dozen counter-protesters arrive at the protest. Counter-protesters shout things at Arab student protesters like “terrorist” and “second Nakba.” Counter-protesters physically attack some of the student protesters. The crowd eventually dissipates.

The day after the incident, many Arab and Muslim students across campus feel unsafe and decide to avoid campus and skip in-person classes for the foreseeable future.

Student members of the protest report the incidents to the university administrators. The university president sends a campuswide email the next day that says, “we support peaceful protest on campus but we condemn all violence.” The administrators tell students that they cannot take further action because it seems that most of the counter-protesters are not students. The students file a complaint with OCR.

*OCR would have reason to open an investigation based on this complaint.* The alleged use of the terms “terrorist” and “second Nakba” in relation to Arab and Muslim students makes it appear that the counter-protesters, at least in part, made their statements based on the actual or perceived Arab ancestry of the student protesters. The alleged incidents of violence that shortly followed these verbal attacks led many students to feel unsafe on campus. If OCR’s investigation confirms these allegations, OCR could find that the counter-protesters’ conduct was subjectively and objectively offensive and so severe or pervasive that it limited the ability of Arab and Muslim students to attend and benefit from educational activities of the university.<sup>30</sup>

If OCR’s investigation confirms that the harassing conduct based on the students’ shared ancestry or ethnic characteristic created a hostile environment about which the university knew or should have known, then OCR would evaluate whether the university took prompt and effective steps to end the harassment, eliminate the hostile environment and its effects, and prevent the harassment from recurring.

### **C. Different Treatment Analysis**

If a complaint alleges that a school’s representative (*i.e.*, an agent or employee such as a teacher or administrator) treated a student differently based on their actual or perceived race, color, or national origin, including shared ancestry or ethnic characteristics, OCR will make a fact-specific determination as to whether discrimination occurred. OCR may find that discrimination occurred

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<sup>30</sup> In this example, the conduct, if confirmed by the evidence, could be considered both severe and pervasive.



where there is direct evidence that the school limited or denied educational services, benefits, or opportunities to a student or group of students on the basis of race, color, or national origin. For instance, a school may maintain a policy that, on its face, subjects students to different rules on one or more of these bases, or a decisionmaker may state that a student's race, color, or national origin was the reason the student was treated differently. Absent such evidence, OCR may engage in the analysis below to determine whether discrimination on the basis of race, color, or national origin occurred. Under this analysis, OCR will consider the following questions in reaching its decision:<sup>31</sup>

1. Did the school limit or deny educational services, benefits, or opportunities to a student or group of students of a particular race, color, or national origin by treating them differently from a similarly situated student or group of students of another race, color, or national origin? If not, then OCR would find that there is insufficient evidence to determine that the school has engaged in different treatment. If the students are similarly situated and the school has treated them differently, then OCR would ask:
2. Can the school provide a legitimate, nondiscriminatory basis for the different treatment? If not, then OCR could find that the school has discriminated on the basis of race, color, or national origin. If the school can articulate a legitimate, nondiscriminatory reason, then OCR would ask:
3. Is the school's explanation for the different treatment a pretext for discrimination (*i.e.*, not the true reason for the school's actions)? If so, then OCR could find that the school engaged in discrimination in violation of Title VI.

Circumstances that could raise Title VI concerns under a different treatment analysis could include, for example: (1) a school disciplining Somali Muslim students more harshly than their white classmates based on fears that such students present a greater safety concern; (2) a teacher or professor giving Jewish students lower grades than non-Jewish students out of disdain for perceived stereotypical claims about Jewish students; (3) a school refusing to investigate allegations of national origin discrimination from students who are Kurdish, Hmong, or from other stateless ethnic groups based on the incorrect view that protections against national origin discrimination only extend to discrimination based on a specific nationality; or (4) a university investigating allegations of national origin harassment against Christian students with a shared

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<sup>31</sup> See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), a case under Title VII that sets forth a three-part test that also applies in the Title VI context. The Department uses the *McDonnell Douglas* test in administrative enforcement as one way to determine whether an institution has engaged in prohibited intentional discrimination. See also *Xu Feng v. Univ. of Delaware*, 785 Fed. Appx. 53 (3rd Cir. 2019) (applying *McDonnell Douglas* to a Title VI claim); U.S. Dep't of Justice, Civil Rights Division, [Title VI Legal Manual](#), 44-46.

ancestry (such as Greek Orthodox, Chaldean, or Coptic Christians) while ignoring similar allegations from Sikh students.

The following example illustrates the kind of incidents that could, depending upon facts and circumstances, raise Title VI concerns, and lead OCR to open a complaint for investigation.

- **Example 9:** A high school world history class includes weekly discussions on current events. One week, a teacher asks the class to discuss the Israel-Hamas conflict. The teacher asks the only Jewish student in the class, who he assumes is Jewish based on her last name, to explain her position on the conflict. The teacher demands that the student condemn Israel, and when the student says she is uncomfortable speaking about the issue publicly, the teacher tells her that she must write an essay explaining why Israel should be condemned. The teacher threatens the student with detention if she does not turn in the essay by the end of the week. No other student is required to take a position on the conflict or to write an essay outlining their opinions. The student reports the teacher's behavior to the school's principal. The principal tells the student that she "should not have issues answering such an easy question." The student files a complaint with OCR.

*OCR would have reason to open an investigation based on this complaint.* The complaint alleges specific facts suggesting that the high school treated the Jewish student differently than non-Jewish students based on her race, including her shared ancestry and ethnic characteristics. The teacher singles out the only Jewish student, demanding that she condemn Israel and requiring her to complete an additional assignment not required of other students, seemingly because of her perceived ancestry. If OCR's investigation confirms the Jewish student is similarly situated to the other students in class and is treated differently from the other students based on the basis of race, color, or national origin (including shared ancestry and ethnic characteristics), OCR would analyze whether the school had a legitimate, nondiscriminatory reason for its decision to treat the Jewish student differently from her peers. If OCR confirmed that the school did not provide a legitimate, nondiscriminatory reason, OCR could support a finding of intentional discrimination in violation of Title VI. In this case, the principal did not provide a reason as to why the student has to do the additional assignment.

## **II. Expression of Views About a Particular Country**

Speech expressing views regarding a particular country's policies or practices is protected by the First Amendment and does not necessarily implicate federal civil rights laws.<sup>32</sup> However, if

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<sup>32</sup> Such distinctions have been drawn in Title VII cases to distinguish offensive political remarks from discriminatory harassment based on race, color, national origin, religion, and sex. *See Singh v. Town of Mount Pleasant*, 172 Fed. Appx. 675, 681 (7th Cir. 2006) (holding that a supervisor's insensitive comment about how the U.S. should handle a high-profile Cuban refugee was not national origin harassment of an employee under Title VII); *Fair v. Guiding Eyes for the Blind, Inc.*, 742 F. Supp. 151, 156 (S.D.N.Y. 1990) (finding that defendant's

harassing conduct that otherwise appears to be based on views about a country's policies or practices is targeted at or infused with discriminatory comments about persons from or associated with a particular country, then it may implicate Title VI and should be analyzed on a fact-dependent basis.<sup>33</sup> For example, if a professor teaching a class on international politics references or criticizes the government of Israel's treatment of non-Jewish people,<sup>34</sup> the nation of Saudi Arabia's response to religious extremism, or the government of India's promotion of Hinduism, so long as such comments do not target Israeli, Jewish, Saudi, Arab, or Indian students based on race, color, or national origin, that would not likely implicate Title VI.

By contrast, Title VI protections could be implicated if a professor teaching about international politics refers to Jewish people, Muslim people, or Hindu people using offensive stereotypes based on perceived shared ethnic characteristics or shared ancestry.<sup>35</sup> If OCR received a complaint from a student in this class, OCR would analyze whether the conduct was unwelcome, subjectively and objectively offensive, and so severe or pervasive that it created a hostile environment and whether the university took prompt and effective steps to end the harassment that created the hostile environment and prevent it from recurring.

OCR acknowledges that it may sometimes be difficult to distinguish between alleged conduct based on views regarding a particular country or its policies (which would not implicate Title VI) and alleged conduct based on students' actual or perceived shared ancestry or ethnic characteristics or their citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity (which could implicate Title VI). However, these distinctions help determine when conduct falls within OCR's jurisdiction under Title VI.

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remarks "concerned his opinions on various political, moral and social issues" and were not based on plaintiff's gender, so those allegations could not constitute harassment based on sex); *Reichman v. Bureau of Affirmative Action*, 536 F. Supp. 1149, 1176 (M.D. Pa. 1982) (deeming "comments concerning the Arab-Israeli conflict and [the Israeli prime minister] to be political opinions rather than disparagements of Judaism" that would constitute unlawful religious harassment under Title VII). OCR similarly interprets Title VI to not be implicated by conduct based solely on political views.

<sup>33</sup> See 34 C.F.R. § 100.3(a). *Cf. Kamal v. Hopmayer*, 300 Fed. App'x 37, 38-39 (2d Cir. 2008) (holding that a high school principal's frequent classroom visits to discuss his military service in the first Gulf War did not state a claim under Title VI of race, color, or national origin harassment of an Iranian Muslim student absent evidence of any prejudice or negative sentiments about Iranian people, Muslim people, or any other group during those discussions).

<sup>34</sup> [Executive Order 13899](#) provides that federal agencies "shall consider" the [non-legally binding IHRA working definition of antisemitism](#) and accompanying examples of antisemitism "to the extent that" any such "examples might be useful as evidence of discriminatory intent."

<sup>35</sup> Federal law recognizes that elementary, secondary, and postsecondary schools; school districts; and states make curricular and programming choices based on the professional judgment of educators, administrators, and school boards. Notwithstanding this authority, the laws enforced by OCR apply to all of a recipient's programs and activities. *See, e.g.*, Section 103(b) of the Department of Education Organization Act, 20 U.S.C. § 3403(b); Section 438 of the General Education Provisions Act, 20 U.S.C. § 1232a; 20 U.S.C. § 1221(d); 42 U.S.C. § 2000d-4a.

Exercising jurisdiction does not mean that OCR has made a determination about the merits of the allegations, which OCR would consider in any subsequent investigation.

### **III. Conclusion**

OCR stands ready to support schools in fulfilling the promise of Title VI to protect every student's right to equal access to educational opportunities without discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics. All students, including students who are or are perceived to be Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, or Palestinian as well as students who come from, or are perceived to come from, all regions of the world are entitled to a school environment free from discrimination.

OCR is available to provide technical assistance to schools and organizations that request assistance in complying with any aspect of the civil rights laws OCR enforces, including on those issues addressed in this letter. If you have any questions or would like technical assistance, please contact the OCR office serving your State or territory by using the [list](#) of OCR offices. If you require language assistance, you may contact OCR by calling 1-800-USA-LEARN (1-800-872-5327). You may also contact OCR's Customer Service Team at (800) 421-3481 or at [OCR@ed.gov](mailto:OCR@ed.gov).

Anyone who believes that a school has engaged in discrimination may file a complaint with OCR. Information about filing a complaint with OCR, including a link to the online complaint form, is available at [How to File a Discrimination Complaint with the Office for Civil Rights](#) on the OCR website.

Thank you for your commitment to providing educational environments to our nation's students that are free of race, color, or national origin discrimination and consistent with free speech rights fundamental to our nation's tradition.

Sincerely,

Catherine E. Lhamon  
Assistant Secretary for Civil Rights