



FOUNDATION
AGAINST
INTOLERANCE
& RACISM

Campus Protests: Resources for Students and Parents

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What do campus protests have to do with Title VI of the Civil Rights Act?

In recent months, American universities have seen a significant increase in student protests, primarily in response to the war between Israel and Hamas. In most cases, the protests are peaceful and do not involve any physical violence, but there have been many instances where students of particular nationalities, ethnicities, skin colors, and/or religions have felt threatened or otherwise unsafe because of the actions taken by protesters. When a campus environment is so hostile that a student is unable to participate in their educational programs or activities due to hostility based on certain protected characteristics, a legal violation may have occurred.

All recipients of Federal financial assistance (which is nearly every American university) are required to adhere to Title VI of the Civil Rights Act, which provides that "[n]o 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. Since Title VI was implemented, case law and regulations have provided helpful interpretation of the law.

Recent [Guidance](#) from the United States Department of Education's ("DOE") Office for Civil Rights ("OCR") makes it clear that educational institutions violate Title VI when they are aware that a hostile learning environment is limiting students' participation in their education and they fail to correct it.

The Guidance sets forth a four-part test the DOE uses to determine whether a Title VI violation has occurred based on a hostile learning environment:

OCR could find a Title VI violation in its enforcement work if: (1) a hostile environment based on race existed; (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 harassment¹, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.

Culpability for a hostile environment rests with educational institutions, regardless of whether they created the hostility or merely tolerated it.² According to the DOE, there is a wide range of incidents and behaviors that can constitute harassment leading to a hostile environment: "unwelcome race-based conduct 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

¹ Harassment is defined by the OCR as: [U]nwelcome race-based conduct 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 the recipient's education program or activity.

² The DOE's guidance states that "schools also may violate Title VI when they create, encourage, accept, tolerate, or fail to correct a racially hostile educational environment."

participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment)." The discriminatory treatment of concern to the DOE is expressly defined as follows:

Discrimination based on race, color, or national origin includes discrimination based on a person's actual or perceived race, color, or national origin. Such discrimination may be based on the country or world region from which a person or their ancestors come; a person's limited English proficiency or status as an English learner; or a person's actual or perceived shared ancestry or ethnic characteristics, including those associated with membership in a specific religion (such as Hinduism, Judaism, Islam, or Sikhism).

In some cases, harassment may create a level of hostility that causes students to censor themselves or otherwise alter their behavior in various ways that curtail their ability to participate fully in educational activities. For example, students might avoid attending classes or otherwise moving around on campus due to safety concerns; they might disguise themselves by hiding any visible symbols of their ethnicity, nationality, or religion in order to avoid harassment on campus; they may even seek alternative housing if they do not feel safe returning to their assigned dormitories.

If a student has experienced hostility based on the actions of protesters on their campus, they should first report their concerns to university authorities, or law enforcement, where appropriate. If the hostile environment is not corrected, a complaint can be filed with DOE's Office for Civil Rights (see sample complaint on page 4). Interested third parties, such as parents, family members, or friends of an affected student, can also file an OCR complaint based on the hostility the student is experiencing (see sample 3rd party complaint form on page 5). The sample complaints we have provided are merely meant to serve examples, and should not dictate what you report to the OCR. All statements submitted to the OCR must be factually accurate. If any portion of the sample complaints we have provided are not true of your experience, delete those portions or amend them as necessary to make them factually correct.

Complaints can be filed via email with the appropriate OCR office, which can be found [here](#). Once the OCR receives a complaint, they will evaluate it and determine whether an investigation should be opened. If you choose to file a complaint with the OCR, we ask you to bcc FAIR's Director of Legal Advocacy so we can track our submissions (leigh-ann.oneill@fairforall.org). It is always a good idea to follow up with the OCR if a significant amount of time has passed since a complaint has been filed and you have not yet received information about the status of your complaint.

Sample Office of Civil Rights Complaint

This is a federal civil rights complaint against [University Name (the “University”)]. I am a student currently enrolled at the University and I am experiencing a hostile learning environment due to the University’s failure to correct discriminatory harassment aimed at [ethnicity/religion/nationality] students amidst the ongoing protests.

Throughout the protests at the University, I have experienced the following incidents of discriminatory harassment: **[list specific incidents you have experienced]**

The hostile environment stemming from the protests began on [DATE].

Based on my experiences outlined above and in order to ensure my own safety and avoid further harassment, I have changed my typical behavior at the University in the following ways: **[list specific actions you have taken to shield yourself from further harassment]**

I have reported the above incidents of discriminatory harassment to the University. **[provide the date of the reports you have made, the names and titles of whomever you reported to, and if possible, copies of written reports you have filed]**. The reports I have filed have not yielded relief from the discriminatory harassment, which remains ongoing.

Since experiencing the hostility outlined above, I do not feel that I am able to participate in my educational programs and activities due to fear for my safety and well-being.

Name of person filing this complaint (Last, First):

City:

State:

Zip Code:

Phone Number:

Email Address:

The University is located in: [City], [State], [County]

Sample 3rd Party Office of Civil Rights Complaint

This is a federal civil rights complaint against [University Name (the “University”)]. I am filing this complaint as an interested third party who has reviewed reports of discriminatory harassment at the University. The harassment aimed at [ethnicity/religion/nationality] students amidst the ongoing protests, and the University’s failure to correct such harassment, has resulted in a hostile learning environment for some of the University’s students.

Throughout the ongoing protests at the University, the following incidents of discriminatory harassment have been reported: **[list specific incidents that have been reported to you]**

The hostile environment stemming from the protests began on [DATE].

Based on the reported incidents outlined above and in order to avoid further harassment, certain University student have been forced to change their typical behavior at the University in the following ways: **[list specific actions students have taken to shield themselves from further harassment]**

I have reported the above incidents of discriminatory harassment to the University. **[provide the date of the reports you have made, the names and titles of whomever you reported to, and if possible, copies of written reports you have filed]**. The reports I have filed have not yielded relief from the discriminatory harassment, which remains ongoing.

Due to the hostility outlined above and fear for their own safety and well-being, many students do not feel they are able to participate in their educational programs and activities.

Name of person filing this complaint (Last, First):

City:

State:

Zip Code:

Phone Number:

Email Address:

The University is located in [City], [State], [County]

Dear _____:

I am writing today to express my concerns surrounding the hostility born out of the ongoing protests on the [University Name]’s campus, and to highlight the associated risks to the University. I appreciate the administration’s respect for the protesters’ freedom of expression; however, I am concerned that the well-being of several students is now at risk.

As you know, when schools engage in discrimination in violation of Title VI of the Civil Rights Act, they risk losing their Federal funding. I fear the University’s failure to curtail pervasive discriminatory harassment makes the University culpable for discrimination in violation of Title IV.

Recent [Guidance](#) from the United States Department of Education’s (“DOE”) Office of Civil Rights (“OCR”) makes it clear that educational institutions violate Title VI when they are aware that a hostile environment is limiting students’ participation in their education and they fail to correct it.

The Guidance sets forth a four-part test the DOE uses to determine whether a Title VI violation has occurred based on a hostile learning environment:

OCR could find a Title VI violation in its enforcement work if: (1) a hostile environment based on race/skin color/national background existed; (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 harassment³, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.

Culpability for a hostile environment rests with educational institutions, regardless of whether they created the hostility or merely tolerated it.⁴ According to the DOE, there is a wide range of incidents and behaviors that can constitute harassment leading to a hostile environment: “unwelcome race-based conduct 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 the recipient’s education program or activity (i.e., creates a hostile environment).” The discriminatory treatment of concern to the DOE is expressly defined as follows:

³ Harassment is defined by the OCR as: [U]nwelcoming race-based conduct 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 the recipient’s education program or activity.

⁴ The DOE’s guidance states that “schools also may violate Title VI when they create, encourage, accept, tolerate, or fail to correct a racially hostile educational environment.”

Discrimination based on race, color, or national origin includes discrimination based on a person's actual or perceived race, color, or national origin. Such discrimination may be based on the country or world region from which a person or their ancestors come; a person's limited English proficiency or status as an English learner; or a person's actual or perceived shared ancestry or ethnic characteristics, including those associated with membership in a specific religion (such as Hinduism, Judaism, Islam, or Sikhism).

In some cases, harassment may create a level of hostility that causes students to censor themselves or otherwise alter their behavior in various ways that curtail their ability to participate fully in school activities. The reports from students on campus include **[add examples being reported from the University's campus about ways in which harassed students have changed their behavior, or have self-censored in an effort to avoid further harassment]**.

This seems to be the very definition of a hostile environment in violation of Title VI of the Civil Rights Act.

I fear that if the types of discriminatory harassment we're seeing at the University are not adequately addressed to ensure that all students are able to participate in their educational programs and activities, the University's Federal funding will be threatened. Additionally, the school may also face other legal liabilities.

I urge you to communicate this risk to all administrators, faculty, and staff so that our University is in the best position to serve all of our students and avoid costly legal actions or other civil rights complaints.

Thank you for your consideration,