

# Balancing Free Speech, Conduct, and Bias: One Campus' Response

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# Land and People's Acknowledgement

Rutgers, a Land Grant University established by the Morrill Act of 1862, was funded by the federal government's sale of "unclaimed land," which white colonists and the US government stole through violent warfare and the forced removal of tribal nations.

Rutgers depended on enslaved people to build its campuses and serve its students and faculty. As we commit to learning about histories and counter narratives of power and oppression, we must be mindful that we teach, work, and live on Indigenous land at an institution that depended on the sale of Black people to fund its very existence.

The Indigenous and enslaved people who contributed to the wealth of Rutgers and the histories of New Jersey and the United States as complicit in a system of racism based on white supremacy.

Rutgers will work to honor the Lenni-Lenape, other Indigenous caretakers of these lands and waters, Indigenous and Black elders who lived here before, those who were forcibly removed to the west and north, those who were enslaved, the Indigenous tribal and Black communities here today, and the generations to come. We lift the voices of members of these communities, working to abolish racism and discrimination through our teaching and community work; and support community-driven organizations aimed at economic, social, and political empowerment of these communities.



# Program Endorsement

This session has been endorsed by the ASCA Public Policy & Legislative Issues Committee. The Public Policy & Legislative Issues (PPLI) Committee identifies state and federal legislation affecting the administration of student conduct and to periodically notify the membership of issues through appropriate Association publications.

Committee meetings are held on the third Tuesday of each month at 2 PM EST.

Chairpersons:

Jeff Bates

Oklahoma State University

Danny Foster (he/him)

Emerson College

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# Knowledge and Skills

Knowledge Area	Skills	Level
Law and Policy	Compliance/Application	Intermediate
Case Resolution Management	Case Resolution Pathways	Intermediate
Internal and External Partnerships	Collaboration and Execution	Intermediate

# Learning Objectives

Participants will:

- Understand the background law and policy applied to bias prevention and Title VI
- Connect processes involving Title VI, bias prevention, and student conduct
- Evaluate your programs to determine opportunities for improvement

# Some Disclaimers Before We Begin

- I'm not an attorney
- Some of this information is Rutgers-specific
- Rutgers is in New Jersey, which has much more liberal views regarding DEI than other states.
- Rutgers is a public college, so Constitutional protections apply
- Want folks to engage so we can learn from each other and see how other programs have changed since 2023.

# Case Law, Policy, and Regulations Impacting Bias Prevention and Response

ASCA Annual Conference • February 10 – 14, 2026



# Speech First 2018-Present

Challenge colleges and universities in court over bias response teams. Believe that bias response teams are vague and overbroad and violate the First Amendment.

2019-Sixth Circuit ruled that Bias Response Teams chill speech because they act in a way that implies threat or punishment for protected speech.

(Speech First v Schlissel)-University of Michigan

2020- Fifth Circuit also ruled that Bias Response Teams regulate protected speech (Speech First v Fenves)-University of Texas

2022 – Speech First released Free Speech in the Crosshairs: Bias Reporting on College Campuses

# Southeastern Legal Foundation

2024: Filed Amicus brief urging Supreme Court to End Bias Response Teams (Speech First v Whitten) - Indiana University – Supreme Court chose not to hear case

# What did these cases mean for bias response?

- Bias Response Teams under attack
- Court cases filed in circuits sympathetic to conservative causes but other schools on notice
- Processes cannot be deemed punitive-need to be very clear on intent of teams
- Language cannot be overbroad and vague – processes need to be clear
- Cannot be construed to chill free speech – statements protecting speech should be included

# Executive Orders – Donald Trump

## Executive Order on Combating Antisemitism (2019)

- Title VI includes discrimination on the basis of shared ancestry
- Antisemitism should be enforced as strongly as other forms of discrimination enforced by Title VI
- Agencies enforcing Title VI should consider the IHRA definition of Antisemitism.

# OCR Dear Colleague Letter (May 2024)

- Clarified that Title VI addressed shared ancestry, including Antisemitism, Anti-Arab, Anti-Hindu and other religious groups.
- Requires schools to ensure every student has equal access to education without facing a hostile environment based on a negative stereotype or bias.
- Colleges are obligated to respond when a hostile environment prevents a student from being able to participate or benefit from an educational program.
- Colleges can violate Title VI if they determine that a hostile environment exists, but they do not take any action to end the harassment, address its effects on students, and prevent it from occurring.

# Catherine Lhamon (May 2024)

- College campuses should not see a conflict between protecting speech and addressing hostile environment discrimination on campus
- Even if you are not taking formal disciplinary action (or cannot take action) given First Amendment requirements, institutions must still determine if a hostile environment exists and if so, take necessary action to address the effects and prevent it from recurring.

# OCR Settlement Agreements

## (Michigan/CUNY) Summer 2024

- Determination was that the schools did not make appropriate determinations about whether a hostile environment was taking place when it came to actions with protected speech involved.
- Given there was no analysis for hostile environment, schools could not determine if remedy was needed, creating an issue.
- Schools asked to do climate survey, reporting of data, training, policy changes.

# Executive Orders – Donald Trump

## Additional Measures to Combat Antisemitism (2025)

- Federal agencies examine and report on their existing criminal and civil authority to combat antisemitism
- Conduct an inventory of all pending administrative complaints and court cases involving protests on college campuses arising from post-October 23rd Israel-Gaza conflict
- Monitor for and report activities of non-citizen students and faculty

# Takeaways from EO and OCR

- Any complaints coming in need to be reviewed to determine if a hostile environment has been created.
- Protected behavior can still create a hostile environment and still needs to be addressed
- Not addressing something because it is protected speech will be a cause for concern

# The Conflict

- Our formal processes are not used for actions that are not violations of University policy (protests, speech).
- Who determines hostile environment?
- Bias response teams are often called upon to address complaints that cannot be handled formally through the conduct process. These processes are often coordinated by committees of staff volunteers who don't have the authority to take action to address hostile environment.
- Community members often believe that if there is not a formal response through a formal process the University is not doing anything to address the incident.

Thoughts-what should we be doing differently in conduct and bias?

# Rutgers Timeline and Changes

2022  
Complaint  
from SLF

Spring/Su  
mmer  
2023  
Revised  
Bias  
process

2024 Complaints  
filed with both  
OCR and DCR  
and lawsuits

2025 OCR  
Resolution and  
implementation

Fall 2025  
updated process  
and protocols

↑  
October 7<sup>th</sup>  
2023-campus  
protests and  
other Free  
Expression  
activities

# Bias Process Changes after SLF

- Language in process changed to get rid of vague and overbroad statements
- Simplified process (included flowchart)
- Explicit mention of free expression and free speech
- Moved from "Response Team" to "Outreach Team" to appear less punitive and more educational.
- Provided information on what the team could do and what they could not do.

# OCR Resolution Agreement – Rutgers

(January 2025)

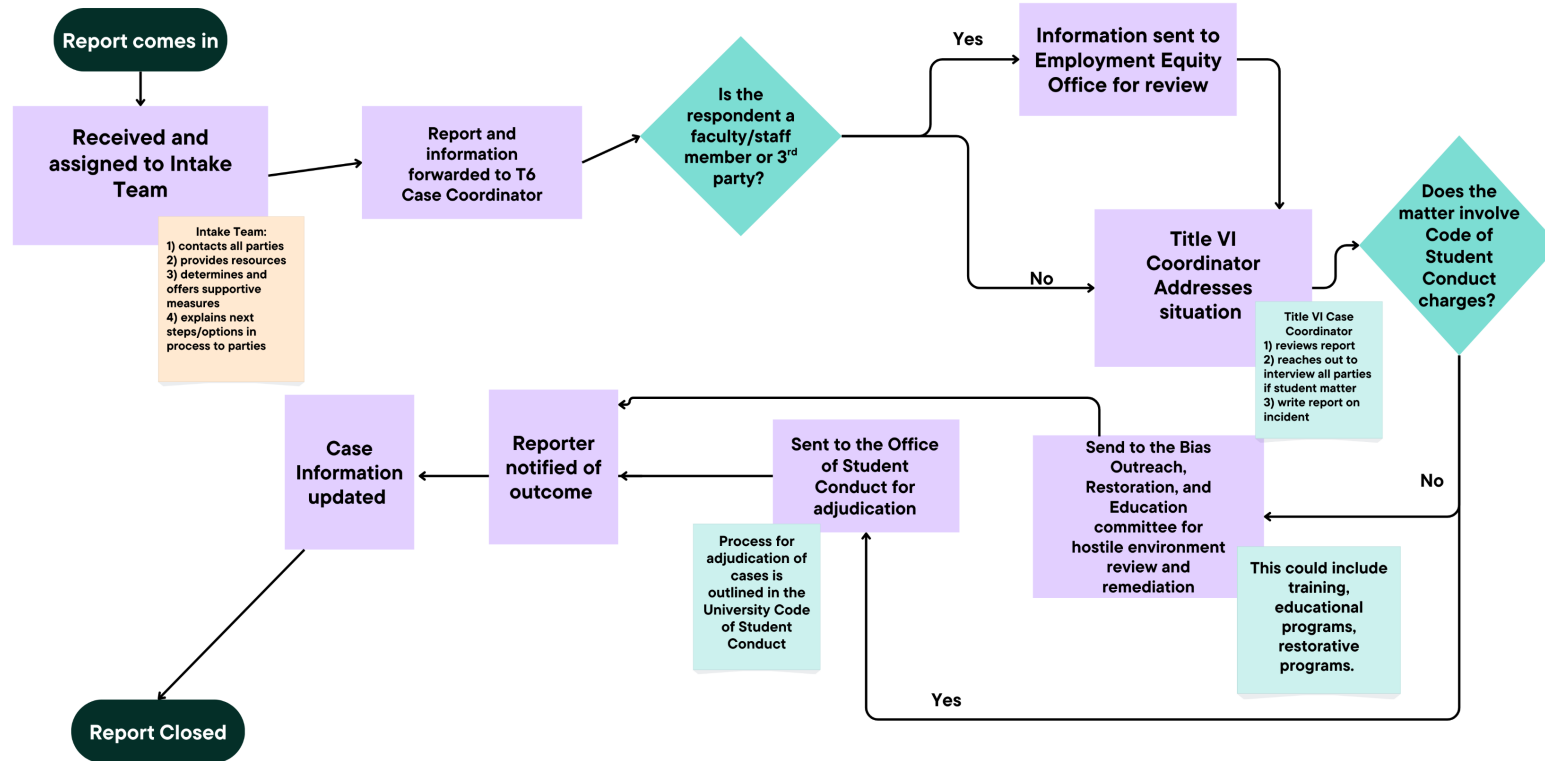
- Including similar determinations from prior cases
- Did not provide support and resources to all parties filing bias complaints
- If incident did not involve formal process, no determination of hostile environment was made
- Resolution agreement included rewrite to policies (including Code and Bias procedures), training for all investigators, listening sessions, climate survey, and training for all faculty, staff and students.



# After OCR Resolution Agreement

- **Creation of Intake Cares team**
  - Responsibility to meet with all parties involved to offer support and resources and to discuss options for resolution. Associate Deans of Students.
- **Implementation of a Title VI Case Coordinator**
  - Responsible for reviewing every case reported, speaking with all parties involved, and collecting information. They then determine if hostile environment was created, if the case should be addressed via a formal process or whether the hostile environment should be addressed via the Bias Team.
- **Bias Outreach Restoration and Education Team**
  - Review all cases for determination of trends, recommendations for remedies for hostile environment, provide training and programming, and meet with other University offices to discuss their cases and outcomes.
- **Coordination with Employment Equity, Provost Office and General Counsel**
  - Meet as a team once a month to coordinate cases, discuss trends, and make recommendations to the Chancellor's Office on macro level needs.
- **Strategic Funding**
  - Awarded \$200K for 2 years by the Chancellor's Office. Added Real Response, creating videos about the process, providing additional training, student RJ Facilitators, and programming funds.

# Protected Class Case Flowchart



Thoughts-what is your campus doing?

# Lessons Learned

- **Do Your Homework**
- **Document everything**
- **Have students review changes to the process to make sure it makes sense to them**
- **Get buy in from protected class constituents**
- **Work with the other offices at your institution that do this work (Office of Employment Equity, Office of General Counsel, Office for Civil Rights)**
- **Case audit**
- **Find money for programming and training**
- **Post your statistics**
- **Restorative Practices are a must**
- **Title VI is the new Title IX**

# Resources

Danny Shaha (2023) [Universities' response to offensive and bias-related speech and behaviors](#). National Center for Free Speech and Civic Engagement.

[Chronicle article](#) on Bias teams (2016)

Why bias teams are a bad idea-[Chronicle editorial](#) (2023)

Is Title VI the new Title IX? [Chronicle article](#) (2025)

Grand River Solutions

The NCHERM Group (TNG)

Student Conduct Institute

# Concurrent Block 8

**Thank You!**



Please Take Time To Complete The  
Evaluation.

PLEASE CONTACT ME WITH QUESTIONS AT  
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