

Key Considerations for Addressing Campus Bias Incidents

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1

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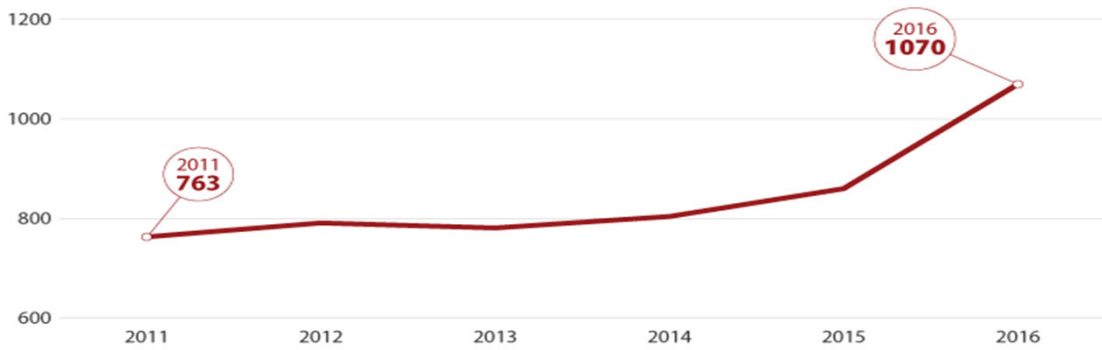
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2

FIGURE 1

Campus hate crimes have increased dramatically since 2011

Number of hate crimes on college campuses, 2011–2016



Sources: National Center for Education Statistics, "Indicators of School Crime and Safety Reports 2013-2018," available at <https://nces.ed.gov/programs/crimeindicators/> (last accessed July 2019).

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3

Agenda

1. What is a "bias incident" vs. a "hate crime"?
2. Legal landscape
3. Federal involvement
4. Lessons from recent examples
5. Off-campus events
6. Best practices: Student Codes of Conduct
7. Bias Response Teams

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What is a bias incident?

- Bias is defined as a preference formed, whether positive or negative, about individuals within a specific group of people, without reasonable justification that can prevent one's judgment from being rational or objective.
- Bias incidents are defined as acts committed against a person or group that are motivated, in whole or in part, by prejudice against that person's or group's sex, gender identity, sexual orientation, national origin, race, religion, disability, veteran status, or other protected class.



5

What are hate crimes?

- *Clery*: criminal offenses that “manifest evidence that the victim was intentionally selected because of the perpetrator’s bias against the victim.”
- FBI: “a criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, ethnic origin or sexual orientation.”
- *Clery*: sufficient objective facts to lead a reasonable and prudent person to conclude bias motivation.
- And don't forget timely notice...



6

Other Laws

- Title VI: **prohibits discrimination on the basis of race, color, or national origin** in all programs or activities receiving federal funding.
- Title VII: **bars employers from discriminating against their employees on the basis of sex, race, color, national origin, and religion.**
- Title IX: **protects people from discrimination based on sex** in education programs or activities that receive Federal financial assistance.
- Rehabilitation Act: **prohibits employment discrimination against individuals with disabilities in the federal sector**
- Americans with Disabilities Act: **prohibits discrimination based on disability**



7

Federal Hate Crimes

Statute	
18 USC 241 Conspiracy Against Rights	Unlawful to conspire to injure, threaten or intimidate a person in their exercise of any right or privilege secured by the Constitution or the laws of the United States.
18 USC 245 Violent Interference with Federally Protected Rights	Crime to use force to interfere with any person because of their background in their enjoyment of a protected activity.
18 USC 247 Damage to Religious Property, Church Arson Prevention Act	Prohibits the defacement, damage, or destruction of religious real property.
18 USC 249 The Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009	Crime to willfully cause bodily injury because of the victim's actual or perceived race, color, religion or national origin.

8

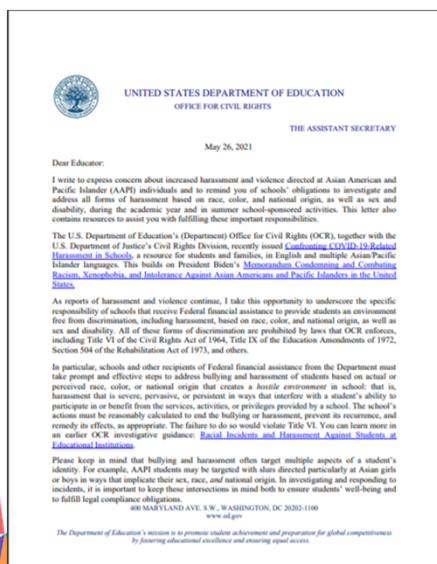
State Hate Crimes

- Forty-five states and the District of Columbia have statutes criminalizing bias-motivated violence or intimidation.
- There is no model hate crime statute.



9

Dear Educator:



[R]ecipients of Federal financial assistance from the Department must take prompt and effective steps to address bullying and harassment of students based on actual or perceived race, color, or national origin that creates a hostile environment in school...The school's actions must be reasonably calculated to end the bullying or harassment, prevent its recurrence, and remedy its effects, as appropriate. The failure to do so would violate Title VI

Schools also have an important role to play in encouraging a culture that empowers students to speak out when they witness bullying or harassment and to seek help if needed. As part of these efforts to foster safe and inclusive learning environments for all students, schools should ensure that students and their families, as appropriate, know how to report concerns and incidents of bullying and harassment on any basis.



10

EEOC Resolutions

Resolution of the U.S. Equal Employment Opportunity Commission In Mourning for the Deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery

WHEREAS the U.S. Equal Employment Opportunity Commission (Commission or EEOC) was created by the landmark Civil Rights Act of 1964 in direct response to calls for racial justice at the historic March on Washington for Jobs and Freedom in 1963; and

WHEREAS the 1964 Civil Rights Act, which established the Commission, was passed by overwhelming bipartisan majorities in both chambers of Congress; and

WHEREAS the Commission opened its doors on July 2, 1965, exactly one year after passage of the Civil Rights Act, and immediately received thousands of discrimination charges, including many alleging racial discrimination; and

WHEREAS in 1972, Congress amended the Civil Rights Act to provide the Commission with greater authority to advance equal employment opportunity, including the ability to seek justice in the federal courts for those who suffer employment discrimination; and

WHEREAS the Commission enforces federal laws that protect all employees in the United States against employment discrimination based on race, national origin, color, sex, religion, age, disability, and genetic identity and has worked to promote equality of opportunity in American workplaces; and

WHEREAS equal employment opportunity strengthens our nation and its economy; and

WHEREAS for more than half a century, the Commission's dedicated staff have worked tirelessly to advance justice for all people, and during that time the Commission has worked to lessen the impact that prejudice and institutional racism have in denying opportunities to persons of color; and

WHEREAS throughout its history, the EEOC has uncovered evidence of virulent racial discrimination in employment, including countless instances of African Americans accosted with nooses, racial epithets, threats of violence, harassment, and more subtle forms of discrimination in the workplace; and

WHEREAS the EEOC's mission to prevent, address, and remedy employment discrimination represents America's highest ideals of equality and justice for all; and

**Resolution of the U.S. Equal Employment Opportunity Commission
Condemning Violence, Harassment, and Bias Against Asian Americans and
Pacific Islanders in the United States**

WHEREAS the U.S. Equal Employment Opportunity Commission (Commission or EEOC), established by the landmark Civil Rights Act of 1964, is the principal federal agency charged with enforcing the nation's laws prohibiting employment discrimination; and

WHEREAS the 1964 Civil Rights Act, which created the Commission, was passed by overwhelming bipartisan majorities in both chambers of Congress; and

WHEREAS President Lyndon B. Johnson declared at the July 2, 1964 signing ceremony that the purpose of the 1964 Civil Rights Act is "to promote a more abiding commitment to freedom, a more constant pursuit of justice, and a deeper respect for human dignity"; and

WHEREAS Title VII of the Civil Rights Act of 1964 protects individuals against harassment and other forms of employment discrimination on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), and national origin; and

WHEREAS advancing equal employment opportunity for people of all races, national origins, and ethnicities is critical to guaranteeing safety and security in the workplace; and

WHEREAS the Commission seeks to prevent and remedy barriers to equal employment opportunity based on race, color, and national origin, including those that impact Asian American and Pacific Islander (AAPI) communities; and

WHEREAS anti-AAPI racism and xenophobia related to the COVID-19 pandemic has put AAPI persons, families, and communities at risk; and

WHEREAS nationwide crimes and reports of bias-motivated harassment against AAPI communities have increased over the past year, and AAPI-owned businesses have been targeted for discrimination; and

WHEREAS hatred, bigotry, and violence have a devastating impact on workers; and

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The Controversial Speaker / The Heckler's Veto

- Establish guidelines that commit to selecting and evaluating speakers based on their contribution to academic discourse.
- Provide community with tools, opportunities, and platforms to encourage critical engagement with campus speakers.
- Reinforce a strong sense of academic identity among students.

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Racist Language / Slurs in Academic Literature

- Consider whether the use of/reference to such language is legally actionable- Hate crime? Anti-Discrimination Policy violation?
- Does it add to/detract from the academic discourse? Are there administrative channels available to address this?

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Racial Slurs / Graffiti / Social Media Posts

Racial Slurs, and the 15 Days That Shook Syracuse

How a protest by students of color at Syracuse University — #NotAgainSU — electrified the campus and gained national attention.

Inside a Battle Over Race, Class and Power at Smith College

A student said she was racially profiled while eating in a college dorm. An investigation found no evidence of bias. But the incident will not fade away.

U.S. NEWS

UConn students' arrest over racial slur prompts review of state's ridicule ban

Two University of Connecticut students uttered a racial slur several times while walking through the parking lot of a campus apartment complex and were recorded by a black student.

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Bias in the Community

The Daily Northwestern
NORTHWESTERN AND ILLINOIS'S ONLY DAILY NEWS SOURCE SINCE 1881

COVID-19 CAMPGUS CITY SPORTS OPINION ART PODCASTS VIDEO INFOCUS MORE

NUCNC, student protesters eating "breakfast" and reading abolitionist literature met with unprecedented police presence

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ONLINE COURSES BEGIN JUNE 12

LA students stage a 'die-in' outside City Hall, demanding end to gun violence in America

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As George Floyd Protests Rock U.S. Cities, Students and Presidents Condemn Systemic Racism
By Andy Thompson | MAY 31, 2020

Through Music, Berkeley Students Rally in Copley Square to 'Stop Asian Hate'
Students Seek Tangible Changes in Face of Anti-Asian Hate
Asian and Asian American student activists across the country want to bring about changes to curricula and campus life.
By Elizabeth Hadden | 4 April 2021

STOP ASIAN HATE

JUSTICE FOR GEORGE FLOYD

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Best Practices: Student Codes of Conduct

- Means of managing and mitigating risk.
- Process for developing policies – include stakeholders
- Simple, clear, concise language – avoid legalese as code must be understood by a diverse audience (beyond just students)
- Set forth consequences for violations, with proportionality
- Be mindful of applicable laws and regulations, and recent changes to laws
- Provide a mechanism for updates – consider contemporary issues

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Best Practices: Bias Response Teams

- Bias response teams should include a variety of stakeholders with assigned roles
- Bias Response Teams should be charged with working within the broader school policy framework, and should not set up a new disciplinary system.
- Bias Response Teams may work best when they review and triage incidents to appropriate structures and mechanisms within the college or university.



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The First Amendment / Academic Freedom

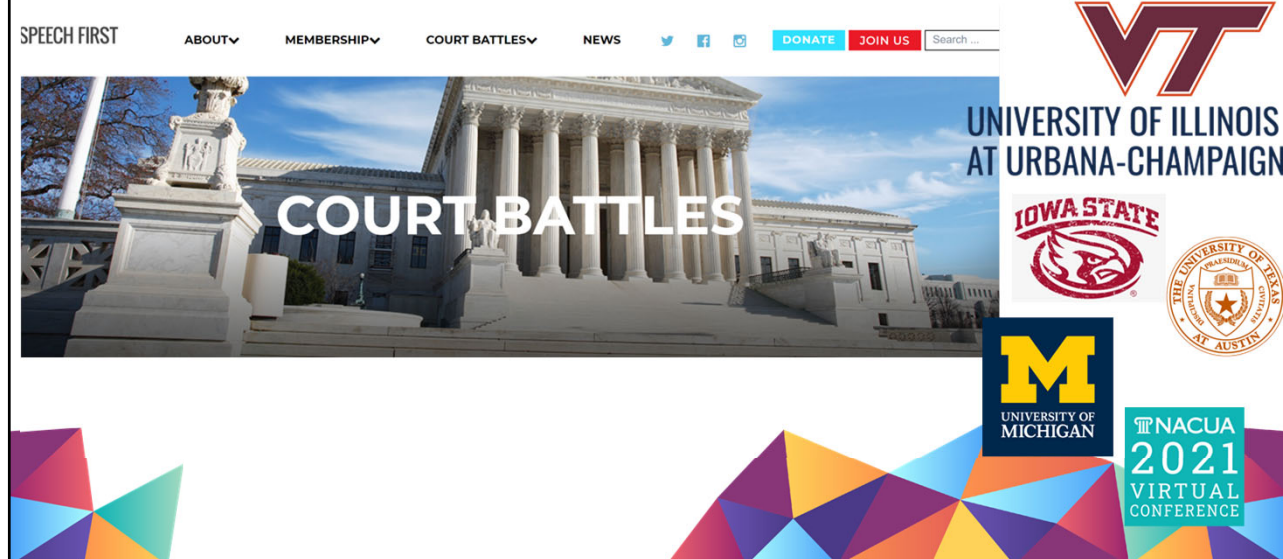
- How do we square the importance of safety and the goals of Clery and other federal laws with the importance of protecting free speech on campuses?
- When considering an act's classification as a hate crime how do we square the actor's freedom of speech, even if offensive, with the harm associated with bias incidents?



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Legal Challenges to Anti-Bias Efforts



19

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20