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Title VI and Title IX Religious Discrimination in Schools and Colleges

OFFICE OF THE ASSISTANT SECRETARY

September 13, 2004

Dear Colleague:

On the seventeenth day of September, we will observe Constitution Day, commemorating the final day on which the delegates to the Constitutional Convention met to sign the document that they had created in 1787. It is appropriate, as we approach this day of education and remembrance, to address the protections that we receive through the Constitution and laws of the United States. On this occasion, I would like to address the right of all students, including students of faith, to be free from discrimination in our schools and colleges under Title VI of the Civil Rights Act of 1964 (Title VI) and Title IX of the Education Amendments Act of 1972 (Title IX).

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) ensures compliance by recipients of the Department's financial assistance with federal laws prohibiting discrimination on the basis of race, national origin, sex, disability, or age, or in the access of certain patriotic organizations to school facilities. Other agencies, including the United States Department of Justice, ensure compliance with federal laws prohibiting discrimination on the basis of religion. The Department of Justice recently reaffirmed its commitment to enforce civil rights laws protecting students perceived to be of Middle Eastern or South Asian descent from religious and national origin discrimination in a letter to state boards of education. This Department issued [Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools \(/policy/gen/guid/religionandschools/prayer_guidance.html\)](/policy/gen/guid/religionandschools/prayer_guidance.html) on February 7, 2003. Although OCR's jurisdiction does not extend to religious discrimination, OCR does aggressively enforce Title VI, which prohibits

discrimination on the basis of race or national origin, and Title IX, which prohibits discrimination on the basis of sex. In OCR's experience, some cases of religious discrimination may also involve racial, ethnic or sex discrimination.

OCR has recently addressed two kinds of race and sex discrimination allegations commingled with allegations of religious discrimination. First, since the attacks of September 11, 2001, OCR has received complaints of race or national origin harassment commingled with aspects of religious discrimination against Arab Muslim, Sikh, and Jewish students. Second, OCR has recently encountered allegations of racial and sex discrimination commingled with allegations of religious discrimination against Christian students. OCR does not tolerate either of these forms of harassment, which are prohibited by Title VI and Title IX.

As we pass the third anniversary of September 11, 2001, we must remain particularly attentive to the claims of students who may be targeted for harassment based on their membership in groups that exhibit both ethnic and religious characteristics, such as Arab Muslims, Jewish Americans and Sikhs. President George W. Bush and Secretary Rod Paige have both condemned such acts of bigotry. As President Bush has said, "those who feel like they can intimidate our fellow citizens to take out their anger don't represent the best of America, they represent the worst of humankind, and they should be ashamed of their behavior." OCR has conducted countless outreach initiatives since September 11, 2001, to assure members of affected communities that their civil rights will be protected. Groups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith. Similarly, the existence of facts indicative of religious discrimination does not divest OCR of jurisdiction to investigate and remedy allegations of race or ethnic discrimination. OCR will exercise its jurisdiction to enforce the Title VI prohibition against national origin discrimination, regardless of whether the groups targeted for discrimination also exhibit religious characteristics. Thus, for example, OCR aggressively investigates alleged race or ethnic harassment against Arab Muslim, Sikh and Jewish students.

OCR has also recently investigated allegations of race and sex discrimination against white, male Christian students. In one unfortunate incident, a white male undergraduate student was harassed by a professor for expressing conservative Christian views in a classroom discussion regarding homosexuality. Just last year, OCR issued a "Dear Colleague" letter admonishing recipients of federal financial assistance that "schools in regulating the conduct of students and faculty to prevent or redress discrimination must formulate, interpret, and apply their rules in a manner that respects the legal rights of students and faculty, including those court precedents interpreting the concept of free speech." No OCR policy should be construed to permit, much less to require, any form of religious discrimination or any encroachment upon the free exercise of religion. While OCR lacks jurisdiction to prohibit discrimination against students based on religion per se, OCR will aggressively prosecute harassment of religious students who are targeted on the basis of race or gender, as well as racial or gender harassment of students who are targeted on the basis of religion.

As we observe Constitution Day this year, I hope that you will join me in reaffirming our commitment to the protection of basic civil rights and civil liberties, including the right of students of all faiths to be free from invidious discrimination. As Secretary Rod Paige has said, "Working together, we can make sure that our children get a good education in a safe environment that does not tolerate violence and hatred."

Sincerely,

Kenneth L. Marcus

Top

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 Close Window

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 Close Window