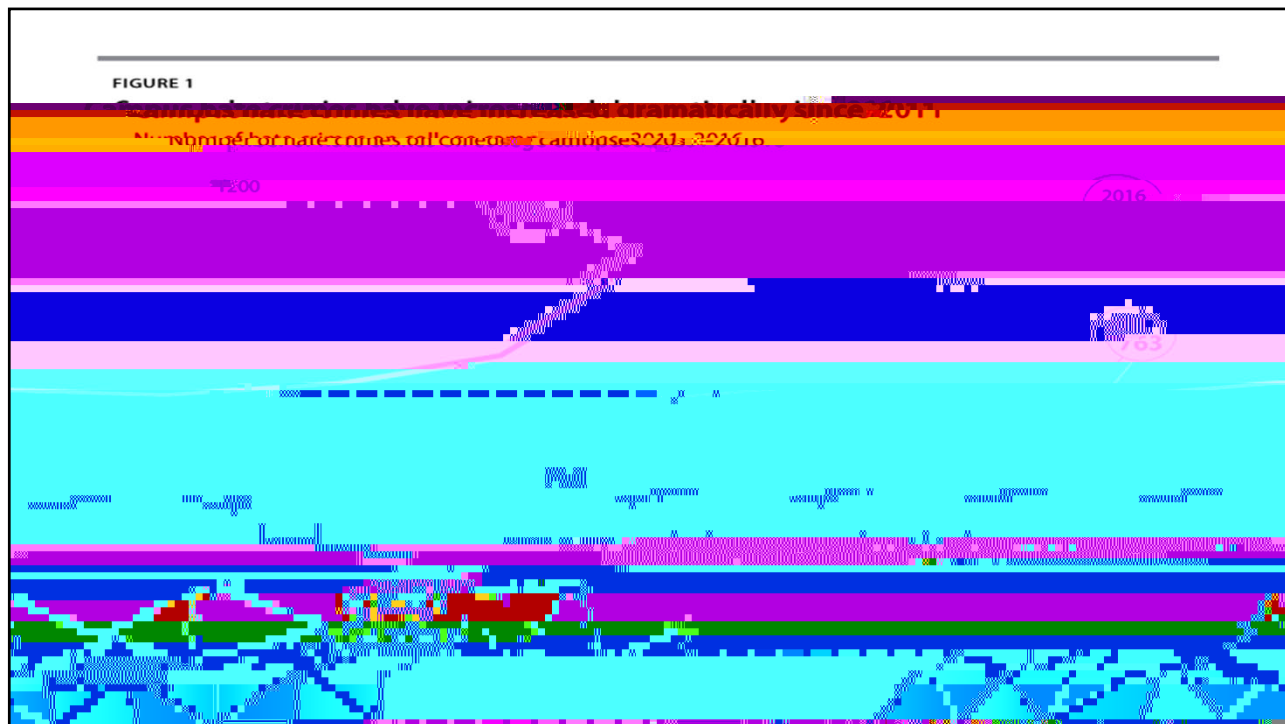


Key Considerations for Addressing Campus Bias Incidents

Brittney L. Denley, Esq., Associate



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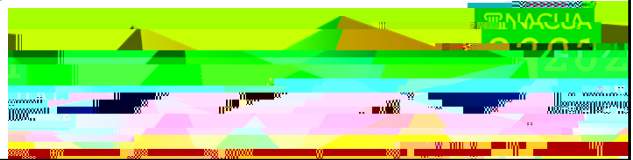
Agenda

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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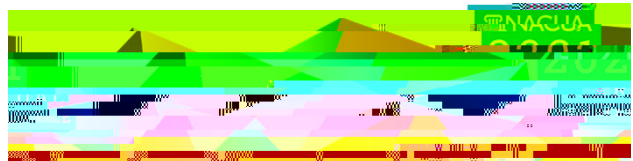
What is a bias incident?

- 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.



What are hate crimes?

- *Clery:*



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**

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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.

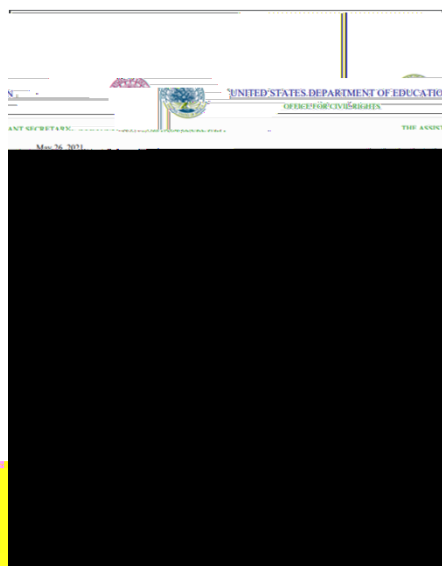
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State Hate Crimes

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

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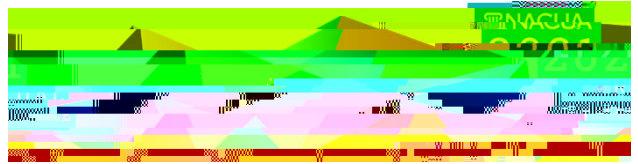
Dear Educator:



[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.

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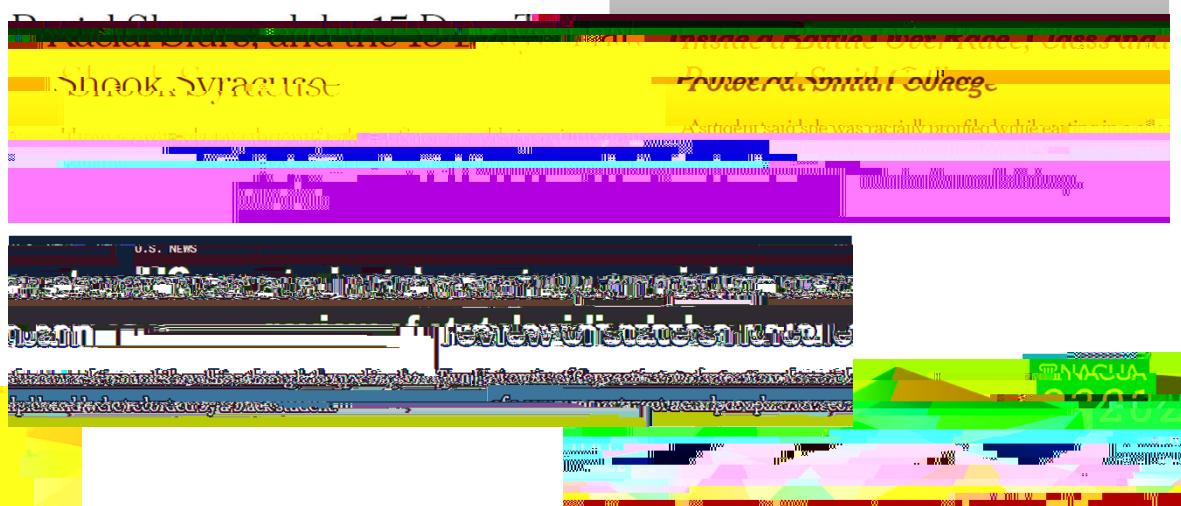


Racist Language / Slurs in Academic Literature

- 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?

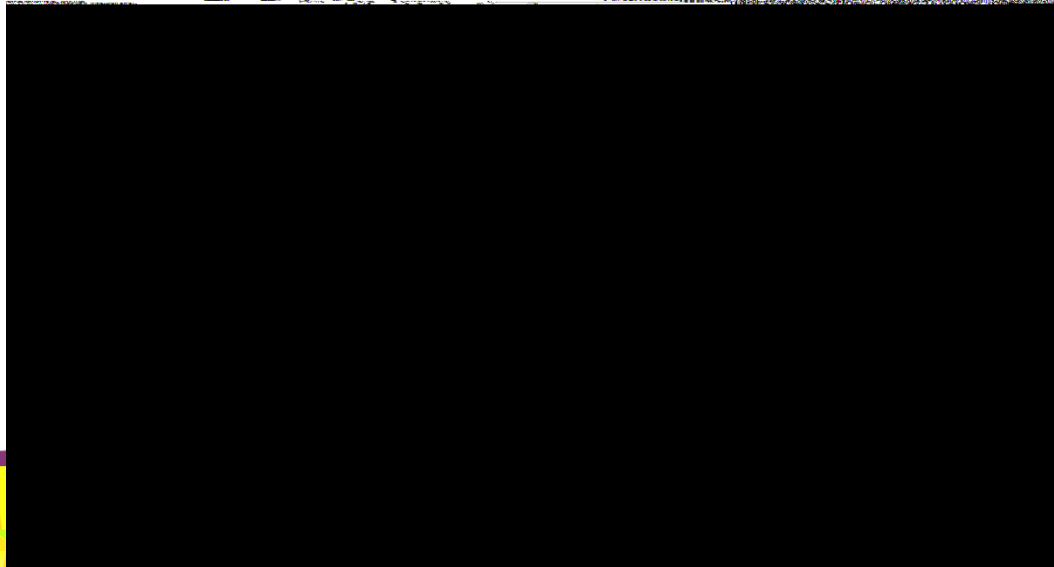
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Racial Slurs / Graffiti / Social Media Posts



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Bias in the Community



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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

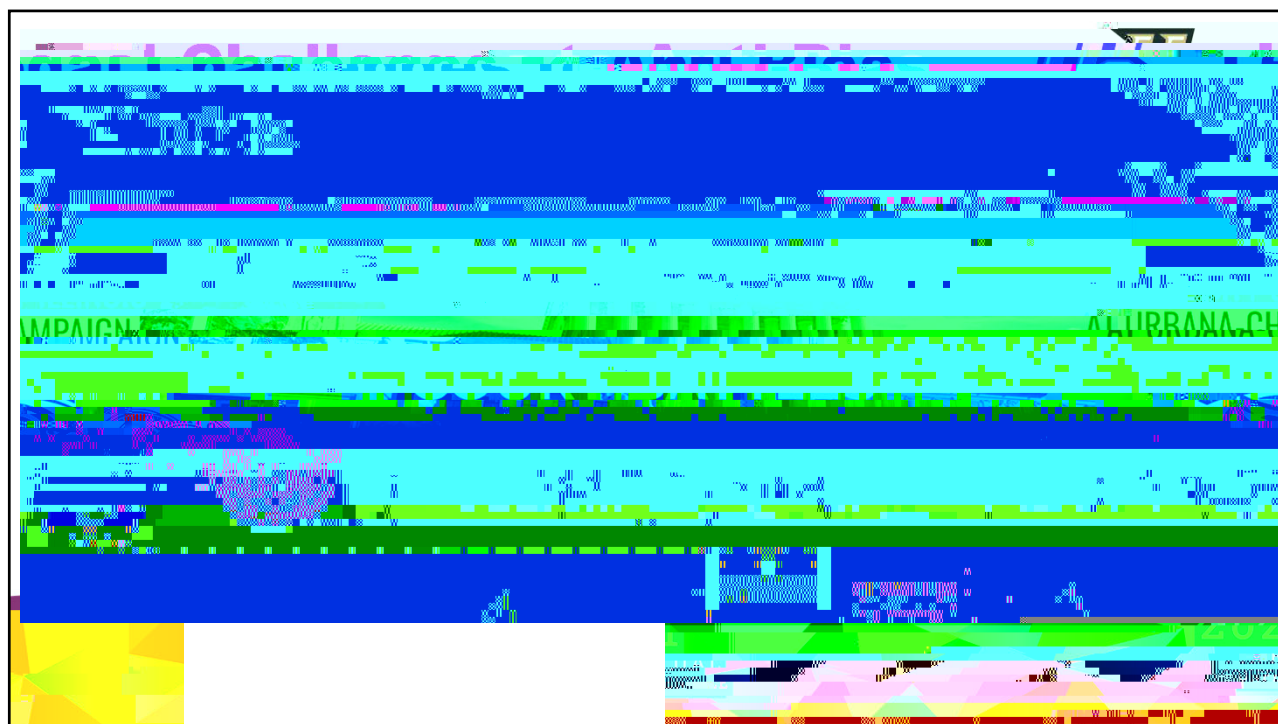
- Bias response teams should include a variety of stakeholders with assigned roles
- Bias Response Teams should be charged with working within the broader school policy framework, and should not set up a new disciplinary system.
- Bias Response Teams may work best when they review and triage incidents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

