

Title VI and Peer-to-Peer Racial Harassment at School: Federal Appellate Decisions

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[Section 601 of Title VI](#) of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in federally funded programs. While that mandate applies broadly to federally funded programs of various types, one significant area that Title VI covers is schools. All public and most private colleges and universities [receive](#) federal financial assistance, as do all K-12 public school districts. Individuals subjected to racial discrimination by a recipient of federal funds may [sue](#) to enforce Section 601 in federal court. If a federally funded school, public or private, intentionally discriminates against a student because of their race, color, or national origin, the student may [sue](#) the school under Section 601 of Title VI.

Reports of racial [harassment](#) at [schools](#) raise the question of what responsibilities a school has when students harass one another based on their race. As explained below, courts have determined that a school's inadequate response to peer-to-peer racial harassment can amount to race discrimination in violation of Title VI. While this Sidebar focuses on judicial enforcement of Title VI in the specific context of racial harassment, the Department of Education's Office for Civil Rights (OCR) is also entrusted with enforcing the statute in federally funded schools. OCR's administrative role in enforcing Title VI is explored in [other](#) CRS products; as a general matter, OCR's administrative standards may not always [mirror](#) the judicial standard for holding schools liable.

Title VI Liability: Failing to Respond to Racial Harassment

Although the text of Title VI does not explicitly address harassment, one potential claim of race discrimination under Title VI is that a school failed to [respond](#) adequately to racial harassment of students. Courts will sometimes consider a school's response to such harassment as amounting to race discrimination in violation of the statute. This basis of liability draws from Supreme Court cases interpreting another law that applies to certain recipients of federal funds, [Title IX](#) of the Education Amendments of 1972 (Title IX). Title IX bars sex discrimination in federally funded education programs and was [modeled](#) after Title VI. The Supreme Court has [reasoned](#) that Congress "passed Title IX with the explicit understanding that it would be interpreted as Title VI was." As explained below, lower courts

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have drawn on cases recognizing sexual harassment claims under Title IX to determine liability under Title VI in the context of racial harassment.

Title IX and Peer-to-Peer Sexual Harassment

The Supreme Court has determined that a school district's inadequate response to sexual harassment by peers can constitute sex discrimination in violation of Title IX. In *Davis Next Friend LaShonda D. v. Monroe County Board of Education*, for example, the Court [held](#) that federally funded school districts with (1) actual knowledge of sexual harassment of a student by peers can be held liable for (2) a deliberately indifferent response to the harassment if (3) the [harassment](#) is "so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school." In crafting this standard for actionable harassment under Title IX, the Court pointed to its prior decision in the Title VII context, in which the Court [recognized](#) a claim for "hostile environment" sexual harassment in the workplace. A hostile environment claim under Title VII must show the harassment is "sufficiently severe *or* pervasive." The Court explained that determining whether harassment was actionable under Title IX would often be fact-intensive.

The Court made [clear](#) that schools may not be held liable unless the school's own deliberate indifference subjects students to harassment. In this peer-to-peer context, harassment thus must take place in situations in which the school [has](#) "substantial control" over the harasser and the context in which the misconduct occurs. When misconduct occurs on school grounds during school hours, for instance, that would be satisfied. If "the harasser is under the school's disciplinary authority," a [recipient](#) may be liable for its deliberate indifference to sexual harassment; the Court in *Davis* particularly [emphasized](#) the school board's authority to take adequate "remedial action" against the harassment in that case. The Court also [explained](#) that the deliberate indifference standard of liability would only be met when a school's response is "clearly unreasonable in light of the known circumstances."

Application of Title IX Deliberate Indifference Standard to Title VI Harassment Claims

The Supreme Court has not expressly addressed a Title VI racial harassment case or the standards it would apply to such a claim. However, federal [appellate](#) courts have drawn from the standards established in the Supreme Court's Title IX sexual harassment cases, notably *Davis*, to impose liability in Title VI cases alleging racial harassment between students. In 2003, not long after the Supreme Court's decision in *Davis*, the Tenth Circuit in *Bryant v. Independent School District No. 1-38 of Garvin County, Oklahoma* [reversed](#) a district court ruling that there was no cause of action under Title VI to remedy a racially hostile education environment. In that case, the appellate court [ruled](#) that the plaintiffs had alleged facts that could support a cause of action for intentional discrimination under Title VI by claiming the school had "facilitat[ed] and maintain[ed] a racially hostile environment." The court [reasoned](#) that because Congress based Title IX on Title VI, the Supreme Court's interpretation "of what constitutes intentional sexual discrimination under Title IX directly informs our analysis of what constitutes intentional racial discrimination under Title VI (and vice versa)." The Tenth Circuit instructed the district court on [remand](#) to apply the test from *Davis* for liability, meaning the plaintiff had to show that the school district had actual knowledge and was [deliberately indifferent](#) to racial harassment that was so severe, pervasive, and objectively offensive that it deprived students of access to educational benefits or opportunities.

“Severe, Pervasive, and Objectively Offensive” Standard

Other federal appellate courts have [similarly](#) drawn from *Davis* to recognize Title VI liability for a school’s inadequate response to racial harassment between students. One important analytical factor under *Davis* is whether [harassment](#) is so “severe, pervasive, and objectively offensive” that it deprives students of equal educational opportunities. As in Title IX sex harassment cases, [precisely](#) when the standard is met in the context of Title VI harassment claims often turns on the specific facts at issue.

It appears that racial harassment that includes repeated violent attacks against a student can satisfy the severe, pervasive, and objectively offensive standard. In *Zeno v. Pine Plains Central School District*, the Second Circuit [affirmed](#) a jury verdict for the plaintiff in a Title VI racial harassment case, finding the harassment met the requisite standard. In addition to being subjected to continuous racial slurs nearly every day and explicit and implicit threats such as references to lynching, the student [endured](#) physical attacks that required police attention, including punching and choking. These acts [persisted](#) for over three-and-a-half years. The Second Circuit found that this harassment [deprived](#) the student of educational benefits, as it prevented the student from having a supportive educational environment free of harassment and resulted in the student graduating early with a limited diploma instead of staying to fully complete their studies.

Likewise, in *Doe v. Galster*, the Seventh Circuit [ruled](#) that a jury could find that repeated violent attacks amounted to severe harassment that deprived a student of educational opportunities. In that case, which included both Title IX and Title VI claims for peer harassment, the student was [subjected](#) to multiple physical attacks, including being punched, struck with metal track spikes, and hit with sticks by multiple assailants. These attacks [drove](#) the student out of the school district. The Seventh Circuit [distinguished](#) these attacks from earlier name-calling and scuffles, which the court did not appear to view as amounting to severe harassment.

Repeated violent attacks are not [necessarily required](#) for actionable harassment under this standard, however. In *Fennel v. Marion Independent School District*, the Fifth Circuit [ruled](#) that plaintiffs established a genuine dispute that a racially hostile environment existed where students were subjected to repeated racial slurs and threats. Quoting a pre-*Davis* [Ninth Circuit](#) Title VI case, the Fifth Circuit reasoned that it was undeniable [that](#) “repeatedly ‘being referred to by one’s peers by the most noxious racial epithet in the contemporary American lexicon, [and] being shamed and humiliated on the basis of one’s race’ is harassment far beyond normal schoolyard teasing and bullying.” Further, a [noose along with a note](#) full of racial epithets was placed by a student’s car, which “underscore[d]” the severity of the harassment. This environment, the court held, [deprived](#) students of educational opportunities, as two students withdrew and moved to another district and another suffered anxiety and needed alternative study arrangements.

Similarly, in the Tenth Circuit *Bryant* case discussed above, the court [concluded](#) that the plaintiffs alleged sufficient facts to support a racially hostile environment claim under Title VI. In that case, the plaintiffs claimed that the school [permitted](#) the use of racial slurs and epithets, as well as “the letters ‘KKK’ inscribed in school furniture and in notes” placed in the lockers and notebooks of Black students. Further, plaintiffs [claimed](#) students were permitted to wear confederate flags, swastikas, and KKK symbols on their shirts, as well as to display nooses on “their person and their vehicles.”

Deliberate Indifference

Even when harassment is shown to meet the “severe, pervasive, and objectively offensive” standard, a school will not be liable [unless](#) it responds with deliberate indifference. This is a “[high bar](#)” that will not be met [simply](#) by showing that a school was [negligent](#). The Court in *Davis* made clear that a plaintiff must show that a school’s [response](#) was “clearly unreasonable in light of the known circumstances.” The

clearest case of deliberate indifference is a complete failure to act or respond to known harassment. When a school does respond in some manner, whether a court will find deliberate indifference turns on the specific facts at issue.

Courts will sometimes find a school's response to be adequate, and thus not violate Title VI, when it intervenes or addresses misconduct and modifies or escalates its responses according to the seriousness of the situation. For instance, in the Fifth Circuit *Fennel* case discussed above, the court found that the plaintiffs sufficiently alleged a racially hostile environment where they endured repeated racial slurs and a noose placed by their car accompanied by a note with racial epithets. The court nonetheless concluded that the school district was not deliberately indifferent and thus not liable under Title VI. The court reasoned that the school district "took some action in response to almost all of the incidents," and took "relatively strong action to address the most egregious incidents." After the noose incident, the district provided the students various accommodations, including allowing one student to park in the teacher's lot and do school work in the counselor's office, and providing an aide to walk another student to school. In addition, some students were suspended for using racial slurs.

By contrast, the Second Circuit in the *Zeno* case affirmed a jury verdict finding a school district deliberately indifferent to racial harassment in violation of Title VI. The court in that case rejected the school district's argument that its response was adequate because it immediately suspended nearly every student harassing the plaintiff, contacted parents, and withdrew school privileges. The Second Circuit reasoned that while prompt disciplinary action can sometimes be sufficient, a school's response must nonetheless be considered according to the circumstances; when circumstances change, a school's response may need to adapt. In the *Zeno* case, the school's disciplinary measures did not stop others from harassment, which grew increasingly severe; the measures had little if any effect on "taunting and other hallway harassment." The court ruled that the jury could have found the school's response deliberately indifferent in three ways. First, the district took a year or more to implement any nondisciplinary remedial action. The panel reasoned that the district's failure to do more facilitated further harassment. Second, the jury reasonably could have found that the additional actions the district did take "were little more than half-hearted measures." Finally, a jury could have reasonably found that the school district "ignored the many signals that greater, more directed action was needed."

Considerations for Congress

The test that federal courts apply under Title VI for claims of racial harassment between students is judicially constructed and derived from standards the Supreme Court set out for evaluating Title IX sexual harassment claims. Congress can choose to leave development of these issues to the courts, but it has a number of available options if it wants to alter the applicable legal requirements. As an initial matter, Congress can amend Title IX and alter the standards applicable for sexual harassment under that law. Congress may also amend Title VI to include text that addresses harassment, such as defining what harassing conduct is, setting the threshold for when harassment requires a school to respond, or codifying, rejecting, or altering the current standard of deliberate indifference applied by lower federal courts.

Another option for Congress is altering the current enforcement scheme. While Title VI is currently enforced by private plaintiffs in court through an implied private right of action and by agencies through the administrative process, Congress could, for instance, decide to eliminate one method of enforcement. For example, if legislators believe school districts are overburdened by litigation, Congress could eliminate the ability to sue in court. Conversely, Congress could cabin enforcement by administrative agencies and rely primarily on judicial enforcement of the law.

Further, Title VI claims address discrimination based on race, color, and national origin. Congress could also pass legislation that adds additional protected classes to the law, consistent with constitutional limitations. Congress could also amend the law to require alignment of the standards applied by courts

and OCR, or establish explicit standards specific to each context. In either case, Congress could require agencies, such as the Department of Education, to promulgate new regulations consistent with the revised law. Finally, beyond the harassment context, Congress can refine through legislation what conduct amounts to race discrimination under the statute.

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