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Office of General Counsel

Bias Incident Response

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Next Month's Presentation

March 9, 2023

Grant Agreements

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What is a Bias Incident?

- An act of bigotry, harassment, or intimidation that is motivated in whole or in part by bias based on an individual's or group's actual or perceived race, color, creed, religion, national origin, gender identity, gender expression, age, marital status, disability, public assistance status, veteran status, or sexual orientation.



And ...

- They stem from fear, misunderstanding, hatred, and stereotypes and may be intentional or unintentional.
- They also bring attention to the needs of diversifying student bodies across the U.S. and an opportunity to shape campus life.

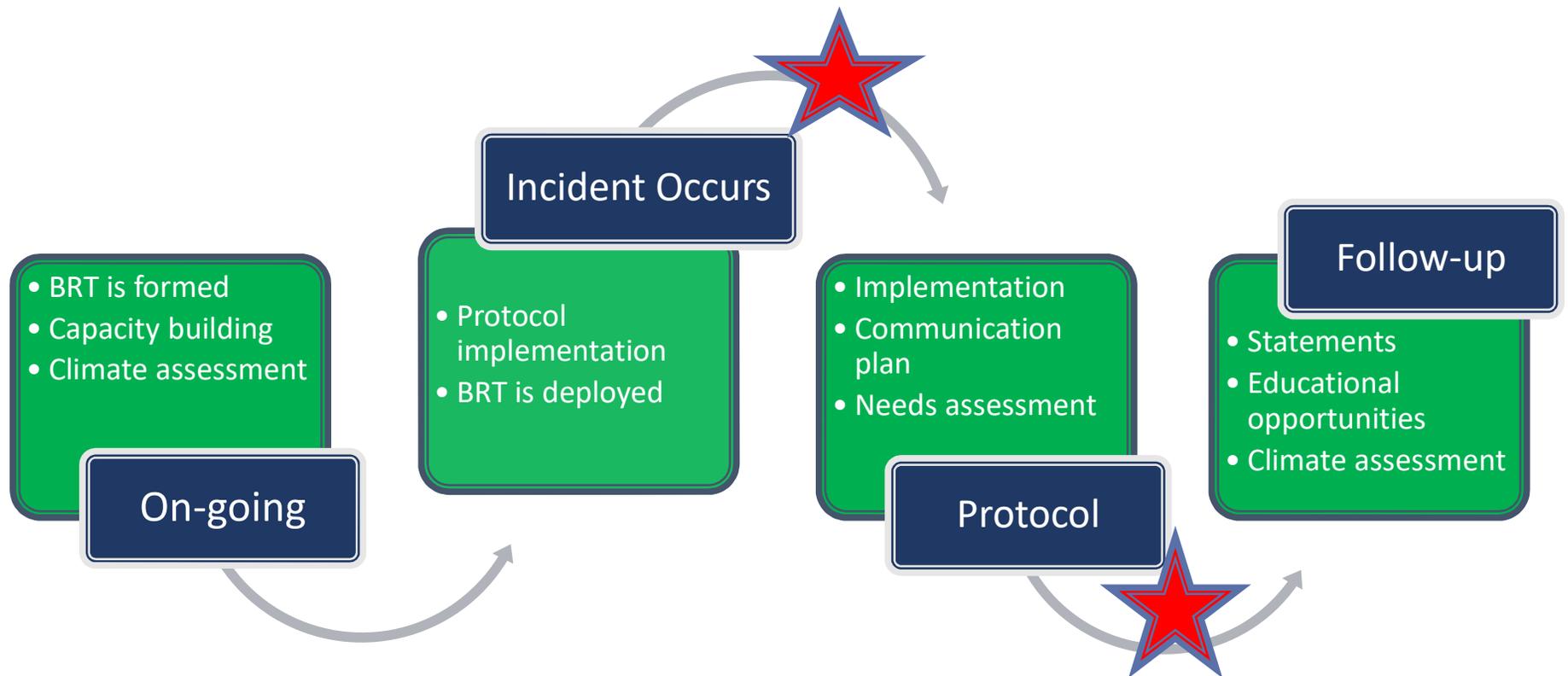


Ensuring Welcoming and Inclusive Campuses

- How to proactively create safe and productive opportunities for deepening discourse and understanding of controversial social, political, and philosophical issues.
- Major principles and strategies in planning for potential controversial/disruptive campus events.



Intentional Planning



Ongoing Communication Preparation

- **Develop a communication plan and strategy**
 - The role of faculty, staff, students, and broader community.
 - Who communicates externally and internally?
 - What is the message?
 - What are the communication channels?
 - Use of social media, control and monitoring.



Incident Occurs

Bias Incident Advisory Team (already in place)

REMINDER: The Bias Incident Advisory Team doesn't have a role in determining whether campus policy has been violated and/or imposing disciplinary action.



Bias Incident Advisory Team

Composition

- Campus Diversity Officer
- VP of Student Affairs
- Dean of Students
- Director- Residential life
- Academic Deans (Provost can refer appropriate dean)
- Faculty committee member
- Campus Safety
- Sr. Student Conduct Officer
- Marketing and Communications
- Civil Rights Officer
- Title IX Coordinator
- Dir. Of Accessibility Services
- Two students



How the B.I.R.T. Can Respond

- Identifying needs
- Referring affected individuals
- Providing support, resources, consultation
- Considering if incident had additional implications
- Updating campus community as appropriate
- EDUCATION

Ongoing learning opportunities, events, programming



Institutional Responses

- Encourage student activism
- Encourage those with power and privilege to communicate diversity and inclusion commitments and goals
- Review policies
- Engage faculty in hosting discussion forums and other events to dive deeper into issues
- Create opportunities for relationship building and engagement with students – Students need to be seen and heard!
- Engaging students in diversity and inclusion experiences – not just those intrinsically interested
- Continually assess campus climate and respond to feedback



Post Incident Debrief and Evaluation

- Two phases:
 - Immediate: event team gains clarity of what happened and determine next steps.
 - Conduct a thorough assessment by the administration, faculty, students, etc.
 - Communication and response
 - Education offerings to wider campus community
 - Public safety
 - Policy review



Post Event Communication

- Communicate to reinforce values
- Communication about events that had widespread protest, arrests, etc. should be coordinated closely with Chancellor/Presidents.
- CDO role and statement to provide voice and perspectives of campus stakeholders who may have been targeted by protests or from marginalized communities or students.



Post Incident Communication

- Communicate with targeted groups or individuals if appropriate:
 - CDO
 - Determine whether any members of the group were physically harmed, threatened, or harassed (offer support, treatment, or advocacy)
 - Post incident town halls, inter-group dialogue, restorative justice or programs.



Post Incident Analysis

- Review and determine if need to modify campus policies, regulations, or procedures.
 - CDO should be active member of policy review process.
- Review and determine if need to modify any response or communication protocol.



The First Amendment

- “Congress shall make no law * * * abridging the freedom of speech * * *.” United States Constitution, Amend 1.
- Applies to public institutions
- Board Policy 3.1 Student Rights and Responsibilities
- Campus Bias Incident response must be consistent with the First Amendment.



The First Amendment

In thinking about speech issues, it is often helpful to think about:

- Who is speaking?
 - A student?
 - A faculty member?
 - A third party?
- Where?
 - In a classroom during class?
 - In an outside campus open area?
 - On a bulletin board?

Different legal rubrics may apply depending on the answers to these questions



Public Institutions Are Subject to the First Amendment

- Campuses are “peculiarly marketplaces of ideas” -- merely offensive ideas may not be shut off in the name of “conventions” of decency. The First Amendment generally protects speech from government sanction but not speech that:
 - Speech that is not protected by the First Amendment such as
 - “Fighting words” (“where such advocacy is directed to inciting or producing imminent lawless action and is likely to produce such action”)
 - “True threats” (“a statement that a reasonable recipient would have interpreted as a serious expression of an intent to harm or cause injury to another”)
 - Unlawful harassment/discrimination
 - Obscenity, defamation



Student Classroom Speech

- Conflict sometimes happens in the “marketplace of ideas.”
- Board Policy 3.1, part 2. Freedom of Expression.
 - Students shall be free to support causes by orderly means that do not substantially disrupt the regular and essential operation of the institution.
 - Students shall be free to take reasoned exception to the data or views offered in any course of student and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.
- Faculty may manage discussion with appropriate rules.
 - Reasonably related to pedagogical concerns.
 - Not pretext for viewpoint discrimination.



Forum Analysis

- Applies to Physical Space
 - Traditional (public streets, sidewalks)
 - Designated (bulletin boards, campus outdoor space, room rentals, etc.)
 - Nonpublic (classroom during class, offices)



Forum Analysis (2)

- Traditional Public Forum
 - Public streets, sidewalks, parks
 - Restrictions must satisfy strict scrutiny (government must have compelling interest in regulation and regulations must be narrowly tailored to fit that interest)
 - No Content and Viewpoint discrimination
 - OK to have reasonable time, place, and manner restrictions like:
 - Hour restrictions (not at night)
 - Noise restrictions (no sound amplification)
 - Permits



Typical Campus Forums

- Outdoor space
- Space reservation and rental
 - Classrooms
 - Auditoriums
- Bulletin Boards



Typical Campus Forums (2)

- Key – Look to campus policy and procedure around the forum. What is your campus policy or practice regarding:
 - Bulletin boards.
 - Outdoor space areas.
 - Indoor space areas (the student union, etc.).
 - Space rental.
- Resource – “Free Speech and Forum Analysis Checklist”



Third Party Access to Campus Facilities

- Forum Analysis
 - If access, then access on a content and viewpoint neutral basis (this includes religious groups)
 - BUT time, place, and manner restrictions are OK
- Security
 - May alert campus security and/or local law enforcement



Discrimination and the First Amendment

- July 28, 2003 [OCR DCL on the First Amendment](#)
- “OCR’s regulations are not intended to restrict the exercise of any expressive activities protected under the U.S. Constitution.”
- “*** the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment.”
- “Harassment *** must include something beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.”



Discrimination and the First Amendment (2)

Instead, “harassment must be sufficiently serious (i.e., severe, persistent or pervasive) as to limit or deny a student’s ability to participate in or benefit from an educational program.”



General Posters and Banners

- Check your college/university facility use policy to determine whether there are public bulletin boards or other areas in which postings are allowed.
- If a bulletin board or other posting area is only for official use, mark it that way.
- Be consistent and content neutral in oversight of posting restrictions—whether violators re campaign related or nonpolitical messages.



Please Contact Us If We Can Be Of Assistance

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Websites

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<https://www.minnstate.edu/system/equity/index.html>

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