some person finds offensive. Under OCR's standard, the conduct must also be considered sufficiently serious to deny or limit a student's ability to participate in or benefit from the educational program. Thus, OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances, including the alleged victim's age.

There has been some confusion arising from the fact that OCR's regulations are enforced against private institutions that receive federal-funds. Because the First Amendment normally does not bind private institutions, some have erroneously assumed that OCR's regulations apply to private federal-funds recipients without the constitutional limitations imposed on public institutions. OCR's regulations should not be interpreted in ways that would lead to the suppression of protected speech on public or private campuses. Any private post-secondary institution that chooses to limit free speech in ways that are more restrictive than at public educational institutions does so on its own accord and not based on requirements imposed by OCR.

In summary, OCR interprets its regulations consistent with the requirements of the First Amendment, and all actions taken by OCR must comport with First Amendment principles. No OCR regulation should be interpreted to impinge upon rights protected under the First Amendment to the U.S. Constitution or to require recipients to enact or enforce codes that punish the exercise of such rights. There is no conflict between the civil rights laws that this Office enforces and the civil liberties guaranteed by the First Amendment. With these principles in mind, we can, consistent with the requirements of the First Amendment, ensure a safe and nondiscriminatory environment for students that is conducive to learning and protects both the constitutional and civil rights of all students.

Sincerely,

Gerald A. Reynolds
Assistant Secretary
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