



## ALERTS

### What Do Colleges And Universities Need To Know About The Executive Order And Title VI?

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On Dec. 11, 2019 President Trump [issued an Executive Order](#) (EO) stating that, “It shall be the policy of the executive branch to enforce Title VI [of the Civil Rights Act of 1964] against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”

This has created a good bit of confusion, with media outlets reporting that the EO “redefines” Judaism as a nationality or ethnicity. Not so. So what does the EO do? What, if anything, is new about it? And how will it affect U.S. colleges and universities that receive federal funding?

Title VI prohibits discrimination on the basis of race, color and national origin in programs and activities that receive federal funding. Applying Title VI to Jewish students is not new. National origin discrimination has been interpreted for years to include discrimination against those who have shared ancestry or ethnicity, to protect religious groups such as Jews, Sikhs and Muslims.

What is new is that the EO directs executive branch agencies and departments charged with enforcing Title VI to consider the International Holocaust Remembrance Alliance’s (IHRA) definition of anti-Semitism when investigating allegations of anti-Jewish discrimination (i.e., when they review an Office of Civil Rights (OCR) complaint).

The IHRA definition, which has been adopted by the U.S. State Department, provides that:

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Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities[.]

The definition includes a list of non-exhaustive examples of anti-Semitism, which the EO also directs agencies to consider. For example: “[m]aking mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as . . . the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.”

Examples also include discrimination against Jewish individuals who support Israel, e.g., “[a]ccusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations” or “[d]enying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor[.]”

In other words, discriminatory conduct directed at Jewish students who support Israel may constitute anti-Semitism.

Some argue the EO conflicts with the First Amendment, although the EO expressly states that agencies “shall not diminish or infringe upon any right protected under Federal law or under the First Amendment.” Simply put, neither Title VI nor the EO limits speech (or even hate speech); it limits conduct. The perpetrator’s speech may be used as evidence of discriminatory intent.

Universities and colleges will need to carefully consider the impact of the EO in reviewing student complaints.

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