



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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**Questions and Answers on Executive Order 13899 (Combating Anti-Semitism)
and OCR's Enforcement of Title VI of the Civil Rights Act of 1964**

On December 11, 2019, President Donald J. Trump signed Executive Order 13899 on Combating Anti-Semitism.¹ The Executive Order reaffirms the long-standing principle that anti-Semitism and discrimination against Jews based on an individual's race, color, or national origin may violate Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*; directs the federal government to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI; and requires federal agencies to consider the International Holocaust Remembrance Alliance's (IHRA) working definition of anti-Semitism and the IHRA's contemporary examples of anti-Semitism in enforcing Title VI.

This Questions and Answers (Q&A) document provides information about the Executive Order, Title VI, and enforcement of Title VI by the U.S. Department of Education's Office for Civil Rights (OCR) in cases involving anti-Semitism. It does not form an independent basis for action in matters determining a person's legal rights and obligations. Other than statutory and regulatory requirements included in the document, the contents of this document do not have the force and effect of law, and are not meant to bind the public. This document is intended only to provide clarity to the public regarding existing requirements under the law.

Question 1: What, in brief, does the Executive Order say?

Answer: The Executive Order strongly reaffirms the statutory anti-discrimination protections of Title VI, which prohibit race, color, and national origin discrimination in programs and activities receiving federal financial assistance. The Executive Order emphasizes that the executive branch will "enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI." It states "Title VI does not cover discrimination based on religion," but "individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a group that shares common religious practices." Accordingly, "[d]iscrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin."

Question 2: Does the Executive Order define Jews as a race or nationality?

Answer: No. The Executive Order reaffirms that Title VI protects Jews from anti-Semitic harassment or other discrimination if it is based on their race, color, or national origin, which can include discrimination based on their shared ancestry or ethnic characteristics.

¹ Executive Order 13899 (Combating Anti-Semitism), 84 Fed. Reg. 68779 (Dec. 11, 2019), <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism>.

Question 3: Does the Executive Order define anti-Semitism?

Answer: No. However, the Executive Order provides that federal agencies “shall consider” the non-legally binding working definition of anti-Semitism adopted on May 26, 2016, by the IHRA that: “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” in enforcing Title VI, and the IHRA’s accompanying examples of anti-Semitism “to the extent that” any such “examples might be useful as evidence of discriminatory intent.” The IHRA definition and examples are set out in the Appendix to this Questions and Answers document for reference.

Question 4: What does the Executive Order do that is new?

Answer: The Executive Order is the first presidential directive to all federal agencies, affirming that anti-Semitic discrimination may violate Title VI, and requiring all federal agencies to consider the IHRA definition in enforcing Title VI.

Question 5: Does the Executive Order change how OCR will handle complaints of discrimination involving anti-Semitism?

Answer: No. OCR has long recognized that anti-Semitism may violate Title VI, including in 2004 and 2010 guidance documents, which explained that Title VI reaches many instances of discrimination based on a student’s actual or perceived shared ancestry or ethnic characteristics.² In enforcing Title VI, OCR has investigated complaints of discrimination alleging anti-Semitism in schools and colleges, and has recently considered the IHRA definition in individual investigations, as appropriate. This enforcement approach is consistent with the Executive Order. Under the Executive Order, OCR will continue to investigate anti-Semitism consistent with OCR’s jurisdictional authority, case processing procedures, the applicable Title VI legal framework, and constitutional principles, just as OCR does in all its investigations.

Question 6: Does the Executive Order mean that any anti-Semitic incident violates Title VI?

Answer: No. An anti-Semitic incident does not violate Title VI merely because it is anti-Semitic, or because it involves an example of anti-Semitism contemplated by the IHRA. Rather, the Executive Order states that a “detailed analysis” is required to determine if a particular act constitutes discrimination prohibited by Title VI, as is true “with all other Title VI complaints.” Nor does the Executive Order “alter the evidentiary requirements” for agencies for determining whether a recipient’s conduct amounts to actionable discrimination. Thus, OCR, as required under the Executive Order, will consider the IHRA definition in handling complaints of anti-Semitism, and will continue to apply the Title VI statute, regulations, and established standards.

Question 7: Does the Executive Order restrict free speech?

² See OCR Dear Colleague Letter: Title VI and Title IX Religious Discrimination in Schools and Colleges (Sept. 13, 2004), www.ed.gov/ocr/religious-rights2004.html.

Answer: No. The Executive Order instructs federal agencies that they “shall not diminish or infringe upon any right protected under Federal law or under the First Amendment.” Additionally, the Executive Order requires consideration of the IHRA definition and accompanying examples only where useful as “evidence of discriminatory intent.” OCR will enforce all civil rights laws under its jurisdiction without restricting speech or expression protected by the U.S. Constitution, and has made clear that schools working to prevent discrimination must respect the free speech rights of students, faculty, and others.³

Question 8: Why was the Executive Order issued?

Answer: The Executive Order was issued to expand, throughout the executive branch, the Department’s longstanding policy that Title VI should be enforced against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against other forms of discrimination. The Executive Order recognizes that “anti-Semitic incidents have increased since 2013, and students in particular are facing increased anti-Semitic harassment in schools and on university and college campuses.”

Question 9: Does the Executive Order apply to anti-Semitic responses to the coronavirus?

Answer: Yes. In a [March 4, 2020 letter](#) and a [March 16, 2020 fact sheet](#), OCR emphasized that schools addressing the risks of COVID-19 (coronavirus) should take actions based on the Centers for Disease Control and Prevention (CDC) guidance regarding health risks, and not based on racial or ethnic stereotypes or assumptions. Those documents were prompted by anti-Asian incidents, but more recent reports of stereotyping and harassment of Jewish students are also of great concern to OCR. Actions that target and scapegoat particular individuals or groups based on ethnic or ancestral characteristics for “spreading disease” are intolerable, and schools should take special care to ensure that all students have a learning environment free from bias or discrimination.

Question 10: Are students who are members of groups that share ethnic or ancestral characteristics, regardless of religion, protected under Title VI?

Answer: Yes. Although none of the laws enforced by OCR expressly addresses religious discrimination, Title VI protects students from discrimination on the basis of real or perceived shared ethnic or ancestral characteristics, regardless of religion. OCR’s webpage at www.ed.gov/ocr/religion.html provides further details about Title VI’s protections against discrimination involving both shared ancestry or ethnic characteristics and religion. OCR has identified Title VI concerns in cases involving such students of various religions, including Jewish students subjected to anti-Semitic threats, slurs, and assaults; Muslim students targeted for wearing a hijab; and Middle Eastern and Sikh students taunted and called terrorists. Other federal agencies enforce laws that expressly prohibit religious discrimination by schools, colleges, and universities. For example, complaints of religious discrimination in employment can be brought to the [Equal Employment Opportunity Commission](#)

³ OCR’s commitment is embodied in a 2003 Dear Colleague Letter, www.ed.gov/ocr/firstamend.html, and in its August 26, 2020 Case Processing Manual, www.ed.gov/ocr/docs/ocrspm.pdf, both of which emphasize that all OCR actions must be consistent with and informed by First Amendment principles.

[\(EEOC\)](#), in housing (including dormitories) to the [U.S. Department of Housing and Urban Development \(HUD\)](#), and by public schools and colleges to the [U.S. Department of Justice \(DOJ\)](#).

Question 11: How can someone get more information from OCR or file a complaint with OCR?

Answer: For more information or with questions, email OCR's OPEN center at OPEN@ed.gov, call OCR's hotline at 1-800-421-3481, or visit OCR's website at www.ed.gov/ocr. If you believe that a school or college has discriminated against someone based on race, color, national origin, sex, disability, or age, you can file a complaint with OCR within 180 days of the alleged discrimination. More information and OCR's complaint form are available at www.ed.gov/ocr/complaintintro.html.

Appendix: International Holocaust Remembrance Alliance
Working Definition of Anti-Semitism and Contemporary Examples of Anti-Semitism

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.

To guide IHRA in its work, the following examples may serve as illustrations: Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits. Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- Denying the fact, scope, mechanisms (e.g., gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.