FIRE
Foundation for Individual Rights and Expression

Federal Mandates and Campus Rights: FIRE's Response to Title VI Pressure at Columbia
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Topic: Anti-Semitism Definition

In its demand letter to Columbia University, the federal government directed Columbia to "Formalize, adopt, and promulgate a definition of antisemitism." It followed up that demand by writing: "President Trump's Executive Order 13899 uses the IHRA definition. Anti-'Zionist' discrimination against Jews in areas unrelated to Israel or [*sic*] Middle East must be addressed," strongly suggesting Columbia adopt President Trump's preferred definition of anti-Semitism.

First, it is important to understand what federal law actually requires. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in federally funded programs, including institutions of higher education. Title VI does *not* prohibit discrimination on the basis of religion. However, since at least 2004, the U.S. Department of Education's Office for Civil Rights (OCR) under successive administrations has consistently maintained that it can investigate anti-Semitic discrimination under Title VI when it targets students on the basis of shared ancestry, ethnicity, or national origin. This longstanding interpretation provides the legal basis for protecting Jewish students against ethnic or national-origin-based anti-Semitism without requiring institutions to adopt a specific definition.

To the extent that there is a gap in federal law when anti-Semitic conduct based on religion falls outside Title VI's scope, many states have statutes that independently prohibit religious discrimination in education. Institutions should understand and comply with these overlapping legal frameworks, but they should not allow political or bureaucratic pressure to force them into adopting policies that threaten academic freedom, institutional autonomy, or free expression.

The Problems with the IHRA Definition

The IHRA definition includes several illustrative examples that equate criticism of Israel with anti-Semitism, including:

- "[A]pplying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation," and
- "[D]rawing comparisons of contemporary Israeli policy to that of the Nazis."

While actual discrimination against Jewish students must be promptly and vigorously addressed, conflating political speech with discriminatory conduct poses significant First

Amendment problems at public institutions and raises serious academic freedom concerns across the board. Courts have long held that overbroad or vague speech restrictions are constitutionally suspect, and IHRA suffers from both.

Institutions that enshrine the IHRA definition as a disciplinary or policy standard risk chilling protected speech on matters of public concern, including as applied to student activism, classroom discussion, or faculty scholarship on the Israeli-Palestinian conflict. This not only exposes institutions to legal liability but undermines their foundational mission to foster open inquiry and robust debate.

As a threshold matter, it is worth asking: why should we define anti-Semitism–or any type of discrimination–at all? There is no formal definition of what constitutes anti-black racism, misogyny, or Islamophobia. What we do instead is define protected classes and allow courts to evaluate the claims of discrimination, taking into account the particular contexts giving rise to the claim. Creating a definition of anti-Semitism will open the floodgates for all protected classes. Navigating a world in which members of every protected class seek to advance a definition of certain types of speech that could be prohibited under anti-discrimination laws would be unworkable.

A Better Approach

Instead of adopting the IHRA definition for anti-discrimination purposes, colleges and universities should:

1. **Reaffirm their commitment to nondiscrimination** under Title VI and relevant state laws, ensuring that all students, including Jewish students, are protected from unlawful harassment and exclusion based on ethnicity or national origin and, if applicable, based on religion. Institutions must confirm they will enforce anti-discrimination laws equally, without favor for one class of individuals over others.

2. **Maintain institutional neutrality** on contested political questions, particularly those involving international conflicts. Universities serve their educational mission best when they protect the rights of students and faculty to express a broad range of political views without fear of official sanction or censorship. Collective statements on social or political issues of the day made on behalf of the institution risk chilling this expression.

3. **Educate rather than censor**: Promote campus dialogue about anti-Semitism — including its religious, ethnic, and political dimensions — through voluntary programming, faculty scholarship, and open discussion, not coercive policy mandates.

Colleges and universities have a legal and moral obligation to protect students from discrimination, including anti-Semitism. But they must meet that obligation in ways that uphold constitutional principles and academic values. Adopting definitions as official policy that restrict speech about hotly debated issues is not the answer — and may ultimately do more harm than good.