

WHAT YOU SHOULD KNOW ABOUT THE EXECUTIVE ORDER GRANTING TITLE VI PROTECTION TO JEWISH STUDENTS



On December 11, 2019, President Trump signed an executive order formally extending Title VI protection to Jewish students facing discrimination. Because there has been confusion surrounding the implication of this executive order, we break it down here:

What Is Title VI? Title VI of the 1964 Civil Rights Act prohibits discrimination on the basis of race, color and national origin in programs or activities that receive federal financial assistance. This includes nearly all universities in the U.S., whether public or private, among other recipients.

What Does the Executive Order Do?

The executive order does three things:

1. It clarifies that Title VI applies to antisemitic discrimination that is based on race, color or national origin;
2. It directs any agency responsible for enforcing Title VI to consider the working definition of antisemitism adopted by the International Holocaust Remembrance Alliance (IHRA); and
3. It prohibits agencies from infringing upon any rights protected by federal law, including First Amendment rights.

Does the Executive Order Define Judaism and/or Jews as a Nation or Race? No. The order does not redefine Judaism and/or Jewish people as a nationality or race. The order reinforces that Jewish students facing discrimination based on race, color or national origin will receive Title VI protection.

Does the Executive Order Change the Application of Title VI?

No. The executive order simply confirms longstanding practice, which is to apply Title VI to individuals who suffer racial or national origin discrimination, even if they are also members of a particular religious group. The new feature of the executive order is that it requires agencies tasked with enforcing Title VI to consider the IHRA definition in determining whether a Title VI violation has occurred.

Consider two previous clarifications about Title VI protection for religious-based discrimination:

- **2004 (Bush Administration):** Some cases of religious discrimination might also involve racial or ethnic discrimination. Arab Muslims, Jewish Americans and Sikhs are specifically identified as religious groups at risk for harassment on the basis of race, color and/or national origin and thus in need of Title VI protection.
- **2010 (Obama Administration):** Title VI extends to religious groups when the discrimination is “based on the group’s actual or perceived shared ancestry or ethnic characteristics” instead of the group’s religious practices.

Have Other Religious Groups Received Title VI Protection?

Yes. In 2012 Title VI was applied to protect a middle school Sikh student facing discrimination and harassment. The discrimination was determined to be based on both the student’s race and national origin.

Does the Executive Order Violate, or Threaten to Violate, the First Amendment?

No. Nothing in the executive order restricts or otherwise interferes with protected speech. Concerns about First Amendment implications of the executive order stem from a misunderstanding about the IHRA definition and examples of antisemitism, but these do not violate or threaten First Amendment rights either. The free speech clause of the First Amendment protects the right of private individuals to engage in controversial expression, including most expression that is bigoted and hateful. Nothing in either the IHRA definition or its examples infringe that right in any way. The IHRA definition and examples merely identify words and actions as “antisemitic,” in much the same way that other words and actions are readily identifiable as “racist” or “sexist.” Identification is not the same as enforcement. To identify something as discriminatory enables appropriate condemnation but does not in any way prohibit it.

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