

Preparing for the Antisemitism Awareness Act: Recommendations for Colleges and Universities

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Key Takeaways

- Republican majorities in the House and Senate will likely pass the Antisemitism Awareness Act in 2025. This Act directs the Department of Education to consider the International Holocaust Remembrance Alliance's broad definition of antisemitism and specific examples of antisemitism, including certain criticism of the state of Israel, when enforcing federal antidiscrimination laws.
- If the Act becomes law, colleges and universities may be required to prohibit conduct captured by this broad definition of antisemitism. Furthermore, critical comments about Israel may become sufficient to find that acts of violence, discrimination or harassment on college campuses are motivated by anti-Jewish animus, in violation of federal antidiscrimination laws.
- In preparation for the anticipated passing of the Antisemitism Awareness Act and heightened scrutiny from the new Congress and the incoming Trump administration, educational institutions should review their policies and procedures to consider whether any changes would need to be made to comply with the Act.

Introduction

In May 2024, in the wake of a series of high-profile hearings on the rise of antisemitism on college campuses, the U.S. House of Representatives passed the Antisemitism Awareness Act ("AAA") by a strong and bipartisan 320-91 vote.¹ However, the bill stalled in the Senate. Congressional Republicans have indicated that they would reintroduce and vote on the bill in the newly convened 119th Congress, and now that

¹ Summer Concepcion, Megan Lebowitz & Rebecca Kaplan, *House Passes Antisemitism Bill with Broad Bipartisan Support Amid Campus Arrests*, NBC NEWS (May 1, 2024), <https://www.nbcnews.com/politics/congress/house-vote-antisemitism-bill-campus-arrests-rcna150170>.

Republicans have majorities and control of both chambers, it is widely expected that the AAA will pass sometime in 2025.²

The AAA directs the U.S. Department of Education to consider the definition and examples of antisemitism promulgated by the International Holocaust Remembrance Alliance (“IHRA”) when enforcing federal antidiscrimination laws, including Title VI, which prohibits discrimination and harassment on the basis of race, color and national origin in federally funded programs and activities.³ The IHRA’s definition is broad and encompasses both widely accepted forms of antisemitism and more controversial examples of criticism of the state of Israel that some view as infringing on the free speech rights protected by the First Amendment.⁴

If the AAA is enacted in 2025, colleges and universities may be required to prohibit conduct encompassed by the IHRA’s definition of antisemitism. Therefore, it is essential for institutions of higher education to evaluate the potential impact of the AAA on their legal obligations under federal antidiscrimination laws and to proactively develop or enhance policies and procedures to prepare for its possible implementation.

In this update, we describe the key provisions of the AAA, analyze its potential impact on colleges and universities, and make recommendations for educational institutions.

The AAA’s Key Provisions

The AAA codifies President Trump’s 2019 Executive Order 13899 directing all executive departments and agencies charged with enforcing Title VI to “consider” the IHRA’s “Working Definition” and examples of antisemitism when determining whether acts of violence, discrimination or harassment on college campuses are motivated by anti-Jewish animus thus violating federal antidiscrimination laws, including Title VI.⁵

² Stephen Neukam, Hans Nichols & Juliegrace Brufke, *Scoop: Schumer and Johnson in Standoff Over Antisemitism Bill*, AXIOS (Dec. 5, 2024), <https://www.axios.com/2024/12/06/schumer-johnson-antisemitism-vote>.

³ See U.S. DEP’T OF EDUC., OFFICE FOR CIVIL RIGHTS, FACT SHEET: DIVERSITY & INCLUSION ACTIVITIES UNDER TITLE VI (2023), <https://www.ed.gov/media/document/ocr-factsheet-tvi-dia-202301pdf>.

⁴ Press Release, Am. Civil Liberties Union, ACLU Urges Senate to Oppose Bill That Will Threaten Political Speech on College Campuses (Nov. 14, 2024), <https://www.aclu.org/press-releases/aclu-urges-senate-to-oppose-bill-that-will-threaten-political-speech-on-college-campuses>.

⁵ Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019). The Biden administration has not issued a notice of proposed rulemaking to implement EO 13899. See *Confronting the Scourge of Antisemitism on Campus Before the H. Comm. on Educ. & the Workforce*, 118th Cong. 27 (2023) (statement of Kenneth Marcus, Chairman, Brandeis Center for Human Rights Under Law).

The IHRA defines antisemitism as “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,” such as “targeting of the state of Israel, conceived as a Jewish collectivity.”⁶ The IHRA’s “contemporary examples” of antisemitism include:

- “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 [Israel] a behavior not expected or demanded of any other democratic nation”;
- “Holding Jews collectively responsible for actions of the state of Israel”;
- “Drawing comparisons of contemporary Israeli policy to that of the Nazis”; and
- “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.”⁷

The AAA does not purport to change the definition of harassment, nor to amend Title VI. Rather, it would require executive agencies responsible for enforcing federal antidiscrimination laws to consider conduct encompassed by the IHRA’s definition and examples of antisemitism as actionable discrimination under Title VI. Universities that permit such conduct may face liability under Title VI for creating a “hostile environment” for Jewish students.⁸

The AAA’s Implications for Colleges and Universities

The AAA’s proponents argue that the IHRA’s definition and examples provide much-needed clarity in identifying and addressing antisemitism, particularly in light of the increasing prevalence of anti-Zionism on college campuses following the October 7

⁶ Working Definition of Antisemitism, INT’L HOLOCAUST REMEMBRANCE ALL., <https://holocaustremembrance.com/resources/working-definition-antisemitism>. (last accessed Dec. 19, 2024).

⁷ *Id.*

⁸ See Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994); see also *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 666 (2d Cir. 2012) (“Educational benefits include an academic environment free from racial hostility.”); *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 356 (S.D.N.Y. 2014) (same).

attack in Israel.⁹ Proponents further argue that, under the AAA, colleges and universities will be better equipped to identify and distinguish harmful and discriminatory antisemitic behavior from constitutionally protected free speech. The AAA's critics, including the American Civil Liberties Union, warn that the legislation could "pressure colleges and universities to restrict student and faculty speech critical of the Israeli government and its military operations out of fear of the college losing federal funding."¹⁰

In light of these conflicting views, enacting the AAA and adopting the broader definition of antisemitism is likely to bring about a period of sustained uncertainty for colleges and universities.

First, if the AAA is enacted, we anticipate that Congress and the Trump administration will prioritize investigations of potential Title VI violations premised on the AAA. We anticipate increased enforcement against universities and colleges that are viewed as permitting conduct encompassed by the IHRA's definition and examples of antisemitism, including speech that is critical of Israel or Zionism.

Congressional Republicans have already announced their intention to continue ongoing congressional probes into allegations that antisemitism at colleges and universities creates hostile environments for Jewish students in violation of Title VI. For example, in the December 18, 2024 Joint-Committee Report on Antisemitism (the "Report"),¹¹ House Republicans lamented that, "[d]espite a historic explosion of virulent antisemitism, the Biden-Harris administration failed to hold universities accountable for Title VI violations" and claimed that the Department of Education "has not imposed real consequences for noncompliant institutions, initiated proactive compliance reviews or directed investigations as called for by its own procedures," or "issued a promised rulemaking implementing President Trump's December 2019 Executive Order [13899]."¹² The Report urged the incoming Trump administration to "aggressively enforce Title VI and hold schools accountable for their failures to protect students" and warned that "[u]niversities that fail to fulfill the obligations upon which their federal funding is predicated or whose actions make clear they are unfit stewards of taxpayer dollars should be treated accordingly."¹³ The additional investigations urged by

⁹ William Daroff, *Pass the Antisemitism Awareness Act*, THE PITTSBURGH JEWISH CHRONICLE (Dec. 26, 2024), <https://jewishchronicle.timesofisrael.com/pass-the-antisemitism-awareness-act/> ("The IHRA definition's merits include concrete examples of antisemitism that capture not only traditional anti-Jewish hatred and Holocaust denial but also modern antisemitism targeting Jewish Americans for association or perceived association with or connection to the State of Israel.").

¹⁰ Press Release, Am. Civil Liberties Union, *supra* note 4.

¹¹ STAFF OF H. COMM. ON EDUC. & THE WORKFORCE ET AL., STAFF REP. ON ANTISEMITISM (Comm. Print 2024), <https://www.speaker.gov/wp-content/uploads/2024/12/House-Antisemitism-Report.pdf>.

¹² *Id.*

¹³ *Id.*

Congressional Republicans will likely build on the Report's findings and focus on whether academic institutions have created a "hostile environment" for Jewish students by permitting, or failing to punish, the types of speech encompassed by the IHRA's definition and examples of antisemitism.

Second, we expect that passage of the AAA would lead to a flurry of litigation challenging the statute's constitutionality on First Amendment grounds. That litigation would likely generate uncertainty as to universities' legal obligations to restrict speech encompassed by the IHRA's definition and examples of antisemitism. At least one federal district court has already found that adopting the IHRA's definition for purposes of enforcing free speech policies at universities may contravene First Amendment protections. Specifically, in ruling on a motion for a preliminary injunction, the U.S. District Court for the Western District of Texas found that plaintiffs were likely to succeed in showing that Texas Governor Greg Abbott's executive order directing all Texas higher education institutions to include the IHRA's definition in their free speech policies constituted viewpoint discrimination in violation of the First Amendment.¹⁴

Recommendations

In light of the anticipated legal uncertainty following the AAA's likely enactment in 2025, colleges and universities should preemptively review and, as needed, enhance their policies and procedures to ensure continued compliance with federal antidiscrimination laws. To effectively navigate the increased scrutiny and shifting regulatory landscape under the new Congress and incoming Trump administration, colleges and universities should consider implementing the following measures:

- Ensure that conduct policies and related disciplinary procedures are up to date and that sufficient resources are allocated to their effective enforcement.
- Review conduct policies (including those applicable to faculty and staff) and consider whether they are sufficiently clear as to the scope of prohibited conduct and potential disciplinary and other consequences of misconduct. Ensure that antisemitic harassment, intimidation and disruptive protests are clearly prohibited.
- Ensure consistent enforcement of conduct policies across all schools and departments for students, faculty and staff. Consider establishing an independent

¹⁴ *Students for Justice in Palestine, at Univ. of Houston v. Abbott*, 2024 WL 4631301, at *12 (W.D. Tex. 2024) ("In conclusion, the Court finds that Plaintiffs are likely to succeed on their claim...that the...university policies impose impermissible viewpoint discrimination that chills speech in violation of the First Amendment.").

review board to oversee the disciplinary process to identify and eliminate instances of bias or inconsistent enforcement.

- Review any complaints alleging antisemitic conduct by students, faculty and staff, made since the October 7 attacks, and consider whether they have been sufficiently addressed.
- Actively engage with and support various student communities, including the Jewish community. That includes ensuring that the university provides adequate resources and accommodations for Jewish students, such as access to kosher food options and dedicated prayer facilities.
- Require administrators, faculty, and staff to undergo training on Title VI, along with ongoing follow-up training covering new regulations, laws or executive orders impacting universities' obligations under federal antidiscrimination laws.
- Consider adopting "time, place, and manner" restrictions to address disruptive conduct that could create a hostile environment in violation of Title VI.
- Investigate allegations of misconduct thoroughly and quickly. Record and track disciplinary measures.
- Regularly review all recognized student organizations to ensure they comply with conduct standards.

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Please do not hesitate to contact us with any questions.



David A. O'Neil
Partner, Washington, D.C.
+1 202 383 8040
+1 202 809 1995
daoneil@debevoise.com



Jane Shvets
Partner, New York,
London
+1 212 909 6573
+44 20 7786 9163
jshvets@debevoise.com



Carter Burwell
Counsel, Washington, D.C.
+1 202 383 8149
cburwell@debevoise.com



Ivona Josipovic
Counsel, New York
+1 212 909 6597
ijosipovic@debevoise.com



Cameron B. Wolfe
Associate, Washington, D.C.
+1 202 383 8279
cbwolfe@debevoise.com



Suzanne Zakaria
Associate, Washington, D.C.
+1 202 383 8107
szakaria@debevoise.com