

114TH CONGRESS  
2D SESSION

# S. 10

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## AN ACT

To provide for the consideration of a definition of anti-Semitism for the enforcement of Federal antidiscrimination laws concerning education programs or activities.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Anti-Semitism Aware-  
3 ness Act of 2016”.

4 **SEC. 2. FINDINGS.**

5 Congress makes the following findings:

6 (1) Title VI of the Civil Rights Act of 1964 (re-  
7 ferred to in the section as “title VI”) is one of the  
8 principal antidiscrimination statutes enforced by the  
9 Department of Education’s Office for Civil Rights.

10 (2) Title VI prohibits discrimination on the  
11 basis of race, color, or national origin.

12 (3) Both the Department of Justice and the  
13 Department of Education have properly concluded  
14 that title VI prohibits discrimination against Jews,  
15 Muslims, Sikhs, and members of other religious  
16 groups when the discrimination is based on the  
17 group’s actual or perceived shared ancestry or ethnic  
18 characteristics or when the discrimination is based  
19 on actual or perceived citizenship or residence in a  
20 country whose residents share a dominant religion or  
21 a distinct religious identity.

22 (4) A September 8, 2010 letter from Assistant  
23 Attorney General Thomas E. Perez to Assistant Sec-  
24 retary for Civil Rights Russlynn H. Ali stated that  
25 “[a]lthough Title VI does not prohibit discrimination  
26 on the basis of religion, discrimination against Jews,

1 Muslims, Sikhs, and members of other groups vio-  
2 lates Title VI when that discrimination is based on  
3 the group’s actual or perceived shared ancestry or  
4 ethnic characteristics”.

5 (5) To assist State and local educational agen-  
6 cies and schools in their efforts to comply with Fed-  
7 eral law, the Department of Education periodically  
8 issues Dear Colleague letters. On a number of occa-  
9 sions, these letters set forth the Department of Edu-  
10 cation’s interpretation of the statutory and regu-  
11 latory obligations of schools under title VI.

12 (6) On September 13, 2004, the Department of  
13 Education issued a Dear Colleague letter regarding  
14 the obligations of schools (including colleges) under  
15 title VI to address incidents involving religious dis-  
16 crimination. The 2004 letter specifically notes that  
17 “since the attacks of September 11, 2001, OCR has  
18 received complaints of race or national origin harass-  
19 ment commingled with aspects of religious discrimi-  
20 nation against Arab Muslim, Sikh, and Jewish stu-  
21 dents.”.

22 (7) An October 26, 2010 Dear Colleague letter  
23 issued by the Department of Education stated,  
24 “While Title VI does not cover discrimination based  
25 solely on religion, groups that face discrimination on

1 the basis of actual or perceived shared ancestry or  
2 ethnic characteristics may not be denied protection  
3 under Title VI on the ground that they also share  
4 a common faith. These principles apply not just to  
5 Jewish students, but also to students from any dis-  
6 crete religious group that shares, or is perceived to  
7 share, ancestry or ethnic characteristics (e.g., Mus-  
8 lims or Sikhs).”.

9 (8) Anti-Semitism remains a persistent, dis-  
10 turbing problem in elementary and secondary schools  
11 and on college campuses.

12 (9) Jewish students are being threatened, har-  
13 assed, or intimidated in their schools (including on  
14 their campuses) on the basis of their shared ancestry  
15 or ethnic characteristics including through harassing  
16 conduct that creates a hostile environment so severe,  
17 pervasive, or persistent so as to interfere with or  
18 limit some students’ ability to participate in or ben-  
19 efit from the services, activities, or opportunities of-  
20 fered by schools.

21 (10) The 2010 Dear Colleague letter cautioned  
22 schools that they “must take prompt and effective  
23 steps reasonably calculated to end the harassment,  
24 eliminate any hostile environment, and its effects,  
25 and prevent the harassment from recurring,” but

1 did not provide guidance on current manifestation of  
2 anti-Semitism, including discriminatory anti-Semitic  
3 conduct that is couched as anti-Israel or anti-Zion-  
4 ist.

5 (11) The definition and examples referred to in  
6 paragraphs (1) and (2) of section 3 have been valu-  
7 able tools to help identify contemporary manifesta-  
8 tions of anti-Semitism, and include useful examples  
9 of discriminatory anti-Israel conduct that crosses the  
10 line into anti-Semitism.

11 (12) Awareness of this definition of anti-Semi-  
12 tism will increase understanding of the parameters  
13 of contemporary anti-Jewish conduct and will assist  
14 the Department of Education in determining wheth-  
15 er an investigation of anti-Semitism under title VI  
16 is warranted.

17 **SEC. 3. DEFINITIONS.**

18 For purposes of this Act, the term “definition of anti-  
19 Semitism”—

20 (1) includes the definition of anti-Semitism set  
21 forth by the Special Envoy to Monitor and Combat  
22 Anti-Semitism of the Department of State in the  
23 Fact Sheet issued on June 8, 2010, as adapted from  
24 the Working Definition of Anti-Semitism of the Eu-  
25 ropean Monitoring Center on Racism and Xen-

1 phobia (now known as the European Union Agency  
2 for Fundamental Rights); and

3 (2) includes the examples set forth under the  
4 headings “Contemporary Examples of Anti-Semi-  
5 tism” and “What is Anti-Semitism Relative to  
6 Israel?” of the Fact Sheet.

7 **SEC. 4. RULE OF CONSTRUCTION FOR TITLE VI OF THE**  
8 **CIVIL RIGHTS ACT OF 1964.**

9 In reviewing, investigating, or deciding whether there  
10 has been a violation of title VI of the Civil Rights Act  
11 of 1964 (42 U.S.C. 2000d et seq.) on the basis of race,  
12 color, or national origin, based on an individual’s actual  
13 or perceived shared Jewish ancestry or Jewish ethnic char-  
14 acteristics, the Department of Education shall take into  
15 consideration the definition of anti-Semitism as part of the  
16 Department’s assessment of whether the alleged practice  
17 was motivated by anti-Semitic intent.

18 **SEC. 5. CONSTITUTIONAL PROTECTIONS.**

19 Nothing in this Act, or an amendment made by this  
20 Act, shall be construed to diminish or infringe upon any

1 right protected under the First Amendment to the Con-  
2 stitution of the United States.

Passed the Senate December 1, 2016.

Attest:

*Secretary.*

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