

116TH CONGRESS
1ST SESSION

S. 852

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

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2019

Mr. SCOTT of South Carolina (for himself, Mr. CASEY, Mr. RUBIO, and Mr. ISAKSON) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Anti-Semitism Aware-
5 ness Act of 2019”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Title VI of the Civil Rights Act of 1964 (re-
9 ferred to in the section as “title VI”) is one of the

1 principal antidiscrimination statutes enforced by the
2 Department of Education’s Office for Civil Rights.

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

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

15 (4) A September 8, 2010, letter from Assistant
16 Attorney General Thomas E. Perez to Assistant Sec-
17 retary for Civil Rights Russlynn H. Ali stated that
18 “[a]lthough Title VI does not prohibit discrimination
19 on the basis of religion, discrimination against Jews,
20 Muslims, Sikhs, and members of other groups vio-
21 lates Title VI when that discrimination is based on
22 the group’s actual or perceived shared ancestry or
23 ethnic characteristics”.

24 (5) To assist State and local educational agen-
25 cies and schools in their efforts to comply with Fed-

1 eral law, the Department of Education periodically
2 issues Dear Colleague letters. On a number of occa-
3 sions, these letters set forth the Department of Edu-
4 cation’s interpretation of the statutory and regu-
5 latory obligations of schools under title VI.

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

16 (7) An October 26, 2010, Dear Colleague letter
17 issued by the Department of Education stated,
18 “While Title VI does not cover discrimination based
19 solely on religion, groups that face discrimination on
20 the basis of actual or perceived shared ancestry or
21 ethnic characteristics may not be denied protection
22 under Title VI on the ground that they also share
23 a common faith. These principles apply not just to
24 Jewish students, but also to students from any dis-
25 crete religious group that shares, or is perceived to

1 share, ancestry or ethnic characteristics (e.g., Mus-
2 lims or Sikhs).”.

3 (8) Anti-Semitism, and harassment on the basis
4 of actual or perceived shared ancestry or ethnic
5 characteristics with a religious group, remains a per-
6 sistent, disturbing problem in elementary and sec-
7 ondary schools and on college campuses.

8 (9) Students from a range of diverse back-
9 grounds, including Jewish, Arab Muslim, and Sikh
10 students, are being threatened, harassed, or intimi-
11 dated in their schools (including on their campuses)
12 on the basis of their shared ancestry or ethnic char-
13 acteristics including through harassing conduct that
14 creates a hostile environment so severe, pervasive, or
15 persistent so as to interfere with or limit some stu-
16 dents’ ability to participate in or benefit from the
17 services, activities, or opportunities offered by
18 schools.

19 (10) The 2010 Dear Colleague letter cautioned
20 schools that they “must take prompt and effective
21 steps reasonably calculated to end the harassment,
22 eliminate any hostile environment, and its effects,
23 and prevent the harassment from recurring,” but
24 did not provide guidance on current manifestations
25 of anti-Semitism, including discriminatory anti-Se-

1 mitic conduct that is couched as anti-Israel or anti-
2 Zionist.

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

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

15 **SEC. 3. DEFINITIONS.**

16 For purposes of this Act, the term “definition of anti-
17 Semitism”—

18 (1) includes the definition of anti-Semitism
19 adopted on May 26, 2016, by the International Hol-
20 ocaust Remembrance Alliance (referred to in this
21 section as “IHRA”), of which the United States is
22 a member, which definition has been adopted by the
23 Department of State; and

24 (2) includes the “[c]ontemporary examples of
25 antisemitism” identified in the IHRA definition.

1 **SEC. 4. RULE OF CONSTRUCTION FOR TITLE VI OF THE**
2 **CIVIL RIGHTS ACT OF 1964.**

3 In reviewing, investigating, or deciding whether there
4 has been a violation of title VI of the Civil Rights Act
5 of 1964 (42 U.S.C. 2000d et seq.) on the basis of race,
6 color, or national origin, based on an individual's actual
7 or perceived shared Jewish ancestry or Jewish ethnic char-
8 acteristics, the Department of Education shall take into
9 consideration the definition of anti-Semitism as part of the
10 Department's assessment of whether the practice was mo-
11 tivated by anti-Semitic intent.

12 **SEC. 5. ADMINISTRATION.**

13 The Assistant Secretary for Civil Rights shall admin-
14 ister and enforce title VI of the Civil Rights Act of 1964
15 (42 U.S.C. 2000d et seq.) and title IX of the Education
16 Amendments of 1972 (20 U.S.C. 1681 et seq.) in a man-
17 ner that is consistent with the manner of administration
18 and enforcement described in the Dear Colleague letter
19 issued on September 13, 2004, by the Deputy Assistant
20 Secretary for Enforcement of the Department of Edu-
21 cation, entitled "Title VI and Title IX Religious Discrimi-
22 nation in Schools and Colleges".

23 **SEC. 6. OTHER RULES OF CONSTRUCTION.**

24 (a) GENERAL RULE OF CONSTRUCTION.—Nothing in
25 this Act shall be construed—

1 (1) to expand the authority of the Secretary of
2 Education;

3 (2) to alter the standards pursuant to which the
4 Department of Education makes a determination
5 that harassing conduct amounts to actionable dis-
6 crimination; or

7 (3) to diminish or infringe upon the rights pro-
8 tected under any other provision of law that is in ef-
9 fect as of the date of enactment of this Act.

10 (b) CONSTITUTIONAL PROTECTIONS.—Nothing in
11 this Act shall be construed to diminish or infringe upon
12 any right protected under the First Amendment to the
13 Constitution of the United States.

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