

# DEPARTMENT OF EDUCATION ISSUES DEAR COLLEAGUE LETTER AS CAMPUS TENSIONS AND HATE CRIMES RISE: 5 STEPS FOR EDUCATIONAL INSTITUTIONS

Insights  
Nov 10, 2023

The Department of Education recently reminded educational institutions receiving federal funding of their responsibility to foster inclusive campuses in light of the nationwide rise in hate crimes and threats to Jewish, Israeli, Muslim, Arab, and Palestinian students. Specifically, the DOE issued a “Dear Colleague” letter this week discussing educational institutions’ legal duty under Title VI of the Civil Rights Act of 1964 to provide a learning environment to students’ of every race, color, and national origin free from discrimination and harassment. Here are the five steps you should take to respond to the November 7 Dear Colleague Letter as you navigate potential reports of potential hate-based incidents.

## What Did the Department of Education Say?

On November 7, the DOE reminded schools that they’re obligated under federal civil rights laws to protect students from discrimination amid a nationwide spike in antisemitic and Islamophobic acts and threats on school campuses over the past month.

Schools – both K-12 campuses and colleges and universities – have seen a rise in “disturbing antisemitic incidents and threats to Jewish, Israeli, Muslim, Arab, and Palestinian students,” according to the letter from the Education Department. The DOE’s Office for Civil Rights received 12 complaints of discrimination based on shared ancestry – the category that covers antisemitic and Islamophobic incidents – between October 7 and November 7 this year. Of those complaints, one stemmed from an incident at a K-12 school

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while the rest stemmed from situations at colleges or universities.

## **The Impact of the Dear Colleague Letter on Educational Institutions**

Title VI protects individuals from discrimination or harassment based on race, color, or national origin in programs or activities that receive federal financial assistance. The newly released Dear Colleague comes on the heels of several additional resources released by the Department of Education's Office of Civil Rights (OCR) this year in an effort to support schools in complying with their obligations under Title VI. OCR issued guidance in January 2023 on Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics and a Dear Colleague Letter in May 2023 as part of the Antisemitism Awareness Campaign.

Schools that receive federal fundings must address discrimination against students of any religious group when it involves "racial, ethnic, or ancestral slurs or stereotypes," according to the letter. They must also address discrimination based on a student's skin color, physical features, or style of dress that reflects ethnic or religious traditions and any discrimination "based on where a student came from or is perceived to have come from." That extends to discrimination based on a student's accent, name, or use of a foreign language.

Schools are required to take immediate action to address any sort of harassment related to race, religion, and ethnicity that creates a hostile environment, even if the conduct isn't directed at a specific individual, the letter said. While there is an open question about whether such a broad interpretation of the law would hold up if challenged – for example, could it lead to actionable hostile environment claims if someone happened to walk past a conversation between two other people involving a controversial opinion they didn't agree with? – the letter is a reminder for schools to remain vigilant about potential harassment.

OCR interprets federal law to define a hostile environment as any unwelcome conduct based on shared ancestry or ethnic characteristics that is subjectively and objectively offensive and so pervasive that it denies a student the ability to benefit from or participate in an education program or activity.



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## **Industry Focus**

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Given the rise in reports at educational institutions across the board, and particularly on college and university campuses, you should ensure that your current policies and procedures for handling complaints of ethnicity-based or religious-based discrimination comport with Title VI's requirements.

## **5 Ways Educational Institutions Can Ensure Compliance with Title VI**

Below are some steps your school can consider taking in light of this "Dear Colleague" letter:

- 1. Revisit Anti-Discrimination Policies.** Do your school's policies explicitly state the institution's commitment to non-discrimination based on national origin and other protected characteristics? Do you have clear grievance policies for individuals who believe they have experienced discrimination? Are your policies communicated clearly to students and staff? A thoughtful review of your anti-discrimination policies is key to ensuring compliance with Title VI.
- 2. Consider Training.** Has your institution provided recent training for faculty, staff, and administrators to raise awareness about Title VI requirements and how to address prohibited discrimination when it arises? Schools should consider offering additional training given the current uptick in complaints.
- 3. Check-In on Complaint Procedures.** Under Title VI, investigations of complaints of discrimination must be handled promptly and thoroughly. When was the last time you reviewed your institution's investigation and reporting procedures? Ask your stakeholders for feedback on how your school's process is working and see if they have ideas to improve that process.
- 4. Review Curriculum.** It is always a good idea to review your school's curriculum to assure that courses of study reflect a variety of perspectives and experiences. Consider updating content of courses and lectures to offer students the opportunity to hear and discuss different viewpoints in a balanced, thoughtful way.
- 5. Connect with Student Organizations.** Now may be a good time to check in with student organizations that

support students from different backgrounds, including students who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian. Listen to their concerns to ensure students know the proper avenues to raise any concerns that may arise.

## **Conclusion**

Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Education Team](#) to obtain practical advice and guidance on how to appropriately address complaints under Title VI. We will continue to monitor the latest developments and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.