

October 27, 2022

Hon. Catherine Lhamon
Assistant Secretary for Civil Rights
U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, S.W., 4th Floor
Washington, D.C. 20202

Catherine.Lhamon@ed.gov

Dear Assistant Secretary Lhamon:

I am writing on behalf of the American Association of University Professors (AAUP) concerning the Department of Education's anticipated notice of a proposed regulation under Title VI to implement Executive Order 13899, which was issued by former President Trump in December 2019. Section 2 of EO 13899 incorporates the International Holocaust Remembrance Alliance (IHRA) definition of anti-Semitism and the "Contemporary Examples of Anti-Semitism" that accompany it. The AAUP urges the Department and its Office for Civil Rights to refrain from relying on or incorporating the IHRA definition and its accompanying "Contemporary Examples of Anti-Semitism" into any proposed Title VI regulation.

The AAUP, founded in 1915, is a non-profit organization of over 44,000 faculty, librarians, graduate students, and academic professionals at institutions of higher education across the country. The AAUP is committed to advancing academic freedom, the free exchange of ideas, and higher education's contribution to the common good.

In March 2022, the AAUP Committee on Academic Freedom and Tenure issued a [Statement on Legislative Threats to Academic Freedom: Redefinitions to Antisemitism and Racism](#), condemning the violations of academic freedom resulting from increased legislative restrictions on educational curriculum in public schools and universities. The Statement addresses recent proposed or enacted state laws that restrict public education in two areas: teaching about the history and perpetuation of racism in the United States; and teaching about the history, policies, and actions of the state of Israel. Legislative attacks on "critical race theory" is an example of the limits in the first area; legislated overly broad definitions of antisemitism that include political criticism of Israel is an example of the second. The Statement explains that the AAUP's long-standing opposition to political interference in teaching curriculum and academic content applies equally to legislative restrictions in both areas. "When politicians mandate the academic content that faculty can and cannot teach or the scholarly areas they can or cannot research or study, they prevent colleges and universities from fulfilling their missions." (quoting the AAUP *Statement on Legislation Restricting Teaching about Race*).

The AAUP's *Statement on Legislative Threats to Academic Freedom* recognizes that "the growth of antisemitism is a severe threat," which "can and should be addressed under existing civil rights laws as religious or race discrimination." The Statement objects, however, to recent state antidiscrimination laws – including laws applied to public schools and universities – that define antisemitism by

incorporating the IHRA definition and its “Contemporary Examples.” The use of the IHRA definition expands the statutory definition of antisemitism to encompass political criticisms of the state of Israel, which is speech protected by the First Amendment and academic freedom. Such overly broad statutory restrictions will create a chilling effect on teachers and students, who may avoid assigning reading materials or engaging in classroom discussions about controversial issues concerning the state of Israel or Zionism. However, academic freedom and freedom of speech is most urgently needed in “the protection of unpopular ideas, for popular ideas have less need for protection.” *Mahanoy Area School District v. B.L.*, 141 S. Ct. 2038, 2046 (2021).

The AAUP Statement notes that “Kenneth Stern, one of the authors of the IHRA definition, has stated that it ‘was never intended as a tool to target or chill speech on a college campus.’ Stern has objected to what he has called the ‘weaponizing’ of the definition, arguing that its misuse undermines efforts to detect and combat real instances of antisemitism.” It is significant that Stern has opposed attempts to enact legislation that incorporates the IHRA definition, including the proposed federal Anti-Semitism Awareness Act. That bill would have required the Department of Education, in applying Title VI of the Civil Rights Act of 1964, to consider factors and examples similar to those encompassed by the IHRA definition when evaluating complaints of antisemitic discrimination. The proposed law did not pass in Congress.

We urge the Department not to use its regulatory power to incorporate the overly broad definition of the IHRA and its accompanying examples into Title VI enforcement. Prohibitions on antisemitic discrimination can and should be enforced under Title VI without restricting political speech protected by academic freedom or the First Amendment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Irene Mulvey".

Irene Mulvey
President
American Association of University Professors

cc: Deputy Assistant Secretary for Policy Monique Dixon
Program Legal Director Alejandro Reyes
Anne Hoogstraten