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# **The Federal Update for November 10, 2023**

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: November 10, 2023

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## Legislation and Guidance

### ED Issues Guidance on Combating Anti-Semitism

The U.S. Department of Education’s Office for Civil Rights (OCR) issued a “Dear Colleague” letter this week addressing recent incidents of antisemitism and the obligations of schools and colleges to address such incidents and the environment they create.

The letter, signed by Assistant Secretary for Civil Rights Catherine Lhamon, acknowledged a number of allegations of hate crimes and harassment against Jewish, Israeli, Muslim, and Arab students. It highlights the legal obligation of educational entities to protect students from discrimination based on race, ethnicity, national origin, and shared ancestry. “It is your legal obligation under Title VI to address prohibited discrimination against students and others on your campus — including those who are or are perceived to be Jewish, Israeli, Muslim, Arab or Palestinian — in the ways described in this letter,” Lhamon wrote.

OCR states that schools must act when students experience “unwelcome conduct based on shared ancestry or ethnic characteristics that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.” This means that when schools are aware of such conduct, they must act to restore a student’s access to the program and ensure the conduct is not repeated. The letter acknowledges that Title VI does not cover discrimination based purely on religion but notes that such complaints may be handled by the U.S. Department of Justice. Types of conduct covered by Title VI, however, are wide-ranging and can include “racial, ethnic, or ancestral slurs or stereotypes” and when “discrimination is based on a student’s skin color, physical features, or style of dress that reflects both ethnic and religious traditions… discrimination is based on where a student came from or is perceived to have come from, including discrimination based on a student’s foreign accent; a student’s foreign name, including names commonly associated with particular shared ancestry or ethnic characteristics; or a student speaking a foreign language.”

The letter also links to several previous documents on discrimination and antisemitism from prior administrations, as well as definitions and contemporary examples of antisemitism to help schools identify problematic speech or conduct. Finally, it contains a link for students who have experienced discrimination to use in filing a complaint.

The [guidance is available here](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=&source=email).

Author: JCM

### House Committee Advances Bill to Expand Reporting on Foreign Gifts

The House Committee on Education and the Workforce advanced a bill this week that would place additional restrictions on the receipt of foreign gifts by institutions of higher education (IHEs). The Higher Education Act currently requires IHEs to report on foreign gifts, but the Defending Education Transparency and Ending Rogue Regimes Engaging in Nefarious Transactions Act, or DETERRENT Act, requires additional action by IHEs.

The DETERRENT Act lowers the reporting threshold on foreign gifts from $250,000 to $50,000 and requires reporting regardless of the amount of a gift or funds received from certain high-risk countries. IHEs would also be prohibited from entering into contracts with high-risk countries without a waiver from the U.S. Department of Education (ED). An amendment to the bill would provide a grace period for IHEs that have contracts in place with those countries. The legislation also imposes consequences for IHEs that do not comply with foreign gift reporting requirements, including potential loss of access to Title IV financial aid. The reporting requirements would extend to faculty and staff under the legislation as well, with employees at research IHEs being required to disclose individual foreign gifts and contracts. The legislation also directs ED to establish a database, accessible to the public, that would include all information on foreign gifts that IHEs report.

The legislation was advanced to the full House on a partisan vote, with Democrats expressing concerns over the administrative burden the bill would create for IHEs and the potentially chilling effect it could have on research. Speaker of the House Mike Johnson (R-LA) has not indicated when the bill may be brought to the floor for a vote, but it will likely not be considered until after appropriations action for fiscal year 2024 is completed.

Resources:

Bianca Quilantan, “House panel clears college foreign gift reporting bill,” *Politico*, November 8, 2023.

Author: KSC

***The Federal Update has been prepared to inform The Bruman Group, PLLC’s legislative clients of recent events in federal education legislation and/or administrative law. It is not intended as legal advice, should not serve as the basis for decision-making in specific situations, and does not create an attorney-client relationship between The Bruman Group, PLLC and the reader.***

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Posted by the California Department of Education, November 2023