

Policy Update – Higher Education Faces Growing Scrutiny

Lewis-Burke Associates LLC – November 17, 2023

Congressional scrutiny of higher education in the realms of foreign influence and concerns around campus responses to antisemitism have been growing. This scrutiny has been especially focused on the issues of foreign gift reporting, protecting students from discrimination on college campuses, and protecting free speech. Below are some of the most recent developments as it relates to congressional and U.S Department of Education (ED) actions in these areas.

Concerns around antisemitism

Several congressional committees have held hearings and roundtables over the last few weeks on concerns around antisemitism on college campuses. The House Subcommittee on Higher Education and Workforce Development held a hearing [“Confronting the Scourge of Antisemitism On Campus,”](#) during which Chairman Burgess Owens (R-UT), noted “The modern form of antisemitism is more subtle, for it is often disguised under progressive political innuendos. For example, Offices of Diversity, Equity, and Inclusion steeped deeply in the doctrine of Marxism are anything but inclusive for Jews. Evidence shows that campus DEI bureaucracies play a major role in propagating the spread of antisemitism.” Witnesses and members called for increased funding for U.S. Department of Justice (DOJ) prevention programs and expanded enforcement, investigations, and reviews of compliance with Title VI by ED’s Office of Civil Rights (OCR).¹

The charge of diversity, equity, and inclusion (DEI) efforts contributing to antisemitism on campuses builds on the larger efforts of congressional Republicans to target DEI in government funding bills. Some committee members also alleged that antisemitism on college campuses is tied to foreign gifts or contracts and that visas for international students should receive increased scrutiny. A Committee on Education and the Workforce [press release](#) in anticipation of a mark-up of the DETERRENT Act (more information below) claimed, “200 American colleges and universities received \$13 billion in previously undisclosed contributions from foreign regimes which has helped fuel antisemitism on college campuses.”

The House Committee on Ways and Means has held two hearings focused on higher education. At a [hearing](#) initially meant to focus on K-12 education tax policy, Chairman Jason Smith (R-MO) expressed, “Unfortunately, an absence of leadership on college campuses has allowed hostility toward Jewish students to escalate since October 7, and too many university presidents have sought to placate the most radical voices on their campuses.” Criticism of DEI efforts at universities were also raised during this hearing.

Another Ways and Means hearing [“From Ivory Towers to Dark Corners: Investigating the Nexus Between Antisemitism, Tax-Exempt Universities, and Terror Financing,”](#) echoed allegations made in other hearings including concerns over how foreign funding from countries of concern, deemed “dark charity,” are impacting U.S. universities’ response to antisemitic incidents and impacting the types of speech that are protected on campuses. During the hearing, allegations were made against university

¹ “Title VI of the Civil Rights Act of 1964 protects people from discrimination based on race, color or national origin in programs or activities that receive Federal financial assistance.”

<https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html>

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administration, endowments, and DEI as contributing to growing incidences of antisemitism on campus. During the hearing multiple House Republicans suggested that institutions of higher education should lose access to federal funding and their tax-exempt status if they are not able to decrease incidents of antisemitism on college campuses. The country of Qatar was flagged as of particular concern given their history of donating large sums of money to U.S. universities and its history of hosting Hamas leaders in exile.

Proposed initiatives to address concerns around rising antisemitism in higher education included increased funding for non-profit security grants, which provide support for increased campus security in spaces likely to be targeted for discriminatory violence; ensuring enforcement of Title VI of the *Civil Rights Act of 1965* and providing ED with enough resources to do so; funding the implementation of the National Strategy to Combat Antisemitism announced by President Biden in May, and increasing scrutiny by the FBI and IRS to look at and review domestic non-profits to ensure they are not donating funds to support terrorist groups, including Hamas.

A House Judiciary Committee held a hearing "[Free Speech on College Campuses](#)" that in addition to examining First Amendment issues also examined "the rise in antisemitism, anti-Israel sentiment, and violence towards students supporting Israel." Some members used this hearing to criticize DEI offices at U.S. universities while others noted how current congressional funding proposals to limit OCR funding would have a detrimental impact on campus safety.

In the U.S. Senate, Senator Bill Cassidy, Ranking Member of the Health, Education, Labor, and Pensions (HELP) Committee recently held a [bipartisan roundtable](#) to examine the increase in antisemitic incidents on college campuses and discuss the obligations of the ED to respond to incidents and ensure students are not being discriminated against on college campuses. Senator Cassidy and other committee members also requested HELP schedule a full hearing on these issues and the Republican members of the Committee recently sent [a letter](#) to ED calling on them to ramp up enforcement of Title VI of the *Civil Rights Act of 1964* because universities are "unwilling or unable" to protect their Jewish students.

Other congressional action related to antisemitism in higher education include:

- A [letter](#) from Rep. Rudy Yakym (R-IN) to more than 100 institutions of higher education noting "one or more incidents on your campus in recent weeks raise questions about the climate of inclusion fostered by the Office for Equity, Diversity, Inclusion, and Belonging for Israeli and Jewish students and faculty."
- [Passage](#) of *H.Res.798 - Condemning the support of Hamas, Hezbollah, and other terrorist organizations at institutions of higher education, which may lead to the creation of a hostile environment for Jewish students, faculty, and staff*, by a vote of 396-23.
- Introduction of *H.Res.833 - Condemning antisemitism on college campuses*.
- Approval of an amendment to the FY 2024 House Labor-H bill from Rep. Lawler (R-NY) – *Amendment No. 77 – Increases/decreases funding at the Department of Education's Office of Civil Rights to prioritize the investigation of antisemitic incidents on college campuses*

Department of Education efforts include:

- An announcement of "[Open Title VI Shared Ancestry Investigations of Institutions of Higher Education and K-12 Schools](#)." ED notes that it will update weekly institutions under investigation for possible discrimination based on shared ancestry or ethnic characteristics on the OCR website.

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- A [Dear Colleague Letter](#) to both pre-K-12 schools and institutions of higher education reminding them of the statutory requirement under Title VI of the *Civil Rights Act of 1965* to create a harassment and discrimination-free educational environment for all students.
- A [toolkit](#) highlighting resources for schools to use to combat hate and bias on campuses.
- ED is also hosting listening sessions with educational leaders and Jewish and Middle Eastern students to learn more about what schools are doing to keep students safe. In May, ED announced an [Antisemitism Awareness Campaign](#) and announced a [National Strategy to Combat Antisemitism](#).
- ED announced the creation of a [National Strategy to Combat Islamophobia](#). All of these efforts will utilize cross agency resources to decrease instances of antisemitism and Islamophobia across the United States.
- The “[Discrimination Based on Shared Ancestry or Ethnicity in Response to EO 13899 on Combating Anti-Semitism and EO 13985 on Advancing Racial Equity and Support for Underserved Communities](#)” proposed rule remains on the ED’s regulatory agenda.

Concerns around foreign influence

As mentioned earlier, some policymakers have been making the claim that foreign gifts and contracts to institutions of higher education are fueling antisemitic incidences on campus. The U.S. House of Representatives Committee on Education and the Workforce, chaired by Representative Virginia Foxx (R-NC) recently marked up the *Defending Education Transparency and Engaging Rogue Regimes Engaging in Nefarious Transactions Act* ([DETERRENT Act](#)). This legislation, which was advanced to be considered by the full House of Representatives, would lower the *Higher Education Act* Section 117 foreign gift reporting threshold from \$250,000 to \$50,000 for all countries and lower the reporting threshold to \$0 for certain countries determined to pose national security risks to the United States, including China, North Korea, Iran, and Russia. It would also increase reporting requirements for Section 117 by requiring annual disclosures from institutions of higher education and disclosure of the name of the individual, benefactor, or department receiving the foreign gift as well as its purpose and any restrictions imposed on the campus in exchange for acceptance of the gift or agreement to a foreign contract. This information would be collected by the U.S. Department of Education (ED) and put into a publicly searchable database on ED’s website.

In addition to increasing the amount of information required to be disclosed regarding foreign gifts to institutions of higher education, the DETERRENT Act would also require the disclosure of foreign gifts to individual faculty members and staff at institutions of higher education with more than \$50 million in annual federal research funding, requires private universities with endowments larger than \$6 billion, or with investments in countries of concern totaling \$250 million or more, to disclose details of all investments made in foreign countries of concern, and institutes fines for institutions that are noncompliant. While there was bipartisan agreement that security of sensitive federally funded research was of tantamount importance, Democrats on the committee expressed concerns that the bill did not do enough to solve the problem of security of sensitive research but instead increased reporting burden on institutions of higher education and created privacy risks due to the amount of information that would be required to be publicly disclosed. Committee Republicans lauded the legislation as a means to close what they perceive as Section 117 reporting loopholes and make college campuses more secure. Although Chairwoman Foxx has an agreement from Speaker Mike Johnson (R-LA) for the DETERRENT Act to be considered on the House floor “soon,” it is unclear when the House of Representatives will vote on the DETERRENT Act and if the bill will be considered on its own or as a part of a larger effort to reauthorize the *Higher Education Act*.

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While it is highly unlikely that a reauthorization of the *Higher Education Act* happens before the end of the calendar year, it is expected that oversight of institutions of higher education and specifically interest in rates of antisemitic incidents and foreign influence will continue into 2024, and legislation addressing these issues could be attached to government spending bills or legislation like the *National Defense Authorization Act*.