



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

AUG 19 2013

Dr. Michael V. Drake
Chancellor University of California, Irvine
The Chancellor's Office
510 Administration
Irvine, CA 92697-1900

(In reply, please refer to OCR case number 09-07-2205)

Dear Chancellor Drake:

In a letter dated April 25, 2008, the U.S. Department of Education, Office for Civil Rights (OCR), notified you that it was opening for investigation a complaint against the University of California, Irvine (University). The complaint alleged that Jewish students were harassed and subjected to a hostile environment, on the basis of their national origin, with respect to the following incidents:

1. *Hostility toward a student who just completed her freshman year because she is Jewish and pro-Israel.*
2. *Harassment of a student reporter as she attempted to interview Muslim Student Union (MSU) guest Ward Churchill in May 2007 during "Holocaust Memorial Week." Specifically, a Muslim student repeatedly pushed a camera in the student reporter's face. The student filed a complaint with the University, but was not satisfied with the University's response.*
3. *Harassment by a University student of a rabbi visiting the campus in May 2007 for an "Israel: Apartheid Resurrected" event. Specifically, the student cursed at the rabbi and asked him, "Don't you have somebody's money to steal?" Nearby students, including at least one Jewish student, heard the comment.*
4. *Harassment of a Jewish student at an MSU-sponsored event on May 16, 2007. Specifically, another student called the Jewish student a "whore" and a "slut" and repeatedly used the word "f---" while yelling at her. The individual allegedly yelled at other students present, calling them "animals."*
5. *Coercion and intimidation of a student by MSU students following his attempt to film an MSU event in May 2007.*
6. *A University administrator harassed a Jewish student based on her national origin by calling her a "troublemaker" after she complained to him about an allegedly harassing incident.*
7. *At the MSU's request, the University prevents the recording of MSU-sponsored speakers, even ejecting students who attempt to make such recordings from events.*

8. *The University has failed to discipline MSU members for disseminating false information that inflames hatred for Jews and Israel, despite Jewish students complaining that the falsehoods violate University codes of conduct. Specifically, during May 2007's "Israel: Apartheid Resurrected" week, the MSU distributed flyers attributing, allegedly falsely, an anti-Israel statement to Nelson Mandela.*
9. *During spring 2007 events, the University failed to stop MSU members from displaying "UC" on t-shirts and flyers containing anti-Israel sentiments, for example, t-shirts reading, "UC Intifada: How You Can Help Palestine." The University did not respond to Jewish students' complaints that such uses violate University policies that prohibit the use of the University's name, insignia and seal, for political purposes and activities.*

OCR enforces Title VI of the Civil Rights Act of 1964 and its implementing regulations. The regulations, at 34 C.F.R. §100.3(a) and (b), prohibit discrimination based on race, color or national origin by recipients of Federal financial assistance. Universities are responsible under Title VI and the regulations for providing students with a nondiscriminatory educational environment. Harassment of a student based on race, color or national origin can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities. Harassment against students who are members of a discrete religious group, including Jews, triggers a university's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics, rather than solely on its members' religious practices. A university also has responsibility under Title VI when its students are harassed based on their actual or perceived citizenship or residency in a country whose residents share a dominant religion or a distinct religious identity. The University receives funds from the Department and is subject to Title VI and the regulations.

OCR has consistently maintained that the statutes and regulations that it enforces protect students from prohibited discrimination, and do not restrict the exercise of expressive activities or speech that are protected under the First Amendment of the U.S. Constitution. This is particularly relevant in the university environment where academic freedom fosters the robust exchange of ideas. OCR's 1994 guidance regarding harassment on the basis of race, color, or national origin stated that in determining whether a hostile environment existed, the inquiry looks at how the conduct would have adversely affected the enjoyment of some aspect of the recipient's educational program by a reasonable person, of the same age and race as the victim, under similar circumstances. (Racial Incidents and Harassment against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11448, 11449 (1994). However, the guidance cautioned that OCR does not "endorse or prescribe speech or conduct codes or other campus policies to the extent that they violate the First Amendment." (*Id.* at 11450, n.7.) In 2003, OCR issued a "Dear Colleague" letter clarifying OCR's enforcement standards in light of First Amendment protections. In addressing allegations of harassment, OCR recognizes that in order to be prohibited by the statutes and regulations that OCR enforces, the harassment must include

something beyond the mere expression of views, words, symbols or thought that a student finds personally offensive. The offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment. Under OCR's standards, in order to establish a hostile environment conduct must be sufficiently severe, persistent or pervasive as to limit or deny the student's ability to participate in or benefit from the educational program. This requires that conduct be evaluated from the perspective of a reasonable person in the alleged victim's position.

In its investigation, OCR interviewed the complainant and each of the students identified by the complainant as witnesses for each of the allegations. OCR also carefully reviewed all documentation and information provided by the complainant and the University.

Based on the results of the investigation, OCR is closing the complaint. The facts relevant to OCR's determination and the reasons therefor are set forth below.

1. *Hostility toward a student who just completed her freshman year because she is Jewish and pro-Israel.*

In her interview with OCR, the witness described a relationship with Muslim students who lived in her dormitory so contentious that she felt compelled to move to a new residence during the spring 2007 semester. According to the student, the animosity stemmed from the student's objection to the Muslim students' protests at a lecture that Daniel Pipes delivered on campus and the Muslim students' reactions to her objection. The student stated that she had been friends with the Muslim students until she learned of their protest, at which point she stopped talking to them. The Muslim students responded by ceasing communication with her. This situation ultimately led to a confrontation between the student and the Muslim students, during which she called them anti-Semitic and they called her a racist. Subsequently, the student and her mother requested that the student be moved to a new dormitory; the request was granted. These facts do not support a conclusion that the student was harassed because of her national origin; rather, they demonstrate that the conflict was related to the different political views of the participants.

The student also stated that she perceived general hostility toward herself and Jewish students at anti-Israel events, but did not describe any specific conduct other than "unwelcoming looks." This allegation fails to state a claim of unlawful harassment as "unwelcoming looks," without more, are not sufficiently serious to establish that college students were subjected to a hostile environment.

The student further stated that an unknown person smashed a pumpkin placed outside her campus apartment on which she had carved "shalom"; she stated that she did not report the smashing of the pumpkin to the University. This allegation fails to state a claim because there is no evidence that the pumpkin was smashed because of the

student's national origin; furthermore, there is no evidence that the University knew or reasonably should have known about the incident.

- 2. Harassment of a student reporter as she attempted to interview MSU guest Ward Churchill in May 2007 during "Holocaust Memorial Week." Specifically, a Muslim student repeatedly pushed a camera in the student reporter's face. The student filed a complaint with the University, but was not satisfied with the University's response.*

The student informed OCR that students belonging to MSU often positioned cameras in the faces of individuals with pro-Israel or politically conservative views as a tactic to intimidate them, and surmised she was targeted during the event that took place in May 2007 because she was wearing a t-shirt reading "I love Israel." She stated that, although she was born in Israel, she did not think students on campus knew that she was Israeli, or even that she was Jewish. However, she stated that she believed that she was commonly recognized as pro-Israel, and believed she was targeted because of this. This allegation fails to state a claim because there is insufficient evidence that the student was subjected to unlawful harassment because of her national origin; rather, the evidence supports the conclusion that the alleged harassment was based on the student's political views.

- 3. Harassment by a University student of a rabbi visiting the campus in May 2007 for an "Israel: Apartheid Resurrected" event. Specifically, the student cursed at the rabbi and asked him, "Don't you have somebody's money to steal?" Nearby students, including at least one Jewish student, heard the comment.*

OCR interviewed two students identified by the complainant as witnesses to this incident. These students understood the statement to the rabbi to be a slur against Jews, and stated that Jewish students who overheard the comment were offended. Although offensive, this statement is not sufficiently serious as to deny or limit students' ability to participate in or benefit from the University's program.

- 4. Harassment of a Jewish student at an MSU-sponsored event on May 16, 2007. Specifically, another student called the Jewish student a "whore" and a "slut" and repeatedly used the word "f---" while yelling at her. The individual allegedly yelled at other students present, calling them "animals."*

The student informed OCR that she felt the alleged harasser singled her out because she was wearing a pro-Israel t-shirt, and because he heard her express disagreement with statements of an MSU guest who was speaking when the incident occurred. As stated by the student subjected to the alleged harassment as well as witnesses to the incident interviewed by OCR, the student was targeted because she was perceived to be pro-Israel. This allegation fails to state a claim because there is insufficient evidence

that the student was subjected to unlawful harassment because of her national origin; rather, the evidence supports the conclusion that the alleged harassment was based on the student's political views. Furthermore, even if the witness had alleged that these comments constituted sexual harassment, they were not sufficiently serious as to deny or limit the student's ability to participate in or benefit from the University's program.

5. Coercion and intimidation of a student by MSU students following his attempt to film an MSU event in May 2007.

The student informed OCR that he was videotaping a speech given in May 2007 by a speaker invited to campus by the MSU when several members of the MSU told him to stop filming. He stated that he was photographed twice by an MSU student with members of the MSU following the event. The witness stated that he is not Jewish and that he had never had any contact with these individuals prior to the event. He further stated that he believed that the reason he was singled out by the members of the MSU was because he was filming. A University administrator witnessed this incident and informed the student that he was not permitted to film the event. The student stated that he subsequently filed an anonymous complaint with the University in which he complained that he was not permitted to film the MSU event; he stated that he did not know whether the University investigated his complaint.

The student also described an incident in May 2008. According to the student, because he and his brother were filming the audience at another MSU event, an MSU member charged at and threatened his brother. At the same event, an MSU member blocked the student's path and took pictures of him. The student also described additional instances of antagonism by MSU members when he attempted to film subsequent events. However, because some MSU members had called him a "Zionist" and a "neo-con," the student stated that he believed that they perceived him to be a supporter of Israel and of students who supported the state of Israel. Although the University's Director of Student Conduct witnessed the incident involving the student and his brother, and invited the student to file a complaint, the student did not do so.

These allegations fail to state a claim because the facts demonstrate that the student was the subject of the alleged harassing incident in May 2007 not because of his national origin but rather because of his filming activities and, in the May 2008 and the later events, because of his perceived support for the state of Israel and for students who were supporters of the state of Israel.

6. A University administrator harassed a Jewish student based on her national origin by calling her a "troublemaker" after she complained to him about an allegedly harassing incident.

The student, who is the subject of Allegation Two above, informed OCR that she had a history of actively condemning pro-terrorist and academically dishonest events, blogging about campus events and complaining to administrators about on-campus treatment of

Jewish students, pro-Israel students and students perceived to be pro-Israel. The specific alleged disparaging statement made about her by the administrator was, according to the complaint, in response to the student's objection to an MSU student putting a camera in her face. As discussed under Allegation Two, the student stated to OCR that she believed that this incident occurred because she is pro-Israel. This allegation fails to state a claim because there is insufficient evidence that the student was subjected to unlawful harassment because of her national origin; rather, the evidence supports the conclusion that the alleged harassment was based on the student's political views.

7. *At the MSU's request, the University prevents the recording of MSU-sponsored speakers, even ejecting students who attempt to make such recordings from events.¹*

The complainant informed OCR that she did not know of any student groups other than the MSU that have requested that the University prevent the recording of their events or speakers. Because there is no evidence that the University treated any other similarly-situated student groups differently (i.e., by denying their requests to prevent recording of their events and ejecting students who attempt to make such recordings), there is no basis to infer that the University's actions constituted unlawful discrimination against Jewish students on the basis of their national origin.

8. *The University has failed to discipline MSU members for disseminating false information that inflames hatred for Jews and Israel, despite Jewish students complaining that the falsehoods violate University codes of conduct. Specifically, during May 2007's "Israel: Apartheid Resurrected" week, the MSU distributed flyers attributing, allegedly falsely, an anti-Israel statement to Nelson Mandela.*

The distribution of flyers by MSU members expressing allegedly false and inflammatory anti-Israel information during "Israel: Apartheid Resurrected" week in May 2007 constituted expression by MSU members on matters of public concern directed to the University community. In the university environment, exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience. In this context, the event described by the complainant does not constitute actionable harassment.

9. *During spring 2007 events, the University failed to stop MSU members from displaying "UC" on t-shirts and flyers containing anti-Israel sentiments, for example, t-shirts reading "UC Intifada: How You Can Help Palestine." The University did not respond to a Jewish student's complaint that such use*

¹ The complainant acknowledged that the University has changed its practice since OCR opened this complaint.

violates University policies that prohibit the use of the University's name, insignia and seal, for political purposes and activities.

OCR's investigation revealed that the student reporter who was the subject of Allegation Two above sent an e-mail to the University's Director of Student Conduct on May 30, 2007, in which she complained about the use of "UC" on t-shirts and flyers that contained anti-Israel sentiments and cited the University policy that she believed that the MSU had violated. The Director responded to the student reporter on May 31, 2007, acknowledging her complaint and stating, "This e-mail is to verify that I have received your complaint and that we will look into this matter regarding the use of the university name."

This allegation does not state a claim because there is no evidence that the University's alleged failure to enforce its policies was based on discrimination that is prohibited by Title VI.

OCR is closing the complaint as of the date of this letter and will notify the complainant by concurrent letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and it should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR routinely advises recipients of Federal funds and public education entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

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If you have any questions about this letter, please call our office at 415-486-5555.

Sincerely,

A handwritten signature in black ink, appearing to be 'ZP', with a long horizontal line extending to the right.

Zachary Pelchat
Team Leader