



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

July 31, 2014

Morton A. Klein
President
Zionist Organization of America
4 East 34th Street, Third Floor
New York, New York 10016

Re: Case No. 02-11-2157
Rutgers University

Dear Mr. Klein:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), regarding the above-referenced complaint you filed against Rutgers University. You alleged that the University discriminated on the basis of national origin (Jewish ancestry/ethnicity) by failing to respond appropriately to a complaint filed on April 6, 2011, alleging that students were subjected to harassment and different treatment because of their national origin. Specifically, you alleged that you complained to the University that Jewish students were harassed and treated differently in the following manner: the Outreach Coordinator for the University's Center for Middle East Studies harassed a Jewish student (the Student) by (a) physically threatening him in November 2009, and (b) posting anti-Semitic comments about him on Facebook on December 9, 2010 (Allegation 1); other students harassed the Student by posting threatening comments about him on Facebook on or about January 31, 2011 (Allegation 2); and a student group called "Belief Awareness Knowledge and Action" (BAKA) treated Jewish students differently by charging an admission fee for an event only to Jewish and pro-Israel students on or about January 29, 2011 (Allegation 3). Hereinafter, you will be referred to as "the complainant."

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color and national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.

Harassment of students on the basis of national origin is a form of discrimination prohibited by Title VI and its implementing regulation.¹ Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school district. A school district is responsible for addressing harassment incidents about which it knows or reasonably should have known. When responding to harassment, a school district must take immediate and appropriate action to investigate or otherwise determine what occurred. The inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a school district must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

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 or regulate the content of protected speech or expression. 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 reviewed information that the complainant and the University submitted. OCR also interviewed the complainant; University staff; students, including the Student; and former students. OCR made the following determinations.

¹ Discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics is protected under Title VI. Thus, harassment against students who are members of any religious group triggers a recipient's Title VI responsibilities when the harassment is based on the group's actual or perceived shared ancestry or ethnic characteristics.

With regard to incidents of student-on-student harassment, the University applies its Code of Student Conduct and the Student Life Policy against Verbal Assault, Harassment, Intimidation, Bullying and Defamation (the Student Life Policy). Both the Code of Student Conduct and the Student Life Policy prohibit “bullying, intimidation, and harassment” that “substantially disrupts or interferes with the orderly operation of the institution or the rights of other students to participate in or benefit from the educational program.”² The Code of Student Conduct also prohibits “use of force against any person or property or the threat of such force.” The Code of Student Conduct and Student Life Policy state that the above-referenced conduct constitute separable offenses, which may result in either expulsion or suspension from the University, or lesser sanctions when appropriate. The Code of Student Conduct and Student Life Policy state that students should report incidents to the dean or dean of students of their college, school or campus, or three other designated individuals (the Director of Student Conduct, Associate Chancellor for Student Affairs, or Assistant Director for Student Life). Students suspected of violating the Code may be reported by any individual to the Director of Student Conduct, who conducts a preliminary review and determines whether to dismiss the complaint or proceed with further disciplinary action.

With regard to incidents of harassment involving employees, the University applies the “Policy Prohibiting Discrimination and Harassment” (the Policy), which instructs individuals to report harassment immediately to a University Advisor or to the Director of the Office of Employment Equity (the OEE Director). The Harassment Complaint Process states that the OEE Director will evaluate the complaint, with the discretion to conduct a preliminary fact-finding investigation, after which the OEE Director may dismiss the complaint if it does not raise a violation of the Policy, or proceed with a complaint investigation by appointing an investigator and reviewing a written report.

OCR determined that the complainant sent a letter to the University, dated April 6, 2011, in which the complainant raised Allegations 1, 2 and 3. By letter to the complainant, dated April 26, 2011, the University informed the complainant that it had addressed the incidents raised in her complaint, but could not provide specific information due to student privacy rights.³

With respect to Allegation 1(a), the complainant alleged that the University failed to respond appropriately to her complaint that the Outreach Coordinator for the University’s Center for Middle East Studies harassed the Student because of his national origin by physically threatening him in November 2009. OCR determined that in her complaint filed with the University, the complainant alleged that this person “physically threatened and tried to intimidate [the Student]” following a student government meeting in November 2009. Specifically, the complainant claimed in her complaint filed with the University that this person “rushed toward” the Student and “began yelling words such as, ‘I’m Palestinian. Do you want to take me on? Do you want

² This conduct is defined, in part, as: “[m]aking, or causing to be made, a communication or communications (including the use of electronic and/or social media) anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm; [s]ubjecting another to striking, kicking, shoving or offensive touching, or threatening to do so; or [e]ngaging in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.”

³ The complainant again raised Allegations 1, 2 and 3 in a letter to the University dated June 21, 2011; and by letter dated June 29, 2011, the University responded that it had addressed the incidents raised in the complainant’s letter, but could not discuss conduct involving any student(s) or personnel.

to fight? I have thick blood. Try me.” The complainant further stated in her complaint filed with the University that this person was “pounding on her chest and pointing to her necklace, which was a silhouette of Israel covered by the Palestinian flag.”

The complainant did not name any witnesses in her complaint filed with the University, other than the Student. OCR interviewed the Student, who corroborated the complainant’s account of the incident. The Student advised OCR that when this person approached him, he was speaking with students, including a reporter for the student newspaper, and was not engaging in any inappropriate conduct. The Student stated that this person was “looking for a fight.” Another student who spoke at the meeting with the Student informed OCR that she and the Student were responding to questions from students about the event when this person “rushed” towards them and made the comments set forth by the complainant in her complaint of April 6, 2011. She further stated that this person was “very physical,” “invading the Student’s personal space,” “beating on her chest,” and “trying to physically provoke [the Student]”; and that this person said “I’m Palestinian, do you want to kill me or my children?”

OCR determined that the person named in the complaint was not employed by the University as the Outreach Coordinator for the University’s Center for Middle East Studies or in any other capacity at the time of this incident on or about November 19, 2009; rather, she was enrolled as a student (Student 2).⁴ OCR determined that the Student, who is Jewish, and was a sophomore at the University during academic year 2009-2010, wrote an opinion column for the “Targum,” the University’s student newspaper.

OCR determined that the Student and Student 2 attended a student government meeting on or about November 19, 2009.⁵ The University informed OCR that during the meeting, the Student spoke against approving the Palestinian Children’s Relief Fund (PCRF) to receive funds. The Director of Student Involvement (the Director) informed OCR that following the meeting, she witnessed the Student being “very aggressive” and “yelling in the face” of a PCRF representative. The Director stated that Student 2 intervened by saying “deal with me, not with her,” and pointed to her chest. The Director stated that she asked the Student to calm down, but he did not; and she then asked the Student and Student 2 to step away from each other. The Director stated that she also called University police in case the situation escalated; however, the Student and Student 2 both left prior to University police’s arrival.

Later that day, the Director sent an electronic mail message (email) to the Executive Director of Student Life (the Executive Director) and the Vice President of Student Affairs (the Vice President) summarizing what had occurred.⁶ The Director informed OCR that she witnessed no conduct by either Student 2 or the Student that violated the Code of Student Conduct, or any conduct that indicated to her that Student 2 was harassing the Student because he is Jewish; rather, Student 2 appeared to be protecting the PCRF representative.

⁴ The University informed OCR that Student 2 did not become a part-time temporary employee at the University’s Center for Middle East Studies, performing clerical duties, until December 9, 2010; more than a year after this incident. At no time was Student 2 the Center’s Outreach Coordinator.

⁵ The purpose of the student government meeting was to designate a charity to receive “meal swipes” from students, who would donate the cost of a meal to the selected organization.

⁶ The email stated that the Director “diffused” a “heated confrontation,” but did not name the parties involved or describe what had occurred.

No complaints were filed with the University regarding the incident until the complainant filed her complaint on April 6, 2011, approximately 14 months later. Based on the Director's observations and report of the incident, the University determined that no further action was necessary in response to the complainant's complaint regarding the incident. Specifically, the Director had witnessed the incident, and the Director's account of the incident differed from the Student's account. Further, the Director did not indicate that she believed that the incident occurred because of the Student's national origin. The complainant did provide any additional information in her complaint to the University regarding the incident.

Based on the above, OCR determined that a heated exchange and dispute occurred between the Student and Student 2 that related to possible financial support for the Palestinian Children's Relief Fund. OCR determined that this allegation fails to state a claim, because there is insufficient evidence that the Student was subjected to unlawful harassment because of his national origin; rather, the evidence supports the conclusion that the alleged harassment was based on the student's political views. 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 events that the complainant described do not constitute actionable harassment. Accordingly, OCR will take no further action with respect to Allegation 1(a).

With respect to Allegation 1(b), the complainant alleged that the University failed to respond appropriately to her April 2011 complaint that Student 2 harassed the Student because of his national origin, by posting anti-Semitic comments about him on Facebook on December 9, 2010. OCR determined that in her complaint to the University, dated April 6, 2011, the complainant stated that Student 2 posted comments on Facebook in which she referred to the Student as a "racist Zionist pig!"

OCR determined that Student 2 did not post any messages on the Student's Facebook page; rather, on December 9, 2010, Student 2 responded to a Facebook post of one of her own friends, in which Student 2's friend stated that he had written to the student newspaper concerning an editorial written by the Student about the PCRF. Student 2 wrote on her friend's Facebook post, "I wrote them too... hopefully they will publish something we sent out as answer to that racist Zionist pig!!!!!! Btw... put his name in [Facebook] search... he has a [Facebook] hate page & a fan page... everyone should write the [student newspaper]... your voices are being heard... keep it that way!" It is unclear how the Student was able to view this posting, or who might have brought it to the Student's attention, since the posting was not made on the Student's Facebook page. The University stated that it did not receive any complaints regarding this Facebook post prior to the complainant's complaint dated April 6, 2011.

The University informed OCR that since Student 2 had become a part-time temporary employee as of December 9, 2010, after receiving the complaint dated April 6, 2011, the University referred the complaint to the University's Director of the Office of Employment Equity (OEE Director) for investigation pursuant to the University's "Harassment Complaint Process," because the incident involved an employee. The OEE Director informed OCR that she reviewed Student 2's Facebook comment and determined that it did not violate the University's policies, because it was made on Student 2's personal Facebook page and not on the Student's page; was

made outside of work hours; did not identify Student 2 as a University employee; and was a one-time incident. Nevertheless, the OEE Director stated that on April 14, 2011, she instructed Student 2's supervisor, the Director of the Center for Middle Eastern Studies, to issue a verbal warning to Student 2 regarding the incident. OCR determined that following the verbal warning, Student 2 deleted the comment from her Facebook page, and posted no further comments regarding the Student.

OCR determined that this allegation also fails to state a claim, because there is insufficient evidence that the Student was subjected to unlawful harassment because of his national origin; rather, the evidence supports the conclusion that the speech involved in this allegation was protected under the First Amendment of the U.S. Constitution as the public expression of an employee.⁷ Moreover, the one-time comment, without more, is not sufficiently serious to establish that the Student was subjected to a hostile environment on the basis of national origin. Accordingly, OCR will take no further action regarding Allegation 1(b).

With respect to Allegation 2, the complainant alleged that University failed to respond appropriately to her April 2011 complaint that other students harassed the Student because of his national origin, by posting threatening comments about him on Facebook on or about January 31, 2011. The complainant stated in her complaint to the University that another student (Student 3) posted the following comments on Facebook: "Im [sic] a pretty angry person"; "Id [sic] be happy to see him beat with a crowbar"; and "[v]iolence doesn't solve problems but it shuts up people who shouldn't speak." The complainant further stated in her complaint to the University that seven of Student 3's friends clicked "like" in support of the comment; and another responded by posting, "[o]r makes them martyrs, furthering the strength behind their beliefs," "[a]nd skinning them alive so they see the afterlife." The complainant further stated in her complaint to the University that the Student promptly complained about the Facebook posts to the Dean of Students at the University's College Avenue campus (the Dean), and the Dean informed the Student that he could not formally charge Student 3 with a violation of the Code of Student Conduct; but that Student 3 was given a verbal warning. The complainant asserted in her complaint to the University that Student 3 should have been disciplined pursuant to the Code of Student Conduct because it prohibits "threatening to use force," and Student 3's posting was sufficient evidence of a threat. The complainant also asserted in her complaint to the University that the University should have taken action against the other seven individuals who "liked" Student 3's post, and the individual who posted the follow-up comment.

OCR determined that on January 31, 2011, the student newspaper published an opinion piece written by the Student, entitled "BAKA Must End Hateful Tactics," in which the Student criticized BAKA for its actions at the event described in Allegation 3, *infra*. OCR determined the students referenced by the complainant did not post any messages on the Student's Facebook page; rather, OCR determined that Student 3 posted a comment on Student 3's own personal Facebook page stating "[a]s I was reading [the Student's] column this morning, I realized how Im

⁷ See *Rodriguez v. Maricopa County Community College District*, 605 F.3d 703 (9th Cir. 2010) – "Harassment law generally targets conduct, and it sweeps in speech as harassment only when consistent with the first amendment." "[t]he desire to maintain a sedate academic environment...[does not] justify limitations on [an employee's] freedom to express himself on political issues in vigorous, argumentative, unmeasured, and even distinctly unpleasant terms." quoting *Adamian v. Jacobsen*, 523 F.2d 929, 934 (9th Cir. 1975).

[sic] a pretty angry person. Id [sic] be happy to see him beat with a crowbar. Violence doesn't solve problems but it shuts up people who shouldn't speak.'" It is unclear how the Student was able to view this posting, or who might have brought it to the Student's attention, since the posting was not made on the Student's Facebook page.

The Dean informed OCR that he met with the Student the same day that he received the complaint from the complainant. The Dean informed OCR that pursuant to the Code of Student Conduct, he conducted a preliminary review to determine whether the evidence was sufficient to proceed with pursuing disciplinary sanctions against Student 3. The Dean stated that he found no evidence that Student 3 wrote his post based on the Student's "heritage, religion or ethnic background." The Dean further stated that he determined that the post did not appear to be a "real threat". OCR noted that the comment was not posted on the Student's Facebook page, but on Student 3's personal Facebook page; and, Student 3 did not indicate in the comment that he personally was going to physically harm the Student. The Dean stated that he met with Student 3, who was remorseful and regretted his choice of words. The Dean stated that he determined that Student 3 had not intended his words as a threat, and issued Student 3 a verbal warning.

The University informed OCR that it took no further action regarding the seven individuals who clicked "like" and the individual who made the follow-up comment, because it was unclear if these individuals were University students; and because the responses constituted free speech and did not require investigation. The University further informed OCR that it did not believe that the follow-up comment was a threat to the Student, and it did not constitute a violation of University policy, because the message was to deter violence rather than encourage it. The University's position was that the follow-up comment, which was written in response to Student 3's post on Student 3's personal Facebook page and not on the Student's Facebook page, "suggests that the violence described by Student 3 turns people 'who shouldn't speak' into martyrs, it strengthens their beliefs, and it secures their position in the afterlife." Thus, the University concluded that the statement actually discouraged violence, since the statement described violence as an ineffective means. The University concluded that the follow-up comment could not be interpreted as a threat to the Student, and did not constitute a violation of University policy. OCR determined that the investigation was completed within four weeks.

OCR determined that on February 28, 2011, the Student sent an email to the Dean inquiring about the status of his complaint.⁸ By email dated March 3, 2011, the Dean responded that "based on the evidence, there were not enough grounds to formally charge [Student 3] with a violation of the Student Code of Conduct," but that he had met with Student 3 and "had a discussion of the issues," and issued him a warning. OCR did not find, and the complainant did not allege, that any of the individuals posted any further comments about the Student on Facebook.⁹

⁸ The Dean informed OCR that under prior practice, students were not notified of the results of conduct investigations because of privacy issues; however, this practice was changed during academic year 2011-2012, so that students are now notified of the outcomes.

⁹ The complainant alleged that one of the individuals called the Student "racist and xenophobic" in a comment in the Student newspaper. OCR reviewed the comment, and determined that in commenting on a column by the Student about New York Police Department surveillance of Muslims, the individual stated that this was "another instance of moronic xenophobia," and that the Student defended "racist policies." OCR determined that the comment was

Based on the foregoing, OCR determined that this allegation fails to state a claim, because there is insufficient evidence that the Student was subjected to unlawful harassment because of his national origin; rather, the evidence supports the conclusion that the speech involved in this allegation was protected under the First Amendment of the U.S. Constitution as public expression. Specifically, the original post and comment on the post were made on Student 3's personal Facebook page. Similarly the students' "liking" the post was done on Student 3's personal Facebook page. All were made in response to the Student's newspaper opinion piece. The University specifically concluded that the original post and comment on the post did not constitute threats to the Student, and thus were not a violation of University policy. The University's conclusions were not unreasonable in the context of evidence that the comments were made only on one occasion and on Student 3's personal Facebook page.

With respect to Allegation 3, the complainant alleged that the University failed to respond appropriately to her April 2011 complaint that BAKA treated Jewish students differently, on the basis of their national origin, by charging an admission fee for an event only to Jewish and pro-Israel students on or about January 29, 2011. OCR determined that on January 29, 2011, an event was held at the University entitled "Never Again for Anyone,"¹⁰ which was advertised as "free and open to the public." The complainant asserted in her complaint to the University that when Jewish and pro-Israel students and community members, who had planned a "peaceful response,"¹¹ arrived to attend the event, an outside organization that co-sponsored the event announced a mandatory admission fee of \$5.00. The complainant alleged in her complaint to the University that the admission fee was "not enforced fairly and equally," because BAKA members and "others who were deemed friendly to BAKA's cause" based on their appearance were admitted to the event for free. The complainant also stated in her complaint to the University that an "unusually large number of students" were provided with green volunteer wristbands and allowed to enter without paying. The complainant further alleged in her complaint to OCR that the University failed to investigate the alleged discrimination at the event. OCR determined that the complainant did not mention individual students' names in her complaint to the University, but referred to the witnesses in her complaint as students or Jewish students.

The University informed OCR that immediately following the event, prior to the complainant's complaint, the Executive Director coordinated an investigation of the event in response to other complaints made by Jewish students. The Executive Director reviewed contemporaneous reports from University staff about the event, and also obtained information from University staff and police who attended the event. Additionally, students and members of the public provided additional information to the President, the Executive Director, and other University staff, after contacting them to express concerns about the event.

political commentary, and did not contain an explicit or implicit threat directed at the Student. The complainant informed OCR that the Student reported no other problems regarding any of the other students.

¹⁰ The University informed OCR that the event, which was part of a program presented around the country, featured an "Auschwitz survivor... and Holocaust refugee... who spoke critically of the current treatment of Palestinians in Israel."

¹¹ The complainant stated that Jewish students planned to reveal shirts that stated "Don't Politicize the Holocaust" during the event, and "quietly walk out."

The University determined that the event was sponsored by several outside organizations, including American Muslims for Palestine (AMP), the Middle East Children's Alliance (MECA), and the International Jewish Anti-Zionist Network (IJAN). The University determined that AMP signed a contract and paid for use of the space; and, although several student organizations, including BAKA, endorsed the event, no student organization was involved in organizing or funding the event. The University determined that the event was advertised on Facebook and on the sponsoring organizations' websites as "free and open to the public," with a \$5 to \$20 "suggested donation," and a sign at the event advertised the same suggested donation.

The University determined that several University student organizations and outside organizations called for a protest of the event, and over one hundred students and members of the public came to the event to protest. The University determined that shortly before the event started, a representative from IJAN announced a \$5 admission fee, and the sign was changed. The University determined that the event sponsors decided to charge the \$5 admission fee in order to control the number of attendees since the number of attendees was larger than anticipated. Additionally, the organizers informed the University that they originally had not planned to impose a fee because the event was for students, but changed their minds after realizing that a substantial number of attendees were not students.¹²

Witnesses OCR interviewed, including University staff, Jewish students identified by the complainant, and Jewish and non-Jewish students involved with BAKA, corroborated that the \$5 fee was imposed approximately half an hour before the event began by the outside organizations. They further corroborated that after the fee was announced, both Jewish and non-Jewish attendees were required to pay the fee for entry.¹³ The student witnesses OCR interviewed who identified themselves as Jewish stated that they refused to pay the fee and were denied entry; however, OCR found no evidence that any Jewish individuals who paid the fee were denied entry, or that any non-Jewish individuals who refused to pay the fee were allowed to enter.

OCR found no evidence that BAKA students had any involvement in the decision to impose the fee, or treated any individuals differently based on national origin with respect to collecting the fee.¹⁴ Student witnesses also informed OCR that BAKA students were allowed in for free only if they volunteered at the event; and BAKA members who had not volunteered paid the admission fee. OCR determined that none of the witnesses were able to identify any instances in which students, either Jewish or non-Jewish, who did not serve as volunteers for the event were provided with wristbands and allowed to enter without paying the \$5 fee.¹⁵ Regardless of whether it was appropriate to begin charging the admission fee, OCR did not find sufficient

¹² The University informed OCR that contracts for events with outside organizations, including the contract with AMP, do not prohibit outside organizations from charging an admission fee.

¹³ One student witness informed OCR that individuals already seated in the event, who he observed to be both Jewish and non-Jewish, were asked to pay the fee. The student believed that all of them complied.

¹⁴ The complainant provided a copy of an email allegedly from a student volunteer for BAKA, stating that he/she was instructed to allow individuals to enter for free who appeared supportive of the event; however, the email was redacted by the complainant due to concerns about confidentiality. Accordingly, OCR was unable to verify whether this information was credible.

¹⁵ Several student witnesses informed OCR that they believed some individuals who did not appear to them to be Jewish were given wristbands identifying them as volunteers and allowed to enter for free. Other student witnesses stated that volunteers from other student organizations involved in the event, who assisted at the event, were permitted to enter for free, which was a common practice among student organizations.

evidence to substantiate that any individuals were treated differently, based on national origin, with respect to imposition of the admission fee. OCR determined that the University President responded to the complainant's complaint by letter dated April 26, 2011, in which he notified the complainant of the results of the University's investigation.¹⁶

OCR determined that in the complainant's letter to the University, dated April 6, 2011, the complainant also stated that the University had failed to respond appropriately to individual bias reports filed by students concerning the event. OCR determined that three Jewish students filed bias reports with the University's Bias Prevention Education Committee (the Committee)¹⁷ regarding the event. OCR determined that in February and early March 2011, University staff met with the students to discuss their bias reports. OCR determined that one Jewish student alleged that she was not allowed to enter the event for free, and two Jewish students alleged that they attempted to join BAKA at the event so that they would be admitted for free as BAKA members, but were denied because BAKA was not accepting new members during the event. University staff informed OCR that the students were charged the \$5 admission fee but did not pay, and did not provide specific information to support that they were not permitted to enter the event because they were Jewish rather than because they refused to pay the fee. OCR determined that Committee staff informed the students that attempting to join BAKA at the event was not appropriate, because it was a "chaotic" time; the students were advised that they could attempt to join BAKA at a regular meeting, and if they were not allowed to join, they could file a complaint with the Office of Student Conduct.¹⁸ OCR determined that the Committee did not refer any of these complaints for adjudication because the students had not provided any specific evidence to support that they were discriminated against by BAKA based on their national origin.

Based on the foregoing, OCR determined that the University promptly investigated the event after it occurred. OCR further determined that the evidence failed to substantiate any specific incidents in which the fee requirement was imposed unequally on Jewish or non-Jewish attendees, based on national origin. OCR did not find any evidence to corroborate that Jewish and pro-Israel students were treated differently by being charged the fee. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the University failed to respond appropriately to her complaint that BAKA treated students differently, on the basis of their national origin, by charging an admission fee for an event only to Jewish and pro-Israel students on or around January 29, 2011. OCR also determined that there

¹⁶ In the complainant's letter to the University, dated June 21, 2011, the complainant stated that the University ignored its concerns about the event on January 29, 2011, and reiterated its previous allegations. The University responded by letter, dated June 29, 2011, stating that it had investigated the complainant's allegations and made its decisions based on a review of the facts, law, and University policies.

¹⁷ OCR determined that the Committee, which comprises University staff, works to monitor and report bias acts, prevent bias acts from occurring, respond to acts of bias, and restore environments in the aftermath of bias incidents. OCR determined that pursuant to University policy, students who believe they have been subjected to bias, including discrimination on the basis of race, color and national origin, may file a bias report with the Committee, either orally or online. OCR determined that the Committee does not adjudicate complaints, but may refer reports to other offices, including the Office of Student Conduct, for further action.

¹⁸ OCR determined that one of the students subsequently attempted to contact BAKA to be placed on the email list, and did not receive confirmation; but she did not follow up on her request with BAKA, nor did she file a complaint with the Office for Student Conduct. The University informed OCR that students may join organizations by attending meetings, and that inclusion on the email list is not a prerequisite to becoming a member.

was insufficient evidence to substantiate the complainant's allegation that the University failed to respond appropriately to any individual complaints regarding the event held on January 29, 2011. Accordingly, OCR will take no further action with respect to Allegation 3, and has closed this complaint as of the date of this letter.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and 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.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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

If you have any questions regarding OCR's determination, please contact Emma Kim, Senior Compliance Team Attorney, at (617)-289-0159 or emma.kim@ed.gov; or Diane Castro, Compliance Team Investigator, at (646) 428-3808 or diane.castro@ed.gov.

Sincerely,



Emily Frangos
Compliance Team Leader

cc: Susan B. Tuchman, Esq.