



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

May 21, 2012

Susan B. Tuchman, Esq.
Director of the Center for Law and Justice
Zionist Organization of America
4 East 34th Street, Third Floor
New York, New York 10016

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

Dear Ms. Tuchman:

This letter is in response to your correspondence, dated December 23, 2011, to the Deputy Assistant Secretary for Enforcement, Office for Civil Rights (OCR), U.S. Department of Education, requesting reconsideration of the dismissal of allegations the Zionist Organization of America (ZOA) raised in the above-referenced complaint against Rutgers University (the University) by OCR's Regional Office in New York (OCR New York). Your correspondence was forwarded to OCR New York for response.

ZOA's complaint, filed on July 21, 2011, alleged that the University failed to respond appropriately to a complaint ZOA filed on April 6, 2011, alleging that students were subjected to harassment and different treatment because of their national origin (Jewish ancestry/ethnicity), in the following manner: (a) the Outreach Coordinator for the University's Center for Middle East Studies harassed a student (Student 1) because of his national origin by physically threatening him in November 2009, and posting anti-Semitic comments about him on Facebook on December 9, 2010; (b) other students harassed Student 1 because of his national origin by posting threatening comments on his Facebook page on or around January 31, 2011; (c) a student group called "Belief Awareness Knowledge and Action" (BAKA) created a hostile environment for Jewish students by holding anti-Israel events and forums; and (d) 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 around January 29, 2011 (Allegation 1). ZOA further alleged that Jewish students were subjected to a hostile environment in Middle East studies courses at the University (Allegation 2); and that Jewish students were generally subjected to a hostile, anti-Semitic environment on campus (Allegation 3). OCR New York proceeded with an investigation of Allegations 1(a), (b), and (d); accordingly, your request for reconsideration is only with regard to the dismissal of Allegations 1(c), 2 and 3.

By letter dated October 26, 2011, OCR New York dismissed Allegation 1(c) because OCR New York determined that ZOA's disagreement with the opinions expressed in speeches and films sponsored by BAKA was not sufficient to support an allegation of national origin discrimination. In your request for reconsideration regarding Allegation 1(c), dated December 23, 2011, you asserted that OCR New York never asked ZOA for additional information to support Allegation 1(c). Along with your request for reconsideration, you provided the names of seven individuals whom you asserted could provide detailed information to support Allegation 1(c).

OCR New York dismissed Allegation 2, because ZOA provided no specifics to support a claim that Jewish students were subjected to a hostile environment in Middle East studies courses at the University; such as a description and dates of any such harassment or the names of any students allegedly affected by such harassment. In your request for reconsideration regarding Allegation 2, you asserted that OCR New York never asked ZOA for additional information to support Allegation 2. Along with your request for reconsideration, you provided the names of six individuals whom you asserted could provide detailed information to support Allegation 2.

OCR New York dismissed Allegation 3, because other than Student 1 (whose allegations OCR New York opened for investigation as Allegations 1(a) and (b)), ZOA provided no specifics to support a claim that Jewish students were generally subjected to a hostile environment on campus; such as a description and dates of any such harassment or the names of any students allegedly affected by such harassment. In your request for reconsideration regarding Allegation 3, you asserted that OCR New York never asked ZOA for additional information to support Allegation 3. Along with your request for reconsideration, you provided the names of eight individuals whom you asserted could provide detailed information to support Allegation 3.

For the reasons set forth below, your request for reconsideration is denied.

BACKGROUND

With respect to Allegation 1(c), ZOA alleged that the University failed to respond appropriately to a complaint ZOA filed on April 6, 2011, alleging that BAKA created a hostile environment for Jewish students, on the basis of their national origin, by holding anti-Israel events and forums. In support of this allegation, ZOA provided a copy of the complaint ZOA filed with the University on April 6, 2011, in which ZOA described these BAKA events and forums; ZOA also described these events and forums in its complaint filed with OCR on July 21, 2011. In these letters, ZOA indicated its disagreement with the opinions expressed in speeches and films shown at these events and with information ZOA believed was a distortion of the facts as presented in these speeches and films; however, as described in these letters, the content of these speeches and films expressed disagreement with the politics and policies of Israel with regard to the Palestinian territories. None of the information ZOA provided regarding these events and forums (other than the allegation of different treatment, Allegation 1(d), which OCR New York opened for investigation) supported an allegation that BAKA subjected Jewish students to

a hostile environment on the basis of their national origin, which may or may not be Israeli, because of their disagreement with the politics and policies of Israel as depicted in the speeches and films at these events and forums. Additionally, ZOA provided no names of students who complained to the University that BAKA subjected them to a hostile environment on the basis of their national origin by holding these events and forums. Accordingly, OCR New York determined that ZOA's disagreement with the opinions expressed in these speeches and films was not sufficient to support an allegation of national origin discrimination; however, OCR New York advised ZOA that it would investigate Allegations 1(a), (b) and (d), including the allegation regarding the University's failure to appropriately respond to ZOA's allegation of different treatment on the basis of national origin by BAKA at an event on January 29, 2011.

With respect to Allegation 2, ZOA alleged that Jewish students were subjected to a hostile environment in Middle East studies courses at the University. Although ZOA alleged generally that Jewish students felt too uncomfortable or intimidated to enroll in these courses because they are "so unfairly biased against Israel", and that when they did enroll, the anti-Israel bias in the classroom made students reluctant and intimidated to speak up and say they support Israel, ZOA only provided OCR New York with one example of a student who was allegedly subjected to this harassment (Student 2); and did not provide OCR New York with the name of Student 2 or the dates on which the alleged harassing conduct occurred. Accordingly, OCR New York determined that ZOA's allegation that Jewish students were subjected to a hostile environment in Middle East studies courses at the University was unsupported.

With respect to Allegation 3, ZOA alleged that Jewish students were generally subjected to a hostile, anti-Semitic environment on campus. In support of the allegation, ZOA provided examples of several students who felt afraid or unsafe; however, other than Student 1, whose allegations OCR New York opened for investigation as described above in Allegations 1(a) and (b), ZOA did not provide the names of any students ZOA described or the dates of any alleged incidents. Accordingly, OCR New York determined that ZOA's allegation that Jewish students were generally subjected to a hostile, anti-Semitic environment on campus was unsupported; however, OCR New York noted that it was opening for investigation the University's response to ZOA's allegations of harassment involving Student 1 as described in Allegations 1(a) and (b).

ANALYSIS AND CONCLUSIONS

In reviewing requests for reconsideration, OCR determines whether the regional office analyzed the facts of the case correctly and/or applied the correct legal standard in reaching its conclusion.

In your request for reconsideration regarding Allegation 1(c), you asserted that OCR New York never asked ZOA for additional information to support Allegation 1(c). Along with your appeal of Allegation 1(c), you provided the names of seven individuals whom you asserted could provide detailed information to support Allegation 1(c). You did not, however, provide any other detailed information such as a description and dates of any

alleged harassment that resulted from events and forums BAKA held. Under OCR's case processing procedures, in order to proceed with the investigation of a complaint allegation, the complainant must provide a written explanation of what happened; identification of the person(s) injured; sufficient detail for OCR to infer from the facts given that the allegation is one over which OCR has subject matter jurisdiction; and the date(s) that the alleged discrimination occurred in order for OCR to determine whether the complaint allegation was timely filed. To date, you have not provided sufficient detail for OCR to infer from the facts given that the allegation is one over which OCR has subject matter jurisdiction. ZOA's disagreement with the opinions expressed in speeches and films sponsored by BAKA is not sufficient to support an allegation of national origin discrimination; neither is just providing the names of individuals who might be able to provide more detailed information, particularly since you provided no indication about whether this additional information would be more disagreement with the opinions expressed in these speeches and films or actual acts of harassment that occurred as a result of the events and forums BAKA sponsored. Based on a review of the record described above, I find that OCR New York's determination regarding Allegation 1(c) was consistent with the laws and regulations enforced by OCR.

In your request for reconsideration regarding Allegations 2 and 3, you asserted that OCR New York never asked ZOA for additional information to support Allegations 2 and 3. Along with your request for reconsideration, you provided the names of six individuals whom you asserted could provide detailed information to support Allegation 2, and eight individuals whom you asserted could provide detailed information to support Allegation 3. You did not, however, provide any other detailed information such as a description and dates of any alleged harassment that occurred in Middle East studies courses or elsewhere on campus. As stated above, under OCR's case processing procedures, in order to proceed with the investigation of a complaint allegation, the complainant must provide a written explanation of what happened; identification of the person(s) injured; sufficient detail for OCR to infer from the facts given that the allegation is one over which OCR has subject matter jurisdiction; and the date(s) that the alleged discrimination occurred in order for OCR to determine whether the complaint allegation was timely filed. To date, you have not provided a written explanation of what happened; the date(s) that alleged discrimination occurred; or sufficient detail for OCR to infer from the facts given that the Allegations 2 and 3 are ones over which OCR has subject matter jurisdiction. Providing the names of individuals who might be able to provide more detailed information is not sufficient to open these allegations for investigation; particularly since you provided no indication about whether this additional information would be more generalizations or whether any alleged acts would be timely filed. Based on a review of the record described above, I find that OCR New York's determinations regarding Allegations 2 and 3 were consistent with the laws and regulations enforced by OCR.

This concludes OCR's consideration of your appeal and constitutes the final agency determination. Final agency determinations are not formal statements 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.

You have now exhausted all avenues of review within the U.S. Department of Education. I regret that the Department will not be able to assist you further in this matter. If you would like to file a new complaint with all of the detailed information indicated above, you are certainly welcome to do so.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Timothy C.J. Blanchard', with a long horizontal stroke extending to the right.

Timothy C.J. Blanchard

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MAY 8 2015
BY: [illegible]