



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION IX
CALIFORNIA

AUG 19 2013

Ms. Tammi Rossman-Benjamin
227 Dickens Way
Santa Cruz, California 95064

(In reply, please refer to OCR case no. 09-09-2145.)

Dear Ms. Rossman-Benjamin:

In a letter dated March 7, 2011, the U.S. Department of Education, Office for Civil Rights (OCR) notified you that it was opening for investigation your complaint against the University of California, Santa Cruz (University). Your complaint alleged that Jewish students were subjected to a hostile environment in violation of Title VI of the Civil Rights Act of 1964, and that the University failed to respond appropriately and effectively to notice of the hostile environment.

First, the complaint alleged that an event in January 2009 entitled "A Pulse on Palestine," that included a film and a panel discussion between two external guest speakers that was moderated by a University professor created a hostile environment for Jewish students at the University. Second, the complaint alleged that a "teach in" entitled "Understanding Gaza," that was scheduled to take place in March 2009 "will undoubtedly be highly offensive and hurtful to many Jewish students on our campus." The complaint alleged that the teach-in will be a "one-sided politically motivated event, in which both speakers will undoubtedly vilify and demonize the Jewish State." After the complaint was filed, you further alleged that the University's sponsorship of a program that was scheduled to take place in April 2010 entitled "Costs of War on Israeli Society: Two Unheard Perspectives" would be "deeply offensive and hurtful to many Jewish students on our campus." You alleged that you sent a "strictly informational" e-mail to the University to make the University aware of the effect that an event, entitled "Truth and Consequences of Israel's Gaza Invasion," scheduled to take place on May 10, 2012 and sponsored by a student organization, would have on Jewish students. Finally, you alleged that the University failed to respond promptly and effectively to several reported incidents concerning anti-Semitic graffiti on campus.

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 carefully reviewed all of the available information with respect to your allegations, as well as additional allegations you made after filing your OCR complaint. OCR reviewed the documentation and information that the University provided in response to OCR's data request. In addition, OCR sent a survey regarding students' experiences surrounding the 2009 "A Pulse on Palestine" event to 87 of the 91 students¹ who had signed a petition protesting the event in 2009. OCR received four responses to the surveys: two responders stated that they believed that there was a hostile environment for Jewish students at the University, and two of the responders stated that they did not feel that there was a hostile environment for Jewish students at

¹ The e-mail addresses of four students who signed the petition were illegible.

the University. In addition, OCR interviewed two of the responders² to the survey and one alumna who signed the petition, but did not respond to the survey. One student responder who was interviewed by OCR stated that he never felt discriminated against in any way by the University and that events at his residential college were very open and welcoming of different perspectives. Another student responder stated to OCR during an interview that she believed the campus had a “very strong community of Jewish students” and that in day to day interactions, including classes, there is an open dialogue that is not discriminatory. The alumna who was interviewed by OCR stated that when the University sponsored “A Pulse on Palestine” she felt “completely failed by my school” and stated that it was “hurtful” that the University would sponsor such events. In addition, OCR also reviewed a list provided by the University of the on-campus events and conferences related to Judaism, Israel, Palestine, and/or Islam that took place during the 2008-2009 academic year. A total of 42 events held: 27 were sponsored or co-sponsored by Jewish student groups or faculty; 15 were sponsored or co-sponsored by Muslim student groups or faculty.

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

Of the four events alleged in your complaint, “A Pulse on Palestine” and “Truth or Consequences of Israel’s Gaza Invasion” took place as scheduled. The two other events that you alleged were harassing, “Understanding Gaza” and “Costs of War on Israeli Society: Two Unheard Perspectives,” were cancelled. All these events constituted (or would have constituted) expression 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 events that you described do not constitute actionable harassment.

With regard to your allegation concerning anti-Semitic graffiti on campus, OCR determined that once such graffiti was reported, the University took prompt action to investigate the circumstances and to remove the graffiti.

Accordingly, OCR is closing your complaint as of the date of this letter. This concludes OCR’s consideration of your complaint. OCR is notifying the University by concurrent letter.

This letter sets forth OCR’s determination in an individual 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. You may have the right to file a private suit in federal court whether or not OCR finds a violation.

Federal regulations prohibit the recipient from retaliating against you or from intimidating, threatening, coercing, or harassing you or anyone else because you filed a

² Two of the survey responders did not respond to OCR’s requests for interview.

complaint with OCR or because you or anyone else take part in the complaint resolution process. Contact OCR if you believe such actions occur.

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.

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

Sincerely,



Zachary Pelchat
Team Leader