



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

9TH FLOOR, 5 POST OFFICE SQUARE
BOSTON, MA 02109-3921

REGION I

CONNECTICUT
MAINE
MASSACHUSETTS
NEW HAMPSHIRE
RHODE ISLAND
VERMONT

January 17, 2025

President Alan Garber
Harvard University
By email: president@harvard.edu

Re: Complaint No. 01-24-2155
Harvard University

Dear President Garber:

This letter is to advise you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of a complaint filed January 29, 2024, alleging that Harvard University (the University) discriminated against students on the basis of their national origin (Palestinian, Arab, and/or Muslim shared ancestry) when it failed to respond appropriately to incidents of harassment in the 2023-2024 school year..

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin, including shared ancestry or ethnic characteristics, under any program or activity that receives Federal financial assistance from the Department. As a recipient of Federal financial assistance from the U.S. Department of Education, the University is subject to these laws and regulations.

On February 6, 2024, OCR opened an investigation into the following issue: Whether the University failed to provide a prompt and effective response to notice of an alleged hostile environment for Palestinian, Arab, and/or Muslim students based on national origin, including shared ancestry, in violation of Title VI.

OCR reviewed records and information provided by the Complainant and the University, as well as publicly available information. These materials included information directly related to the alleged harassment of Palestinian, Arab, and/or Muslim students in this complaint, and alleged harassment of students based on other national origins including Jewish shared ancestry. Prior to OCR completing its investigation the University expressed an interest in resolving the allegations pursuant to Section 302 of OCR's Case Processing Manual, which provides that allegations may be resolved prior to the conclusion of the investigation, if the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate because it has identified concerns that can be addressed through a resolution agreement. At this point in OCR's investigation, OCR has identified the following compliance concerns appropriate for 302 resolution; 1) the University's policies and procedures for receiving and responding to complaints or reports of Title VI harassment appear not to be sufficient to ensure that it provides

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

www.ed.gov

a prompt and effective response to such reports, 2) the University appears based on its records to have failed to provide a prompt and effective response to reports of a hostile environment, and 3) the University's record keeping practices do not seem sufficient to make a determination about Title VI compliance. OCR's concerns are explained in detail below with illustrative examples based on OCR's review to date.

LEGAL STANDARDS

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies. Title VI's protection from national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived shared ancestry or ethnic characteristics, such as students of Jewish, Palestinian, Muslim, Arab, and/or South Asian descent, or citizenship or residency in a country with a dominant religion or distinct religious identity, or their association with this national origin/ancestry. The existence of a hostile environment based on national origin that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of national origin in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to take prompt and effective action to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from a recipient's education program or activity. Harassing acts need not be targeted at the complainant to create a hostile environment. The acts may be directed at anyone, and the harassment may also be based on association with others of a different race (the harassment might be referencing the race of a sibling or parent, for example, that is different from the race of the person being harassed whose access to the school's program is limited or denied).

The harassment must in most cases consist of more than casual or isolated incidents based on national origin to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the harassment, as well as the identity, number, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe or pervasive that it would have limited the ability of a reasonable person, of the same age and national origin as the victim, under the same circumstances, from participating in or benefitting from some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A recipient may be found to have violated Title VI if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a hostile environment based on national origin harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

A recipient violates Title VI if one of its agents, acting within the scope of their official duties, has treated an individual differently on the basis of national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to deny or limit the ability of the individual to participate in or benefit from the services, activities, or privileges provided by the recipient. If the alleged harasser is an agent or employee of a recipient, acting within the scope of their official duties, then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment.

Once a recipient has actual or constructive notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

The Title VI regulation at 34 C.F.R. § 100.6(b) requires a recipient to keep records that are timely, complete, and accurate, and that will enable OCR to ascertain whether the recipient is in compliance with its obligations under Title VI.

SUMMARY OF INFORMATION

Policies and Procedures

The University identified two principal policies addressing bullying and/or harassment during the relevant timeframe: The University-Wide Statement on Rights and Responsibilities and The University's Non-Discrimination and Anti-Bullying Policies

The University-Wide Statement on Rights and Responsibilities (Statement) includes the following statement proscribing harassment: "It is implicit in the language of the Statement on Rights and Responsibilities that intense personal harassment of such a character as to amount to grave disrespect for the dignity of others be regarded as an unacceptable violation of the personal rights on which the University is based."

The University's Non-Discrimination and Anti-Bullying Policies consists of two procedures: one addressing bullying, and one addressing harassment on the basis of protected classes. For purposes of this letter, OCR will address and refer to the section addressing harassment on the basis of protected classes (Non-Discrimination Policy, or Policy). The Policy, which was revised and effective September 2023, prohibits discrimination and harassment and sets out detailed

procedures for processing reports of discrimination on the basis of over one dozen protected categories, including in relevant part “national origin” and “ancestry.” (The Policy expressly does not apply to sex-based or disability-based discrimination and provides a reference to the policies that do address those allegations.)

The Policy states that it prohibits “discriminatory disparate treatment” and “discriminatory harassment” and includes the following definitions:

- “Discriminatory disparate treatment” is defined in relevant part as “targeting an individual for less favorable treatment because of their protected characteristic...In the education context, to rise to the level of discrimination, the treatment must unreasonably interfere with or limit the student’s ability to participate in or benefit from the institution’s programs and activities.”
- “Discriminatory harassment” is defined in relevant part as “unwelcome and offensive conduct that is based on an individual or group’s protected status. Discriminatory harassment may be considered to violate this policy when it is so severe or pervasive, and objectively offensive, that it creates a work, educational, or living environment that a reasonable person would consider intimidating, hostile, or abusive and denies the individual an equal opportunity to participate in the benefits of the workplace or the institution’s programs and activities.” The Policy then lists “factors that will be considered in assessing whether discriminatory harassment violates this policy,” as: “[f]requency of the conduct,” “[s]everity and pervasiveness of the conduct,” “[w]hether it is physically threatening,” “[d]egree to which the conduct interfered with an employee’s work performance or a student’s academic performance or ability to participate in or benefit from academic/campus programs and activities,” and “[t]he relationship between the alleged harasser and the subject or subjects of the harassment.”

The Policy states that its jurisdiction applies to misconduct that occurs on University property, including University e-mail or computer systems; and off University property, including on social media, if, in relevant part, it directly involves a University program or activity and if it has the effect of creating a hostile or abusive learning environment for the targeted member(s).

The Policy describes the process for making informal reports of harassment and for filing formal complaints, and, as written, includes a number of restrictions on when a “formal complaint” may be filed and/or will be accepted for further action by the University. The Policy states in relevant part:

- Reports must be made to Local Designated Resources. The University’s Office for Community Conduct, which according to University documents is “the central office responsible for ...implementing the [Policy],” prominently displays on its website a directory of Local Designated Resources for each school with contact information. However, the “Local Designated Resource” for Harvard College lists an email address and states: “Students with concerns or questions may also reach out to their Resident Deans.” The University characterized “Local Designated Resources” to OCR as “the individuals at each school designated to serve as the resource for receiving reports and

complaints, directing community members to resources, and providing information on supportive measures [and] who respond to, and work to address and resolve, concerns raised under the [U]niversity-wide [Policy].”

- The Policy makes a clear distinction between an “informal resolution process” and a “formal complaint process” and states: “Bringing a concern to the attention of the Local Designated Resource or Central Office does not automatically launch an inquiry or investigation. Supportive measures or other techniques for conflict resolution may be provided regardless of whether a mediated resolution or formal investigation is launched.”
- A Complainant may not pursue a complaint under the Policy, and/or the complaint will be dismissed without further investigation, if the alleged conduct has already been investigated and resolved pursuant to other policies or procedures, or otherwise considered by the University in another forum or another mechanism.
- Complainants cannot proceed anonymously with a formal complaint.
- “If efforts at informal resolution are unsuccessful or not feasible, the complainant may file a complaint.” An informal resolution may include a “mediated resolution.” This provision in the Policy suggests that the University may require informal resolution as a precondition for filing a formal complaint.

Outside the context of a formal complaint, the Policy does not include a process for the University to launch an “inquiry or investigation” and it does not provide for how, or if, the University will pursue information provided in a report alleging harassment that may constitute a discriminatory hostile environment, if a formal complaint is rejected or precluded due to the above conditions.

The Policy does include a detailed description of the investigation and resolution process it will follow once it has determined that the parameters for a formal complaint have been met. This process includes an investigation, hearings, a determination of whether a violation of the Policy occurred, the imposition of discipline and remedial measures where appropriate, and an appeal process. The Policy states that if a violation is found, “the decision will include recommended corrective measures (e.g., training, coaching, or other measures, as appropriate) to be taken by the unit(s) to eliminate the conduct, prevent its recurrence, and address its effects.”

OCR was not able to locate a link to a reporting or complaint form in the Policy itself. The website for the Office for Community Conduct prominently displays a prompt reading: “I have a bullying or discrimination concern. Where do I start?” and it lists reporting options under “How do I file a report or formal complaint?” and lists two options: “filing a report (anonymous),” which includes a link to an anonymous reporting hotline; and “filing a report (not anonymous),” which advises students to contact their Local Designated Resource and links to a directory. OCR could not locate a link to a complaint form on the Office for Community Conduct website.

University's Response(s) to Reports of Discrimination

The University provided OCR with two distinct sets of records in response to OCR's request for all documentation related to reports or complaints alleging shared ancestry harassment from October 2023 through May 2024, and the University's response to those reports and complaints. The first set of records pertains to reports and complaints that were processed through the University's Non-Discrimination Policy. The second set pertains to reports that were filed through the University's on-line anonymous reporting system.

Non-Discrimination Policy Reports

The University provided OCR with a tracking chart that reflects the receipt and disposition of around two dozen matters alleging shared ancestry harassment, including harassment based on Palestinian, Arab, and/or Muslim shared ancestry; and harassment based on Jewish shared ancestry (hereinafter collectively referred to as "shared ancestry" or "shared ancestry complaints."). The University indicated to OCR that these matters represent "informal reports and formal complaints of discrimination on the basis of shared ancestry under the Non-Discrimination and Anti-Bullying Policies" that were received from October 2023 through late May 2024. It appears from the record that these are the only shared ancestry reports that the University processed pursuant to the Policy during this time frame. Approximately half of these reports were reported directly through the channels described in the Policy. The remainder appear to have come through the University's anonymous online reporting system (discussed below). OCR notes this here because it could not determine with certainty how or why these cases reported through the hotline were handled pursuant to the Policy while approximately 125 other shared ancestry reports that were also filed through the hotline were not processed through the Policy.

Regarding the reports handled pursuant to the Policy, the tracking chart provided by the University contains the following information: whether the report was processed as an "informal complaint" or "formal complaint," a summary of the allegations, the responsive action taken by the University, the disposition, and closure date. According to the tracking chart, only one of these approximately two dozen reports was investigated as a formal complaint under the Policy; one report was "routed to another forum"; and the remainder were dismissed, closed, or informally resolved without an "inquiry or investigation". This despite the fact that the allegations as documented on the chart suggest that at least some of these reports likely warranted further "inquiry or investigation" and, as appropriate, additional responsive action by the University.

Below are illustrative examples:

- In the only reported matter that was formally investigated and resolved under the Policy, Student 1 alleged that a professor made "statements about the Israeli hostage situation" that Student 1 "found distressing." Student 1 [redacted]. The professor subsequently apologized, offered an extension on an assignment, but then allegedly assigned a grade lower [redacted], which Student 1 alleged was retaliation for reporting the incident. According to the tracking chart, the University "initiated a formal complaint process" and

engaged a third-party factfinder to conduct an investigation, which appears to comport with the Non-Discrimination Policy. The factfinder concluded that the professor did not violate any policy.

- Student 2 alleged that an instructor “actively discriminated against Muslim and Arab students, as well as students affiliated with the pro- Palestine protests from the past year,” and provided examples of this alleged discrimination (not detailed in the University’s tracking chart). The chart indicates that the “College met with the [the student] to discuss her concerns and informed her that she could still file a formal complaint before she graduated [redacted],” and “offered to have her meet with [the dean of her school] to discuss her concerns and informed her that she could still file a formal complaint...” The student “declined to file a formal complaint” and the University’s tracking chart indicates the matter was “Closed.” Nothing in the record provided by the University indicates that it followed-up with the instructor at issue or took measures to evaluate whether the student or other students referenced in her report were subjected to a discriminatory hostile environment.
- Student 3 filed a report alleging that as a Jewish student, he felt unsafe accessing Harvard Yard because he was followed by marshals and because of “disturbing antisemitic chants.” The tracking chart indicates that Student 3 “rescinded their report” and the matter was “closed.” Nothing in the record indicates that the University considered whether the report could and should be pursued without Student 3 in an effort to identify the alleged harassers, determine whether the reporter or others were subjected to a discriminatory hostile environment, and/or prevent recurrence.
- Student 4 alleged that they were “called a terrorist” and “filmed” by someone on campus for wearing a keffiyeh (a scarf often associated with the Palestinian people), and provided a video of this same person accosting another University student wearing a keffiyeh. The University’s tracking chart indicates that this matter was considered outside the jurisdiction of the Non-Discrimination Policy because “the subject of the complaint was not a member of the Harvard community.” The Local Designated Resource “offered to meet with the [student] to provide support as needed.” Nothing in the record provided by the University indicates whether it took measures to evaluate if this student or the other student in the video were subjected to a discriminatory hostile environment or whether it took measures to identify the alleged harasser and prevent a recurrence of the incidents.
- Student 5, filed a report that alleged, in relevant part, that members of a University group “made antisemitic statements to other [Jewish] members who did support Israel.” The tracking chart indicates that the report was informally resolved when “[t]he reporter was offered supportive measures.” There is no further information as to whether the University assessed whether antisemitic statements were made and may have created a hostile environment for the student or others.
- Two separate reports were filed alleging that Student 6 and Student 7, and other students, were being doxxed by multiple other students in a manner intended to encourage harassment of them “for supporting [redacted] [Boycott, Divestment, Sanctions]

[redacted].” The chart indicates that the reports included evidentiary support for the doxxing and harassment allegations. Both reports were dismissed for “failure to state a claim.” The school for one of the accused students determined that the report did not state a claim because the accused student was no longer affiliated with the University. The record for this determination does not reflect whether the school evaluated if the doxxed student experienced a hostile environment, regardless of whether the accused student attended the University, and if so, whether further measures were required of the University. The schools where the other accused students attended determined that the allegation(s) did not state a violation under the Non-Discrimination Policy. There is nothing further in the record for these reports indicating whether there was a factual inquiry that took place after the report was filed, such as interviewing Student 6 or Student 7, or how and why the determination was made that the allegations did not state a violation of the Policy.

- Student 8 and Student 9 filed a report alleging that various faculty had engaged in antisemitism and that their Jewish student organization was treated differently than others, citing an example of a dean attending a vigil for a group associated with Palestine but not the group’s event. The tracking chart indicates that the report was informally resolved after the dean at issue acknowledged concerns, offered to speak to Students 8 and 9, and attended an event at their invitation. OCR could not identify a record in the chart that would indicate whether the University pursued the allegations about faculty engaging in antisemitism.
- Student 10 alleged that she was “accosted” by a group of students for wearing a keffiyeh while working at a [redacted], and that the same group of students took a photograph of her wearing the keffiyeh and posted it [redacted]. The record indicates that the complaint was dismissed after a determination that the alleged conduct did not violate the Policy; however, the tracking chart listed an array of remedial measures taken by the University to support the complainant and other [redacted]. There is no explanation regarding how it is the University determined this was not a violation of the Policy, or a description of action taken to identify the alleged perpetrators to prevent future incidents.
- Student 11 reported antisemitic social media posts by an employee. The tracking chart notes that the University handled the report under its “HR processes,” and the disposition indicates: “Handled under an alternative process.” OCR could not identify information in the record indicating if the University made a determination whether the postings subjected the student or others to a discriminatory hostile environment and, if so, whether the alternative resolution process and the “HR process” provided remedies designed to resolve any hostile environment for impacted parties consistent with the requirements of Title VI and the University Policy.

Anonymous Reporting Hotline

In addition to the approximately two dozen reports discussed above that were processed pursuant to the Policy, the University also provided OCR with documentation of approximately 125 reports of alleged shared ancestry harassment that were received and processed through the

University's on-line anonymous reporting hotline. The hotline is an on-line portal operated by a third-party contractor but it is staffed in part by the University's Risk Management and Audit Services personnel (Risk Management). The portal allows students and other members of the University community to file anonymous and non-anonymous reports, including reports of discrimination, harassment, and bullying based on shared ancestry. Through this system, reporters can anonymously correspond with a University designee from Risk Management about the reported allegations. The documents provided by the University include the following for each report: the allegation as submitted by the reporter, messages between the reporter and the Risk Management staff, and internal notes or logs from the Risk Management staff of any follow-up measures taken in response to the report.

OCR reviewed the allegations for each of the reports and found, numerous instances, where the facts as alleged suggested a possible hostile environment based on shared ancestry for the reporting student. Collectively, the approximately 125 reports of harassment covered a broad range of alleged harassment based on shared ancestry, including verbal harassment, doxxing, and physical assault. Except for the hotline reports that were handled pursuant to the Policy and captured in the tracking chart discussed above, it does not appear that any of the other hotline reports were processed pursuant to the Policy. Instead, it appears that these were handled through a different process facilitated by Risk Management staff.

Based upon OCR's review of these materials to date, it appears that once a report was submitted through the hotline, a Risk Management staff typically acknowledged receipt of the report, advised the reporter to contact police if there was a threat of violence, directed the reporter to appropriate support resources and explained that the information in their report would be routed to appropriate University officials but that further details could not be provided to the reporting student due to "considerations of privacy."

The internal logs for these reports indicate that in the majority of cases, the Risk Management staff would route the report to at least one University official, and in many cases, this would include the President's Office, the general counsel's office and possibly a Local Designated Resource contact. However, there was typically no detail provided in the log indicating for what purpose the report was forwarded (OCR did find many notations indicating a report was being forwarded "For information only" or as part of a standard daily summary report) or if any further action was taken. Based on the records provided to OCR by the University, OCR could not determine what, if any, action the University took once the reports were referred out. OCR can, however, determine that these reports were not processed through the Policy (except for those noted above) and did not result in a formal investigation.

Most internal logs for these reports were brief and indicated that the matters were closed, without providing information to determine the factual support for the closure. For example, one student reported being repeatedly harassed based on shared ancestry, despite having asked the harasser to stop. The log states that the "allegations appear to be personal and were not within the University's remit." There were no notes to explain why the personal nature of the harassment precluded further action. In another instance, a student reported an incident of shared ancestry harassment that led the RMAS staff to engage the relevant Local Designated Resource. The Local Designated Resource indicated to the RMAS staff that another student had already alerted

him about this incident the previous month and that he had resolved it by talking to the alleged harassers, who apologized. OCR could not find a record that the University followed-up with the reporting student to determine if their individual experience warranted further action, including an apology from the harassing students. OCR also did not identify any records from the University that appeared to document the initial underlying report referenced by the Local Designated Resource or the response from the Local Designated Resource.

In its review thus far of the reports filed through the portal, OCR identified multiple reports of harassment filed by individual students related to “doxxing trucks” in fall 2023 and spring 2024 that were targeting specific students who were, or were believed to be, affiliated with certain activity related to events in Israel. These doxxing incidents were widely publicized and visible and the University reacted by providing the impacted students with support services, including sharing resources to protect online privacy, obtaining licenses to detect and remove students’ personal information, and other related measures. OCR did not, however, identify in the records that the University addressed the individual student reports of the doxxing pursuant to its antiharassment Policy or that it responded to the individual student reports by evaluating whether the reporting student or other students were subjected to a discriminatory hostile environment as a result of the doxxing, and if so, what if any additional action and/or remedial measures may have been required of the University.

OCR did find examples from the hotline logs where Risk Management staff engaged in fact finding with the reporter such as asking if the reporter would be willing to speak with someone else from the University or if the reporter could answer certain questions or send a picture or other evidence. There were also some examples where the log indicates that a Local Designated Resource was consulted and that informal resolution efforts were made on behalf of the reporting student. These more in-depth responses and log entries do not include an indication that the alleged shared ancestry harassment was evaluated to determine if the student reporter experienced a hostile environment.

Federal Litigation Related to Shared Ancestry Discrimination

OCR notes that according to publicly available information, two federal lawsuits were filed against the University in 2024 alleging, in relevant part, Title VI violations on the basis of shared Jewish ancestry. Kestenbaum and Students Against Antisemitism, Inc. v. President and Fellows of Harvard College, No. 1:24-cv-10092-RGS (D. Mass. Jan. 10, 2024); and Louis D. Brandeis Center for Human Rights Under Law and Jewish Americans for Fairness in Education v. President and Fellows of Harvard College, No. 1:24-11354-RGS (D. Mass. May 22, 2024). In August 2024, the federal court in Kestenbaum denied a motion to dismiss allegations of Title VI “deliberate indifference” of “student-on-student harassment” on the basis of shared Jewish ancestry. In November 2024, the federal court in Louis D. Brandeis Center for Human Rights Under Law denied a motion to dismiss allegations of Title VI “deliberate indifference” relating to the University’s response to specific incidents of harassment on the basis of shared Jewish ancestry. OCR acknowledges that these dispositions are specific to motions to dismiss, which assume as true the factual allegations pled by the plaintiffs.

Additional Actions Taken by the University Since the Opening of the OCR Complaint

The University represented to OCR that it has taken recent steps to improve the University climate and reduce incident of harassment for all students. Some of the actions taken specific to the campus climate include for students based on national origin, including shared ancestry, include:

- Undertaking extensive efforts to foster respectful discussion and debate on controversial issues, including numerous panels, forums, and other events related to the Middle East conflict, and incorporating pedagogy on civil disagreement into coursework at various schools.
- Hosting the Inclusion & Belonging Summit, which featured the theme: Committed to Combatting Hate and Bias. The summit brought together leaders from across the University to build capacity for inclusive leadership through training and information sharing. Breakout sessions explored the history and current manifestations of Antisemitism, Islamophobia, Anti-Israeli, Anti-Arab, Anti-Muslim, and Anti-Palestinian biases and approaches to recognizing, disrupting, and mitigating impact on campus.
- Providing training on shared ancestry discrimination for Harvard administrators, faculty, students, and staff, including educational sessions for faculty and administrators who participate in disciplinary processes at each school.
- Providing bias training for college student affairs professionals, residential life staff, peer advising fellows, and faculty deans.
- Developing and publishing the resource guide “Protecting Against Online Harassment.”
- Creating two presidential task forces: one devoted to combating antisemitism and one devoted to combating anti-Muslim and anti-Arab bias. Though differently focused, the groups are similarly charged with: examining recent history and current manifestations of bias; identifying the causes of and contribution factors to bias-based behaviors on campus; evaluating evidence regarding the characteristics and frequency of these behaviors; and recommending approaches to combat bias and to mitigate its impact on campus. The University represented that it “continues to make progress on implementing the recommendations of the task forces and “developing short- and long-term initiatives to combat Islamophobia, antisemitism, and other forms of bias, intolerance, and hate.”
- Issuing new “Guidance on Protest and Dissent,” which clarifies and makes explicit the University’s expectations regarding protest and dissent and reaffirms the University-wide Statement.

ANALYSIS

Based on OCR’s review thus far of the University’s policies and procedures for receiving, processing, and resolving reports and complaints of shared ancestry harassment, OCR is

concerned that the University's Non-Discrimination Policy appears to impede its ability to meet its obligations pursuant to Title VI to provide a prompt and effective response to incidents of shared ancestry harassment that create a hostile environment about which it knew or should have known.

For example, the University's Non-Discrimination Policy, as written, does not permit students to pursue a harassment complaint and/or the University will dismiss a complaint, if the alleged conduct has been addressed "in another forum or another mechanism." This provision does not specify that the other "forum or mechanism" must have included a Title VI-compliant response including an analysis of whether the alleged conduct subjected the student(s) to a discriminatory hostile environment, and if so, providing remedies designed to prevent recurrence and remedy the effects. As a result, the Policy may preclude or dismiss complaints of a discriminatory hostile environment in violation of its obligations under Title VI.

The Policy also expressly states that "Complainants cannot proceed anonymously with a formal complaint." This provision misapplies the law, which requires the University to provide a prompt and effective response in all cases when it has notice of a hostile environment. The fact that a person filing a complaint does not identify themselves or is not willing to participate in an investigation, does not per se relieve a University of its responsibility to act on information suggesting that a student or students may be subjected to a discriminatory hostile environment. If the University has actionable information, Title VI requires a prompt and effective response.

Similarly, it appears that the Policy as written may precondition a student's ability to file a complaint upon their willingness to engage in an informal resolution process when feasible. OCR is concerned that, if a student declines to participate in informal resolution of alleged harassment, this provision could result in the University failing to provide a prompt and effective response to notice of a hostile environment in compliance with Title VI.

What appears from the records to be a limited response by the University to numerous reports alleging discrimination based on Palestinian, Arab, and/or Muslim shared ancestry supports the concerns OCR identified regarding the Policy. OCR's review of the reports processed pursuant to the Non-Discrimination Policy found that only one of these reports proceeded to the formal complaint process; no other formal "inquiry or investigation" was launched. Moreover, many of the approximately 125 reports filed through the hotline appear from the record to have received a minimal response through the Risk Management process, none of which appears to have resulted in a formal investigation under the Non-Discrimination Policy, and while many cases were referred out to other University offices for follow-up, there is not a record indicating that these harassment allegations were evaluated to determine if the students were subjected to a hostile environment. OCR also notes that the federal court overseeing two Title VI lawsuits against the University has declined to dismiss allegations regarding the University's response to reports or complaints of harassment on the basis of shared Jewish ancestry.

Title VI does not require that all allegations of discriminatory harassment go through a recipient's formal complaint process or a formal investigation; however, it does require that if the University receives a report of harassment that may have created a hostile environment, it must determine whether a discriminatory hostile environment exists as a result of the alleged

harassment and if so, it must take measure to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. OCR is concerned, based on the records provided by the University, that its reliance on the informal resolution process, and to a greater extent its reliance on the process afforded to reports filed through the hotline, appears to have resulted in insufficient responses to reports of harassment, that failed to meet the requirements of Title VI.

OCR is also concerned that, based on the initial documents provided by the University, it appears not to be creating and/or maintaining records of reports of alleged national origin harassment and its response to those reports sufficient to demonstrate compliance with Title VI.

CONCLUSION

The University has agreed to implement the enclosed Resolution Agreement, which commits the University to take specific steps to address the identified areas of concern. The Agreement entered into by the University is designed to resolve these issues. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant when the University enters into an agreement that, fully performed, will remedy the identified areas of concern. OCR will monitor closely the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information if necessary to determine whether the University has fulfilled the terms of the Agreement. Once the University has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter 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 a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

Sincerely,

/s/
Ramzi Ajami
Regional Director

Enclosure

cc: Attorney Bruce Berman (Bruce.Berman@wilmerhale.com)
Attorney Seth Waxman (Seth.Waxman@wilmerhale.com)