

December 5, 2023

**VIA ELECTRONIC MAIL TO [OCR@ed.gov](mailto:OCR@ed.gov)**

U.S. Department of Education  
Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

**Re: Federal Civil Rights Complaint Concerning Antisemitic Harassment at Arizona State University**

To Whom It May Concern:

The Defense of Freedom Institute for Policy Studies (“DFI”) is a national, nonprofit organization dedicated to defending and advancing freedom and opportunity for every American family, student, entrepreneur, and worker and to protecting the civil and constitutional rights of Americans at school and in the workplace.

Pursuant to the discrimination complaint resolution procedures of the U.S. Department of Education’s Office for Civil Rights (“OCR”), DFI brings this federal civil rights complaint against Arizona State University for discrimination on the basis of (i) shared ancestry or ethnic characteristics; and (ii) citizenship or residency in a country with a dominant religion or distinct religious identity<sup>1</sup> in programs or activities that receive federal financial assistance. DFI files this complaint as an interested third-party organization that strongly advocates for a republic where freedom, opportunity, creativity, and innovation flourish in our schools. Accordingly, DFI files the foregoing to request that OCR investigate the events described below and put Arizona State University on clear notice that its failure to fulfill its duty under federal civil rights law to protect Jewish students from such antisemitic attacks will result in the withdrawal of federal funding.

On November 14, 2023, the undergraduate student senate at Arizona State University Tempe campus met to consider a resolution “expressing support for all ASU students impacted by the ongoing Israel-Hamas war.”<sup>2</sup> Pro-Palestine students attended the meeting and were advocating for an economic boycott of corporation that support Israel. Jewish students were also present and were expressing their support for Israel and campus safety concerns, when a protest by members

<sup>1</sup> See *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 353-55 (S.D.N.Y. 2014) (holding that discrimination based on shared ancestry and ethnic characteristics is prohibited by Title VI); see also 42 U.S.C. § 2000d; 34 C.F.R. § 100.3(b)(1)(iv) and (vi).

<sup>2</sup> Sasha Hupka, Pro-Palestinian protest disrupts ASU student Senate meeting; campus police investigating, ARIZONA REPUBLIC (Nov. 15, 2023, 4:35 PM), available at <https://www.azcentral.com/story/news/politics/arizona-education/2023/11/15/asu-police-investigate-after-pro-palestinian-protest-disrupts-meeting/71595023007/>.



of the ASU chapter of Students for Justice in Palestine, a pro-Palestinian activist organization, suddenly erupted. Notably, Emily Fox-Million, a Jewish student at ASU, described the atmosphere as divisive and unsettling, citing instances of pro-Palestine students yelling antisemitic chants and interrupting speakers. The situation escalated when, according to reports, an individual threw landscaping rocks at a window where the students were gathered, immediately forcing the meeting to end.<sup>3</sup> Ben Griffith, another Jewish student, attested to witnessing friends leaving the meeting in a distressed state. Furthermore, police officers arrived to escort some of the students away from the building.

In response to the incident, ASU President Michael Crow announced that the ASU Police Department would be conducting an investigation. Crow reiterated the university's unwavering stance against acts of intimidation or violence and affirmed the university's commitment to fostering inclusion, respect, and providing a safe environment for civil dialogue and learning. However, there were no subsequent arrests made in connection with the attack and the university has not announced any disciplinary actions it plans to take as a result of the incident.

### **OCR's Legal Authority and Duties Under Title VI**

Title VI of the Civil Rights Act of 1964 (“Title VI”) provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>4</sup> The law directs federal agencies, including the U.S. Department of Education, to carry out this mandate by issuing rules conditioning the continued receipt of federal funding on compliance with the anti-discriminatory objectives of the statute.<sup>5</sup> The Department interprets Title VI to prohibit harassment on the basis of race, color, or national origin “that, based on the totality of 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 the recipient’s education program or activity.”<sup>6</sup>

Pursuant to its regulations implementing Title VI, OCR “will make a prompt investigation” upon receipt of a complaint that “indicates a possible failure” to abide by Title VI.<sup>7</sup> Such an investigation may result in “the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law,” including referral to the U.S. Department of Justice for enforcement proceedings.<sup>8</sup> For years, the Department has interpreted Title VI to

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<sup>3</sup> Emma Lockhart, Jewish Students at Asu Reportedly Escorted Off Campus After Protestors Disrupt Meeting, ARIZONA’S FAMILY (Nov. 17, 2023, 9:38 PM), available at <https://www.azfamily.com/2023/11/18/jewish-students-asu-reportedly-escorted-off-campus-after-protestors-disrupt-meeting/>.

<sup>4</sup> 42 U.S.C. § 2000d.

<sup>5</sup> 42 U.S.C. § 2000d-1.

<sup>6</sup> Catherine E. Lhamon, Assistant Secretary for Civil Rights, U.S. Department of Education, Dear Colleague Letter, Nov. 7, 2023, at 2, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf> (citing *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655, 670 n.14 (2d Cir. 2012); OCR’s Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance, 59 Fed. Reg. 11448, 11450 (Mar. 10, 1994)).

<sup>7</sup> 34 C.F.R. § 100.7(c).

<sup>8</sup> 34 C.F.R. § 100.8(a); *see also* CRS, Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of 1964, at 4 (2019), available at <https://crsreports.congress.gov/product/pdf/R/R45665> (citing *Nat’l Black Police*



prohibit discrimination, including harassment, on the basis of an individual or group’s actual or perceived “shared ancestry or ethnic characteristics” or “citizenship or residency in a country with a dominant religion or distinct religious identity.”<sup>9</sup> In 2019, President Trump issued an executive order declaring that “[i]t shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI”.<sup>10</sup> President Biden has not withdrawn E.O. 13899. Notably, despite the prior administration having finalized a proposed rule clarifying OCR’s Title VI enforcement responsibilities with respect to antisemitic discrimination and harassment, the current administration has inexplicably failed to publish those proposed regulations.

The incident at Arizona State University reflects a worrisome trend: Antisemitic discrimination at colleges and universities has risen over the past decade.<sup>11</sup> Furthermore, the Hamas attacks, which resulted in the wholesale slaughter of approximately 1,200 innocent men, women, and children in Israel and the taking of hundreds of hostages, have galvanized a growing antisemitic movement to wage a war of intimidation that deprive Emily Fox-Million, Ben Griffith, and other Jewish students of their right to an education free of discrimination and harassment. DFI urges OCR to investigate the allegations in this complaint and ensure that Arizona Union complies with Title VI of the Civil Rights Act of 1964, as well as provide other appropriate relief.

Please feel free to contact me with any questions related to this request.

Sincerely,

/s/ Donald A. Daugherty, Jr.  
Donald A. Daugherty, Jr.  
Senior Litigation Counsel

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*Ass’n, Inc. v. Velde*, 712 F.2d 569, 575 (D.C. Cir. 1983) for the principle that the statutory language of Title VI contemplates as one mechanism of enforcement agencies’ referral of cases to the Attorney General for the purpose of filing a civil suit against the recipient).

<sup>9</sup> *Id.* at 1-2 (citing *T.E.*, 58 F. Supp. 3d at 353-55; OCR Dear Colleague Letter: Harassment or Bullying, 4-6 (Oct. 26, 2010), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>).

<sup>10</sup> Executive Order 13899 of December 11, 2019, Combating Anti-Semitism, 84 Fed. Reg. 68779, 68779, available at <https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf>.

<sup>11</sup> See Testimony of Kenneth L. Marcus, Founder and Chairman, The Louis D. Brandeis Center for Human Rights Under Law, “Free Speech on College Campuses” Testimony Before the United States House Committee on the Judiciary, Nov. 8, 2023, at 3-4, available at <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/marcus-testimony.pdf>. Mr. Marcus served as Assistant Secretary, Office of Civil Rights, during the prior administration.