

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 The Cooper Union for the Advancement of Science and Art**

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 the Cooper Union for the Advancement of Science and Art (Cooper Union) 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 the Cooper Union 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 Wednesday, October 26, 2023, eleven Jewish students at Cooper Union, including sophomore, Taylor Lent, were barricaded within the school library after library staff locked the entrance where a cohort of pro-Palestinian demonstrators were protesting.<sup>2</sup> The demonstrators, who are said to be members of Cooper Union’s chapter of Students for Justice in Palestine, were chanting slogans

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<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> Lisa Rozner, *Pro-Palestinian Rally at Cooper Union Leads to Tense Moments at School Library*, CBS NEWS NEW YORK (Oct. 26, 2023, 8:47 AM), available at <https://www.cbsnews.com/newyork/news/cooper-union-pro-palestinian-rally-jewish-students-library/>.



such as “Free Palestine” and “Globalize the intifada from New York to Gaza,” while forcefully pounding on the library doors. They also brandished signs proclaiming, “Zionism Hands Off Our Universities” and “Shame on Cooper Union,” leveling accusations of “genocide” and “apartheid” against Israel. This tumultuous situation escalated as the demonstrators pounded on the library’s glass windows, threatening the safety of the Jewish students who were at the library to study.

In response to the protest, the New York Police Department intervened and, ultimately, facilitated the discreet exit of the confined Jewish students through an alternate exit and private tunnels. The University has not announced any plans to punish those students involved in trapping the Jewish students in the library.

### **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>3</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>4</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>5</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>6</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>7</sup> For years, the Department has interpreted Title VI to 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>8</sup> In 2019, President Trump issued an executive

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<sup>3</sup> 42 U.S.C. § 2000d.

<sup>4</sup> 42 U.S.C. § 2000d-1.

<sup>5</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>6</sup> 34 C.F.R. § 100.7(c).

<sup>7</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 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>8</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>).



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>9</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 Cooper Union reflects a worrisome trend: Antisemitic discrimination at colleges and universities has risen over the past decade.<sup>10</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 Taylor Lent 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 Cooper 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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<sup>9</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>10</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.