

December 5, 2023

VIA ELECTRONIC MAIL TO 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 Drexel 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 Drexel 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 identity¹ 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 Drexel 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 October 10, 2023, an act of arson caused the immediate evacuation of hundreds of students residing at Race Hall, a predominantly freshman residence hall at Drexel University.² Upon inspection, the Philadelphia Fire Department discovered that the door of a suite adorned with

¹ 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).

² Dan Stamm, *Drexel Investigating Arson At Jewish Student's Door Amid Israel-Hamas War*, NBC10 (Oct. 12, 2023, 2:38 PM), available at <https://www.nbcphiladelphia.com/news/local/drexel-dorm-anti-semitism-vandalism/3666052/>; see also StopAntisemitism (@StopAntisemitism), X/TWITTER (Oct. 11, 2023, 7:13 PM) <https://twitter.com/StopAntisemites/status/1712245105283727623>.



Jewish decorations and occupied by an observant Jewish student was singled out and intentionally set on fire. The victim is outspoken in her support of Israel, and it is believed that she was targeted because of her familial tie to the Israeli Defense Forces.³ Drexel University president, John Fry, later addressed the incident in a letter to the Drexel community and stated that it was being investigated “to determine if bias, discrimination, or hate” motivated the arson.⁴ 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 attack.

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.”⁵ 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.⁶ 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.”⁷

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.⁸ 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.⁹ 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

³Shreeya Gounder and Krishna Thaker, *Arson and Antisemitic Graffiti Heighten Fears of Hate Crime On Drexel Campus*, THE TRIANGLE (Oct. 20, 2023), available at <https://www.thetriangle.org/news/arson-and-antisemitic-graffiti-heighten-fears-of-hate-crime-on-drexel-campus/>.

⁴John Fry, Drexel University Office of the President, PRESIDENT’S MESSAGES, *A Message of Support for Our Drexel Community*, (Oct. 11, 2023), available at <https://drexel.edu/president/messages/message/2023/October/A-Message-of-Support-for-Our-Drexel-Community/>.

⁵ 42 U.S.C. § 2000d.

⁶ 42 U.S.C. § 2000d-1.

⁷ 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)).

⁸ 34 C.F.R. § 100.7(c).

⁹ 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).



a dominant religion or distinct religious identity.”¹⁰ 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.”¹¹ 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 Drexel University reflects a worrisome trend: Antisemitic discrimination at colleges and universities has risen over the past decade.¹² 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 deprives the Race Hall arson victim at Drexel University, 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 Drexel University 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

¹⁰ *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>.

¹¹ 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>.

¹² 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.