

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 Rutgers 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 Rutgers 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 Rutgers² 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 31, 2023, Matthew Skorny, a freshman at Rutgers University, targeted a Jewish Israeli student on campus by writing on the social media platform, YikYak, “Palestinian protesters, there is an Israeli at AEPi go kill him.” AEPi is a Jewish college fraternity, and its mission is to “[develop] the future leaders of the Jewish communities.”³ Megan Schumann, a Rutgers

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 Carly Baldwin, *Rutgers Student Made Online Threat Against Israeli Student: Police*, PATCH (Nov. 4, 2023, 6:26 PM), available at <https://patch.com/new-jersey/newbrunswick/rutgers-student-made-online-threat-against-israeli-student-police>.

³ See Alpha Epsilon Pi Fraternity, <https://www.aepi.org/>.



spokesperson, confirmed that a Rutgers student was charged with “bias intimidation, terroristic threats, and false public alarm” in connection with the threat after a Rutgers University Police Department investigation.⁴ Lisa Harris Glass, chief executive officer of Rutgers Hillel, stated that several days later there were other discriminatory assaults against AEPi members, including an incident where a carload of people gathered outside of the AEPi house and “threw eggs at them as they walked into the house. One was hit with eggs.” Glass added that antisemitic vulgarities were yelled at the students during this attack. To date, the university has not announced Skorny’s expulsion or that it intends to take any actions against the other students involved in throwing eggs at the AEPi members.

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

⁴ Deena Yellin, *Jewish High Schools Demanding Plans from Colleges to Keep Students Safe*, NORTHJERSEY.COM (Nov. 6, 2023, 4:28 AM), available at <https://www.northjersey.com/story/news/2023/11/06/plan-for-jewish-college-safety-must-be-shown-to-recruits-at-nj-schools/71376259007/>.

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 Rutgers 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 deprive AEPi members at Rutgers 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 Rutgers 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.