



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

December 27, 2022

The Honorable Josh Gottheimer
U.S. House of Representatives
Washington, DC 20515

Dear Representative Gottheimer:

Thank you for your November 1, 2022, letter to Dr. Miguel Cardona, Secretary of the U.S. Department of Education (Department), expressing concern about alleged discrimination against Jewish students at the University of California, Berkeley (UC Berkeley). I am pleased to respond on his behalf.

In your letter, you requested that the Department “recognize its responsibilities under” Title VI of the Civil Rights Act of 1964 (Title VI) and Executive Order 13899 on Combating Anti-Semitism (Executive Order).¹ Additionally, you requested that the Department report to Congress on whether federal funding provided to UC Berkeley is “being used to further discrimination against Jewish and pro-Israel students, including through funding for campus organizations.”

As has been widely reported, the Department’s Office for Civil Rights (OCR) has recently received a complaint alleging discrimination at UC Berkeley arising from the actions discussed in your letter. We have opened that case for investigation and are therefore unable to provide further comment on this particular matter while this complaint is under investigation.

Please be assured that the Department is fully committed to ensuring that the civil rights of all students, including Jewish students, are protected, consistent with President Biden’s commitment to combat anti-Semitism. This commitment is heightened given the nationwide rise in reports of anti-Semitic incidents, including in schools.

The laws that OCR enforces protect all students from discrimination on the basis of race, color, national origin, sex, disability, and age. While none of the laws that OCR enforces expressly

¹ E.O. 13899, *Combating Anti-Semitism*, 84 Fed. Reg. 68779 (Dec. 11, 2019), <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism>.

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

addresses religious discrimination, Title VI protects students of any religion from discrimination, including harassment, based on a student's actual or perceived (1) shared ancestry or ethnic characteristics, or (2) citizenship or residency in a country with a dominant religion or distinct religious identity.²

As OCR explained in our January 19, 2021, *Questions and Answers* document regarding the Executive Order, the Executive Order does not change how OCR will handle complaints of discrimination involving anti-Semitism.³ For example, OCR can and does investigate complaints that students were subjected to ethnic or ancestral slurs; harassed for how they look, dress, or speak in ways linked to ethnicity or ancestry (e.g., skin color, religious attire, language spoken); or stereotyped based on perceived shared ancestral or ethnic characteristics. In doing so, OCR will remain cognizant that Title VI protects students from invidious discrimination and does not regulate the content of speech, and that OCR's enforcement must comport with the United States Constitution's First Amendment.⁴

OCR's website features a [variety of resources](#) and policy guidance, both recent and longstanding, to help educate the public on the importance of educational environments free from discrimination, including discrimination based on shared ancestry or ethnic characteristics or citizenship in a country with a dominant religion. In addition, OCR's virtual "binders" for [elementary and secondary schools](#) and [postsecondary institutions](#) include a section on religious and shared ancestry discrimination, including OCR fact sheets on combating discrimination against [Jewish](#) students and [Muslim, Arab, Sikh, and South Asian](#) students.

² See, e.g., OCR, *Dear Colleague Letter: Religious Discrimination* (Sept. 2004), <https://www2.ed.gov/about/offices/list/ocr/letters/religious-rights2004.pdf>; OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 2010), <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201010.html> (pages 5-6); OCR, *Know Your Rights Fact Sheet: Title VI and Religion* (Jan. 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>.

³ See OCR, *Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR's Enforcement of Title VI of the Civil Rights Act of 1964* (Jan. 19, 2021) (Question 5) (OCR's "enforcement approach is consistent with the Executive Order"), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf>; see also *id.* (Question 8) (Executive Order was issued to apply "the Department's longstanding policy that Title VI should be enforced against prohibited forms of discrimination rooted in anti-Semitism.").

⁴ See e.g., *Dear Colleague Letter: First Amendment* (July 28, 2003), <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>; *Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance*, 59 Fed. Reg. 11,448 (Mar. 10, 1994), www.ed.gov/ocr/docs/race394.html ("In cases in which verbal statements or other forms of expression are involved, consideration will be given to any implication of the First Amendment to the United States Constitution.").

Thank you for your commitment to providing all students a supportive and safe learning environment that is free from discrimination. If you have additional questions or concerns, please contact Molly Petersen, Principal Advisor, Office of Legislation and Congressional Affairs, at 202-763-8035.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights

JEWISHINSIDER