

December 7, 2023

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

*Re: Anti-Semitic Harassment at Postsecondary Institutions and the U.S. Department of Education's Grant Programs and Enforcement of Federal Civil Rights Law*

Dear Secretary Cardona:

We are 18 organizations and individuals writing to express our concern about the U.S. Department of Education's ("Department") response to the outpouring of anti-Semitic discrimination and harassment in education programs and activities throughout the United States. We call on the Department to follow through on its commitment (i) to pursue impartially its civil rights investigations of alleged anti-Semitic discrimination at educational institutions and (ii) to issue long-delayed regulations pursuant to Title VI of the Civil Rights Act of 1964 ("Title VI CRA") clarifying the legal duty of schools, colleges, and universities to address such discrimination in their education programs and activities. We also urge the agency to conduct an emergency audit of any grants disbursed to postsecondary institutions since September 30, 2020, under Title VI of the Higher Education Act of 1965, as amended ("Title VI HEA"), to ensure these awards promote the national security or economic competitiveness of the United States as intended by Congress and do not engage in the promotion of anti-Semitic or anti-American viewpoints.

### **Title VI CRA and the Prohibition of Anti-Semitic Discrimination and Harassment**

Title VI CRA 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>1</sup> The law directs federal agencies, including the Department, to carry out this mandate by issuing rules conditioning the continued receipt of federal funding on compliance with the anti-discriminatory

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<sup>1</sup> 42 U.S.C. § 2000d.

objectives of the statute.<sup>2</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>3</sup> Any institution that fails to respond to such prohibited harassment as required by Title VI CRA is subject to “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>4</sup>

For years, OCR has interpreted Title VI CRA 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>5</sup> In 2019, President Trump issued Executive Order 13899 (“E.O. 13899”), which declared that “[i]t

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<sup>2</sup> 42 U.S.C. § 2000d-1.

<sup>3</sup> Catherine E. Lhamon, Assistant Secretary for Civil Rights, U.S. Department of Education, *Dear Colleague Letter*, Nov. 7, 2023, at 2 (hereinafter “Lhamon, *Dear Colleague Letter*”), 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); Department of Education Office for Civil Rights, *Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance*, 59 Fed. Reg. 11,448, 11,450 (Mar. 10, 1994)). Our restatement of the Department’s current interpretation of what constitutes harassment on the basis of race, color, or national origin under Title VI does not indicate our agreement that this interpretation accurately states the law.

<sup>4</sup> 34 C.F.R. § 100.8(a); see also JARED P. COLE, CONGRESSIONAL RESEARCH SERVICE, 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>5</sup> Lhamon, *Dear Colleague Letter*, at 1–2 (citing *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 353-55 (S.D.N.Y. 2014); Department of Education Office for Civil Rights, *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>).

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>6</sup> President Biden has not withdrawn E.O. 13899. Notably, despite the prior administration having finalized a proposed rule clarifying Title VI CRA with respect to anti-Semitic discrimination and harassment in educational programs and activities, the current administration has inexplicably failed to publish these proposed regulations since assuming office on January 20, 2021.<sup>7</sup>

### **Federal Support for Anti-Semitic Programs and Activities Under Title VI HEA**

Congress first authorized the international education and foreign language studies grant programs currently found in Title VI HEA in the National Defense Education Act in 1958.<sup>8</sup> This law was “designed to provide the country with better-educated, defense-oriented personnel by providing financial help to foreign language scholars, foreign area studies centers, and science/engineering/mathematical studies programs.”<sup>9</sup> Congress confirmed this unambiguous orientation to national security by including in its findings for the law that “[t]he security, stability, and economic vitality of the United States in a complex global era depend upon American experts in and citizens knowledgeable about world regions, foreign languages, and international affairs . .

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<sup>6</sup> Exec. Order No. 13899, 84 FED. REG. 68,779, 68,779, *available at* <https://www.govinfo.gov/content/pkg/FR-2019-12-16/pdf/2019-27217.pdf>.

<sup>7</sup> Office of Information and Regulatory Affairs, View Rule: Discrimination Based on Shared Ancestry or Ethnicity in Response to EO 13899 on Combating Anti-Semitism and EO 13985 on Advancing Racial Equity and Support for Underserved Communities, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=1870-AA15> (last visited Nov. 21, 2023).

<sup>8</sup> NEETU ARNOLD, HIJACKED: THE CAPTURE OF AMERICA’S MIDDLE EAST STUDIES CENTERS 32 (2022), *available at* [https://www.nas.org/storage/app/media/Reports/Hijacked/Hijacked\\_Capture\\_of\\_Americas\\_MES\\_C.pdf](https://www.nas.org/storage/app/media/Reports/Hijacked/Hijacked_Capture_of_Americas_MES_C.pdf).

<sup>9</sup> LOUIS D. BRANDEIS CENTER, THE MORASS OF MIDDLE EAST STUDIES: TITLE VI OF THE HIGHER EDUCATION ACT AND FEDERALLY FUNDED AREA STUDIES 6 (Rev. Ed. 2014), *available at* [https://brandeiscenter.com/wp-content/uploads/2017/10/antisemitism\\_whitepaper.pdf](https://brandeiscenter.com/wp-content/uploads/2017/10/antisemitism_whitepaper.pdf).

. . .”<sup>10</sup> Title VI HEA thus authorizes funding for National Resource Centers (“NRCs”) with certain conditions, including that they teach “any modern foreign language” and provide “instruction in fields needed to provide *full understanding* of areas, regions, or countries in which such language is commonly used . . . .”<sup>11</sup>

The Department’s Office for Postsecondary Education (“OPE”) currently administers the NRC grant program under Title VI HEA.<sup>12</sup> According to the Department, in fiscal year 2023, it provided just under \$3.5 million in funding for 13 Middle East-focused NRCs and close to \$3.4 million to these NRCs in Foreign Language and Area Studies Fellowships.<sup>13</sup>

A substantial, growing body of evidence demonstrates that these NRC and related grants, far from fostering the U.S. national security and economic interests that led to their passage 65 years ago, are actually undermining these interests in furtherance of critical theory (*i.e.*, viewing every subject through the lens of the oppressor and the oppressed) that indoctrinates students in higher education and K–12 teachers<sup>14</sup> with a warped worldview that America and its allies, like Israel, are fundamentally irredeemable oppressors on the world stage. As one report put it, “The social and cultural priorities of today’s academics have rerouted Title VI funding away from serving the American national interest and toward political and ideological activism.”<sup>15</sup> In 2006, the U.S. Commission on Civil Rights published a report finding evidence that various recent anti-Semitic

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<sup>10</sup> 20 U.S.C. § 1121(a)(1).

<sup>11</sup> 20 U.S.C. § 1122(a)(1)(B)(i)–(ii) (emphasis added).

<sup>12</sup> See U.S. Department of Education, OPE—International and Foreign Language Education, <https://www2.ed.gov/about/offices/list/ope/iegps/index.html> (last visited Nov. 21, 2023).

<sup>13</sup> U.S. Department of Education, National Resource Centers Program, Awards, <https://www2.ed.gov/programs/iegpsnrc/awards.html> (last visited Nov. 21, 2023).

<sup>14</sup> ARNOLD, *supra* note 8, at 40 (“The scholars at Middle East NRCs typically do not interact with K–12 students directly; instead, the centers hold K–12 teacher workshops in which they discuss curricula and lesson plans that the teachers can implement in their classrooms.”).

<sup>15</sup> *Id.* at 113.

incidents had been “fueled by ideologically biased campus programs that receive operating funds from the federal government under Title VI of the Higher Education Act.”<sup>16</sup>

Recent examples of such anti-American and anti-Israeli activism funded by American taxpayers through Title VI HEA grants abound. For instance, between 2010 and 2013, UCLA’s Title VI-funded Center for Near East Studies devoted over one quarter of its 149 public events to discussions about Israel; according to AMCHA, a watchdog on anti-Semitism in higher education, 93 percent of these programs exhibited bias against Israel.<sup>17</sup> In 2019, the University of Texas-Austin’s Title VI-funded Center for Middle Eastern Studies contributed instructional materials to a “Critical Literacy for Global Citizens Summer Institute” that included materials regarding “Kindergarten Global Citizenship,” “Understanding & Enacting Culturally Sustaining Pedagogy,” and “Starting and Sustaining Critical Race Literacy in the Classroom.”<sup>18</sup> It is exceedingly difficult to see how such lessons provide anything close to a full understanding of the Middle East or countries within that region as required by law.

A notable recent example of abuse in the Title VI HEA program is the Duke University-UNC Chapel Hill Title VI HEA-funded Consortium for Middle East Studies (“Duke-UNC CMES”), which hosted a March 2019 conference entitled “Conflict over Gaza: People, Politics, and Possibilities.”<sup>19</sup> When OCR opened an investigation of the universities’ failure to abide by the Title VI CRA responsibilities in light of an anti-Semitic performance by a rapper during the conference and subsequent discovery of swastikas drawn on campus and anti-Semitic flyers in a UNC library, Duke and UNC entered a resolution agreement with the agency committing the

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<sup>16</sup> BRANDEIS CENTER, *supra* note 9, at 14 (quoting U.S. COMMISSION ON CIVIL RIGHTS, BRIEFING REPORT: CAMPUS ANTI-SEMITISM 1 (2006), *available at* <http://www.usccr.gov/pubs/081506campusantibrief07.pdf>).

<sup>17</sup> AMCHA Initiative, Joint Statement on Title VI HEA, <https://amchainitiative.org/joint-statement-on-title-vi-hea/> (last visited Nov. 21, 2023).

<sup>18</sup> ARNOLD, *supra* note 8, at 38.

<sup>19</sup> Letter from Ralph A. Suris, Chief Regional Attorney, District of Columbia Regional Office, Office for Civil Rights, U.S. Department of Education, to Interim Chancellor Kevin M. Guskiewicz, Office of the Chancellor, University of North Carolina at Chapel Hill, Nov. 6, 2019, at 1, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11192215-a.pdf>.

universities to issue statements and engage in trainings on Title VI CRA’s prohibition of anti-Semitic harassment.<sup>20</sup>

The conference also led OPE to review the activities of the Duke-UNC CMES funded under Title VI HEA.<sup>21</sup> OPE found fault with the use of federal tax dollars under Title VI HEA to support, for instance, a conference focused on “Love and Desire in Modern Iran” and academic papers regarding *Amihri Hatun: Performance, Gender-Bending and Subversion in the Early Modern Ottoman Intellectual History, or Radical Love: Teachings from Islamic Mystical Tradition*, although the subjects of these endeavors had no clear national security or economic stability nexus.<sup>22</sup> The letter noted that the program’s lack of balance in promoting the interests of Middle Eastern regimes while failing to note the positive aspects of any belief system other than Islam “strongly suggests” that the Duke-UNC CMES was not fulfilling its responsibility to provide a “full understanding” of the region on which it focuses.<sup>23</sup> It also noted that the ideological activism of the program crowded out “serious instruction preparing individuals to understand the geopolitical challenges to U.S. national security and economic needs.”<sup>24</sup> To remedy the failure of these activities to abide by Title VI HEA’s requirements, OPE directed the Duke-UNC CMES to revise its list of activities and describe how each “promotes foreign language learning and advances the national security interests and economic stability of the United States.”<sup>25</sup>

### **Anti-Semitic Harassment in Education Programs and Activities**

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<sup>20</sup> *Id.* at 3; Letter from Ralph A. Suris, Chief Regional Attorney, District of Columbia Office, Office for Civil Rights, U.S. Department of Education, to Dr. Vincent E. Price, President, Duke University, Dec. 10, 2019, at 2–3, *available at* <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11192214-a.pdf>.

<sup>21</sup> Department of Education Office of the General Counsel, *Notice of [OPE] Letter Regarding the Duke-UNC Consortium for Middle East Studies*, 84 FED. REG. 48,919, 48,919 (Sep. 17, 2019), *available at* <https://www.govinfo.gov/content/pkg/FR-2019-09-17/pdf/2019-20067.pdf>.

<sup>22</sup> *Id.* at 48,920.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 48,921.

As NRCs have mutated into engines of indoctrination in anti-American and anti-Israel views, it should come as no surprise that students at postsecondary institutions have been subject to increasing levels of discrimination and harassment based on their Jewish or Israeli identity. Surveys conducted over the past decade have documented a rise in reports of anti-Semitism at America’s colleges and universities, including a survey in 2021 indicating that more than half of Jewish fraternity and sorority students have felt unsafe in their education programs due to their Jewish identity.<sup>26</sup> Students on college campuses have been excluded or pressured to resign from student government positions or student groups due to their Jewish identities,<sup>27</sup> and in one case resolved earlier this year, OCR concluded that the University of Vermont had violated Title VI by failing to take action against a teaching assistant who openly discriminated against Jewish students, including bragging about giving them no credit for class participation, and fostered an environment that led to their exclusion from student clubs—including a sexual assault awareness group.<sup>28</sup>

The October 7th Hamas attacks in Israel, resulting in the murder of approximately 1,200 innocent men, women, and children and the taking of hundreds of hostages, have galvanized a growing anti-Semitic movement to wage a war of violence and intimidation that has deprived Jewish students in the United States of the protections to which they are entitled under Title VI CRA.

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<sup>26</sup> See Testimony of Kenneth L. Marcus, Founder & Chairman, Louis D. Brandeis Center for Human Rights Under Law, “Free Speech on College Campuses,” 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> (documenting this 2021 survey, a 2013 Pew Research Center survey showing that Jews were more likely to experience anti-Semitism in higher education than elsewhere, and a 2014 Brandeis Center-Trinity College survey showing more than half of Jewish postsecondary student respondents reported experiencing or witnessing anti-Semitism during the previous school year).

<sup>27</sup> *Id.* at 4 (describing incidents at the University of Southern California, Tufts University, the University of California, Berkeley Law School, and SUNY New Paltz).

<sup>28</sup> *Id.* at 4–5 (citing Dion J. Pierre, “Historic Victory”: US Gov’t Rules That University of Vermont Failed to Address Campus Antisemitism, THE ALGEMEINER, Apr. 3, 2023, <https://www.algemeiner.com/2023/04/03/historic-victory-us-govt-rules-that-university-of-vermont-failed-to-address-campus-antisemitism/>).

Reported incidents of anti-Semitic harassment, including violence and threats of violence, have included the following:

- Police arrested a computer science professor at Ventura County Community College for killing Paul Kessler, an elderly Jewish man participating in a pro-Israel demonstration in Westlake Village near Los Angeles, by reportedly striking him in the head with a megaphone.<sup>29</sup>
- The Department of Justice filed federal charges against a Cornell University student who allegedly posted threats online encouraging attacks on Jewish students and threatening to shoot them with a rifle.<sup>30</sup>
- Jewish students at Columbia University reported that fellow students posted online death threats against them.<sup>31</sup>
- Arizona State University campus police are investigating reports that members of National Students for Justice in Palestine (“NSJP”) threw rocks at the windows of a university building to disrupt a student government meeting considering a resolution on the Israel-Hamas conflict, resulting in police escorting Jewish students away from the building as an anti-Israel crowd lobbed death threats at them.<sup>32</sup>

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<sup>29</sup> Ari Blaff, *California Professor Arrested on Manslaughter Charges in Pro-Israel Demonstrator’s Death*, NAT’L REV., Nov. 16, 2023, <https://www.nationalreview.com/news/california-professor-arrested-on-manslaughter-charges-in-pro-israel-demonstrators-death/>.

<sup>30</sup> Luke Barr & Sarah Beth Hensley, *Student Charged with Making Antisemitic Threats to Cornell’s Jewish Students*, ABC NEWS, Nov. 1, 2023, <https://abcnews.go.com/Politics/fbi-investigating-antisemitic-threattargeting-cornell-universitys-jewish/story?id=104480004>.

<sup>31</sup> Lisa Rozner & Naveen Dhaliwal, *Echoing Concerns at Cornell, Jewish Students at Columbia University Say They’re Experiencing Antisemitism*, CBS NEWS NEW YORK, Oct. 31, 2023, <https://www.cbsnews.com/newyork/news/echoing-concerns-at-cornell-jewish-students-at-columbia-university-say-theyre-experiencing-antisemitism/>.

<sup>32</sup> Sasha Hupka, *Pro-Palestinian Protest Disrupts ASU Student Senate Meeting; Campus Police Investigating*, AZ CENTRAL, Nov. 15, 2023, <https://www.azcentral.com/story/news/politics/arizona-education/2023/11/15/asu-police-investigate-after-pro-palestinian-protest-disrupts-meeting/71595023007/>.



- Police arrested a student at the University of Massachusetts Amherst for punching a Jewish student during a demonstration for hostages held by Hamas, after which he spat on the Israeli flag the Jewish student was carrying.<sup>33</sup>
- A mob targeted Jewish students in a library at the Cooper Union for the Advancement of Science and Art with anti-Israel chants and banged on the doors, forcing library staff to lock the doors for students' protection.<sup>34</sup>
- A Jewish student at Tulane University suffered a broken nose after being battered by anti-Israel protestors with a flagpole and a megaphone near the university's campus.<sup>35</sup>
- Multiple Harvard University students physically attacked an Israeli student pleading with them not to grab him at an anti-Israel protest at Harvard Business School.<sup>36</sup>
- Jewish students at New York University filed a lawsuit alleging, among other anti-Semitic harassment, that faculty and student members of pro-Palestinian groups threatened Jewish attendees at a silent vigil supporting Israel with "slit-your-throat" gestures.<sup>37</sup>

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<sup>33</sup> *UMass Amherst Student Allegedly Punched Jewish Student, Spit on Israeli Flag*, WBZ NEWS, Nov. 6, 2023, <https://www.cbsnews.com/boston/news/umass-amherst-student-punches-jewish-student-spit-israel-flag/>.

<sup>34</sup> Lisa Rozner, *Pro-Palestinian Rally at Cooper Union Leads to Tense Moments at School Library*, CBS NEWS NEW YORK, Oct. 26, 2023, <https://www.cbsnews.com/newyork/news/cooper-union-pro-palestinian-rally-jewish-students-library/>.

<sup>35</sup> David Swindle, *Anti-Israel Protesters "Broke My Nose," Says Jewish Student at Tulane*, JEWISH NEWS SYNDICATE, Oct. 30, 2023, <https://www.jns.org/they-broke-my-nose-jewish-tulane-student-tells-jns-of-anti-israel-protesters/>.

<sup>36</sup> Jewish News Syndicate, *Israeli Student at Harvard Business School Attacked as Video Shows Him Saying "Don't Grab Me,"* NAT'L POST, Nov. 3, 2023, <https://nationalpost.com/news/harvard-law-review-antisemitic-attacker>.

<sup>37</sup> Jonathan Stempel, *NYU Is Sued by Jewish Students Who Allege Antisemitism on Campus*, REUTERS, Nov. 14, 2023, <https://www.reuters.com/legal/nyu-is-sued-by-jewish-students-who-allege-antisemitism-campus-2023-11-14/>.

- A Jewish student at Yale University reported that she has received death threats for her pro-Israel activism and that Yale’s administration “refuses to provide direct protection” to her and her peers.<sup>38</sup>
- The University of Pennsylvania’s “Palestine Writes Festival,” which the university sponsored and funded in September and included at least 25 speakers known for past anti-Semitic speech and conduct, contributed—according to a Title VI CRA complaint filed by the Louis D. Brandeis Center for Human Rights Under Law—to student rallies weeks later in support of the Hamas attacks and calling for genocidal violence against Israelis, as well as anti-Semitic harassment directed at the Jewish faith community Penn Hillel.<sup>39</sup>

The University of Pennsylvania “Palestine Writes Festival” bears special mention because its Middle East Center was a recipient under Title VI HEA until it lost this funding in August 2022 due to a lack of financial support from the university (not due to its support of unbalanced and anti-Semitic events).<sup>40</sup> This link between Title VI HEA funding and anti-Semitic harassment, as documented by the U.S. Commission on Civil Rights’ report making such a connection over 15 years ago,<sup>41</sup> demonstrates a compelling need for the Department to conduct a full, thorough, and complete audit of its Title VI HEA grants awarded since September 30, 2020, to ensure that such grant fund programs serve a national security or economic purpose without engaging in anti-American and/or anti-Semitic bias.

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<sup>38</sup> Testimony of Sahar Tartak, “Confronting the Scourge of Antisemitism on Campus,” House Committee on Education and the Workforce, Subcommittee on Higher Education and Workforce Development, Nov. 14, 2023, at 1, *available at* [https://edworkforce.house.gov/uploadedfiles/sahar\\_tartak\\_testimony\\_11.14.23.pdf](https://edworkforce.house.gov/uploadedfiles/sahar_tartak_testimony_11.14.23.pdf).

<sup>39</sup> Letter from Kenneth L. Marcus, Founder & Chairman, Louis D. Brandeis Center for Human Rights Under Law, et al. to Catherine Lhamon, Acting Assistant Secretary, U.S. Department of Education Office for Civil Rights, and Philadelphia Office, Office for Civil Rights, *Re: Civil Rights Violations by the University of Pennsylvania*, Nov. 9, 2023, 1–2, *available at* <https://brandeiscenter.com/wp-content/uploads/2023/11/Univerisity-of-Penn-Title-VI-Complaint.pdf>.

<sup>40</sup> *Id.* at 6 n.11.

<sup>41</sup> *Supra* note 16.

## The Need for Unbiased Civil Rights Investigations and Proposed Regulations on Anti-Semitic Discrimination and Harassment

On November 16, 2023, OCR took a laudable step in responding to this alarming rise in anti-Semitic incidents by releasing a list of seven K–12 and postsecondary institutions under investigation for alleged violations of Title VI CRA’s prohibition of discrimination on the basis of shared ancestry or ethnic characteristics.<sup>42</sup> Five of these investigations focus on reports of anti-Semitic harassment at institutions—including postsecondary institutions listed in the previous section of this letter where anti-Semitic harassment and violence took place following the October 7th Hamas attacks.<sup>43</sup> The press release announcing these investigations quotes you as follows: “When students are targeted because they are—or are perceived to be—Jewish, Muslim, Arab, Sikh, or any other ethnicity or shared ancestry, schools must act to ensure safe and inclusive educational environments where everyone is free to learn.”<sup>44</sup> We applaud this statement and call on OCR to pursue unbiased investigations of the institutions in question (and others yet to be announced) to ensure that they have adhered to the important principle it articulates as required by federal civil rights law.

Unfortunately, your comments since OCR launched these investigations have thrown into doubt how seriously the Department takes its responsibility to protect students from anti-Semitic harassment and violence. The day following OCR’s announcement of these investigations, you said in an interview on CNN, “Look, if an institution refuses to follow the law to protect students,

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<sup>42</sup> U.S. Department of Education, Press Release, U.S. Department of Education’s Office for Civil Rights Announces List of Open Title VI Shared Ancestry Investigations of Institutions of Higher Education and K–12 Schools, Nov. 16, 2023, <https://www.ed.gov/news/press-releases/us-department-educations-office-civil-rights-announces-list-open-title-vi-shared-ancestry-investigations-institutions-higher-education-and-k-12-schools>.

<sup>43</sup> *Id.* (listing Cornell University, Columbia University, the University of Pennsylvania, and Cooper Union among institutions under investigation). Since this initial release, OCR has added seven postsecondary institutions, including Harvard University, to its list of open Title VI shared ancestry investigations. *See* U.S. Department of Education Office for Civil Rights, List of Open Title VI Shared Ancestry Investigations, <https://www2.ed.gov/about/offices/list/ocr/sharedancestry-list.html> (last visited Dec. 6, 2023).

<sup>44</sup> *Id.*

we would withhold dollars. That said . . . I haven't spoken to a college leader that doesn't want to do everything they can. Right now what we're doing is giving them resources.”<sup>45</sup>

If the only action OCR is currently taking is giving “resources” to postsecondary institutions—instead of actually investigating them for their alleged failure to respond as required under Title VI CRA to reports of anti-Semitic harassment—then the Department suffers from a profound lack of understanding of what the law requires. Your comments also disturbingly prejudge the outcome of these investigations and place inappropriate pressure on OCR investigators to come to a certain conclusion favored by the current political leadership of the Department—namely, that the postsecondary institutions’ responses to the anti-Semitic harassment under investigation will not preclude them from continuing to collect their federal funding. This makes a mockery of the Title VI CRA investigatory process and signals to educational institutions that OCR investigations conducted by this administration will result in no consequences for schools, colleges, and universities.

We call on you to disavow your comments prejudging the outcome of OCR’s investigations of postsecondary institutions over their alleged failure to respond to anti-Semitic harassment and to reaffirm that OCR will pursue these investigations in a prompt, professional, and unbiased manner.

Relatedly, we call on the Department to publish its long-awaited Notice of Proposed Rulemaking (“NPRM”) clarifying the obligations of institutions receiving federal funds to address anti-Semitic discrimination, including harassment, in their programs and activities.<sup>46</sup> We can see no legitimate reason why the Department has allowed the NPRM to languish since this administration took office. Indeed, the dramatic rise in anti-Semitic incidents on campus, as well as OCR’s announcement of a slew of investigations of institutional responses to such harassment, underscore the need for the Department immediately to publish the NPRM so as to ensure educational institutions fully understand their responsibilities under Title VI CRA. Surely, there is no better time to clarify these duties than now. Particularly considering the need to give interested members of the public an adequate time period of at least 60 days to comment on the NPRM, we call on the Department to propose them no later than December 31, 2023.

### **The Urgent Need for a Review of Title VI HEA-Funded Activities**

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<sup>45</sup> *Quoted in Bianca Quilantan, Education Secretary: Schools That Protect Students Will Keep Their Money*, POLITICO, Nov. 17, 2023, <https://www.politico.com/news/2023/11/17/cardona-unlikely-schools-under-investigation-will-lose-federal-funds-00127799>.

<sup>46</sup> *Supra* note 7.

As illustrated above, postsecondary institutions are coopting Title VI HEA funding for purposes that have nothing to do with the national security- and economic competitiveness-based objectives of the law. In fact, institutions are shamelessly undermining those objectives by directing Title VI HEA funding toward ideologically driven programs and activities that present America and critical allies such as Israel as the great oppressors of the modern world and that train K–12 teachers to present this malicious and academically unserious portrait of the global landscape to their elementary, middle, and high school students. The Department only a few years ago recognized this unlawful mismatch between the purposes of the Title VI HEA program and the activities of the Title VI-funded Duke-UNC CMES. It should do the same today. The agency also must recognize that it continues to fund the same kind of anti-Semitic harassment under Title VI HEA that it is currently investigating as potential violations of Title VI CRA. This abuse of federal funds is blatantly impermissible under both Title VI of the Higher Education Act and Title VI of the Civil Rights Act.

We call on you to direct OPE to audit all Title VI HEA grants to NRCs made since September 30, 2020, to determine whether recipients have used them in accordance with the national security and economic competitiveness purposes of the statute and whether they have presented the required “full understanding” of the countries and regions they cover in accordance with the law. OPE should make this determination through interviews, site inspections, annual project reports submitted by the NRCs, recent NRC proposals, and any other documentation requested from the NRCs to support this audit. Following this audit, the Department must withdraw Title VI HEA funding from any recipient that is currently directing these resources toward programs and activities that are unauthorized by the statute—such as those that focus solely on American politics and society; focus on subjects that have no bearing on U.S. national security or economic competitiveness; or omit critical aspects of a region’s history or culture to obfuscate a “full understanding” of these subjects, such as programs focused on the Middle East that exclude Israeli perspectives or promote anti-Semitic and/or anti-American viewpoints. The agency must also take steps to ensure that future grant awards hew closely to congressional intent regarding Title VI HEA.

Such an audit will yield at least two critical benefits in a time of extreme anxiety on campus for Jewish students and faculty. First, it will prevent federal grants from being spent on activities that merely serve to undermine the global standing of America and its allies and fuel hostile environments for the Jewish community. Second, it will place postsecondary institutions on notice that future spending under Title VI HEA will be directed toward programs focused on bolstering U.S. national security and economic competitiveness—not on blaming Jews and Israel for conflict in the Middle East.

In sum, the urgent need to address the rampant anti-Semitic harassment detailed in this letter demands that the Department pursue unbiased investigations of such harassment under Title VI CRA; issue regulations clarifying the duty of federal recipients to respond to anti-Semitic discrimination and harassment in their educational programs and activities; and audit Title VI HEA grants disbursed since September 30, 2020, to ensure these awards promote the national security or economic competitiveness of the United States and do not engage in the promotion of anti-Semitic or anti-American viewpoints.

We appreciate your prompt consideration of these requests.

Sincerely,

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cc: Honorable James Kvaal, Under Secretary of Education  
Honorable Catherine Lhamon, Assistant Secretary, Office for Civil Rights  
Honorable Dr. Nasser Paydar, Assistant Secretary, Office of Postsecondary Education