

**STATEMENT OF THE ZIONIST ORGANIZATION OF AMERICA**  
**SUBMITTED TO**  
**THE UNITED STATES COMMISSION ON CIVIL RIGHTS**  
**IN CONNECTION WITH ITS BRIEFING ON MAY 13, 2011, ON**  
***PEER-TO-PEER VIOLENCE AND BULLYING:***  
***EXAMINING THE FEDERAL RESPONSE***

**Submitted May 27, 2011**

## Introduction

The Zionist Organization of America (ZOA) welcomes the opportunity to submit this statement to the U.S. Commission on Civil Rights, in connection with the Commission's examination of the federal response to peer-to-peer violence and bullying. The ZOA's statement will focus on that part of the problem relating to the harassment and intimidation of Jewish students in their schools and on their college campuses, which has sometimes escalated into actual physical violence against Jewish students. The problem is serious. Indeed, in April 2006, after holding a briefing on campus anti-Semitism in November 2005, this Commission recognized the seriousness of anti-Semitic harassment and intimidation on college campuses.<sup>1</sup>

Recently, the federal government took an important step toward addressing the problem, by making it clear that Jewish students are protected under the law from anti-Semitic harassment and intimidation in their schools and on their college campuses. On October 26, 2010, the U.S. Department of Education's Office for Civil Rights (OCR) clarified that Title VI of the Civil Rights Act of 1964 (Title VI)<sup>2</sup> will now be enforced to protect Jewish students who are being subjected to a hostile anti-Semitic environment in federally funded schools.<sup>3</sup> The ZOA advocated vigorously for this policy clarification for more than six years, and we strongly praise OCR for issuing it. As is described in more detail below, the ZOA has already effectively used the policy to help a Jewish high school student in Maine who had been facing a hostile anti-

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<sup>1</sup> Findings and Recommendations of the United States Commission on Civil Rights Regarding Campus Anti-Semitism, Finding 1 (Apr. 3, 2006), *available at* <http://www.usccr.gov/pubs/050306FRUSCCRRCAS.pdf> ("Many college campuses throughout the United States continue to experience incidents of anti-Semitism. This is a serious problem which warrants further attention.").

<sup>2</sup> Title VI provides: "No 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." 42 U.S.C. §2000d.

<sup>3</sup> See Russlynn Ali, Assistant Secretary of Education for Civil Rights, Dear Colleague Letter (Oct. 26, 2010), *available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

Semitic school environment for more than one year, which school officials knew about but failed to remedy.

While in no way diminishing the importance of OCR's new Title VI policy, there is more that the federal government could and should be doing to guarantee that Jewish students, like all students, are able to obtain their education in an environment that is safe, welcoming and conducive to learning. Until now, whether Jewish students have been afforded the protections of Title VI has depended on how OCR, the agency charged with enforcing the law, has decided to interpret it. But Title VI protections should not be subject to agency interpretation. Congress should enact legislation that enshrines in the law that federally funded schools must protect students from religious harassment and intimidation, in the same way that they are already obligated to protect against discrimination based on "race, color, or national origin" under Title VI. Respectfully, we ask this Commission to urge Congress to move forward with such legislation.

#### **About the ZOA**

The ZOA is the oldest and one of the largest pro-Israel organizations in the United States, with offices around the country and in Israel. Since its founding in 1897, the ZOA has been fighting for the Jewish people and the Land of Israel. Under the leadership of such illustrious presidents as U.S. Supreme Court Justice Louis Brandeis, Rabbi Dr. Abba Hillel Silver, Rabbi Stephen Wise and current National President Morton A. Klein, the ZOA carries out its work through its Government Relations Department, Campus Activism Network, Center for Law and Justice, and Israel office, and has been on the front lines of Jewish activism. With a national membership of over 30,000, and chapters throughout the United States (including in Chicago, Cleveland, Dallas, Detroit, Los Angeles, Miami, Milwaukee, New Jersey, Philadelphia,

Pittsburgh and Washington D.C.), the ZOA today works to strengthen U.S.-Israel relations through educational activities, public affairs programs and our work on Capitol Hill, and to combat anti-Semitism and anti-Israel bias in the media, in textbooks, and in schools and on college campuses.

### **The ZOA's Efforts to Protect Jewish Students from Anti-Semitic Harassment and Intimidation**

The ZOA has been a leader in fighting all forms of anti-Semitism in schools and on college campuses – including anti-Israel and anti-Zionist sentiment that crosses the line into anti-Semitism.<sup>4</sup> We have helped Jewish students facing a hostile anti-Semitic environment at schools across the country, such as the University of California, Irvine; the University of California, Berkeley; Pace University (in New York); Wayne State University (in Michigan); and Rutgers University (in New Jersey).

In October 2004, the ZOA filed a landmark complaint with OCR on behalf of Jewish students against the University of California, Irvine. The complaint alleged that Jewish students had faced years of anti-Semitic harassment, intimidation and discrimination, which the university

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<sup>4</sup> While of course not all criticism of Israel is anti-Semitic, the U.S. government has recognized that some anti-Israel and anti-Zionist sentiment crosses the line into anti-Semitism. In March 2008, the U.S. Department of State issued a Report on Contemporary Global Anti-Semitism. See <http://www.state.gov/documents/organization/102301.pdf>. In the report, the State Department noted that some criticism of Zionism or Israeli policy is anti-Semitic because it “has the effect of promoting prejudice against all Jews by demonizing Israel and Israelis and attributing Israel’s perceived faults to its Jewish character.” *Id.* at 4. For purposes of its report, the State Department adopted the working definition of anti-Semitism prepared by the European Monitoring Center on Racism and Xenophobia (EUMC). *Id.* at 6. The EUMC cites several contemporary examples of anti-Semitism, such as (1) making dehumanizing, demonizing, or stereotypical allegations about Jews; (2) denying the fact or scope of the Holocaust; (3) accusing Jews or Israel of inventing or exaggerating the Holocaust; (4) denying the Jewish people their right to self-determination; (5) applying double standards to Israel by requiring a behavior of Israel not expected or demanded of any other nation; (6) using symbols and images associated with classic anti-Semitism (e.g., the blood libel) to characterize Israel or Israelis; and (7) comparing contemporary Israeli policy to that of the Nazis. *Id.* at 6-7.

This Commission has likewise recognized that anti-Zionist and anti-Israel sentiment may cross the line into anti-Semitism. After its briefing on campus anti-Semitism in November 2005, the Commission found that anti-Israel propaganda perpetuating the anti-Semitic blood libel of Jews slaughtering children for ritual purposes, and anti-Zionist propaganda promoting the anti-Semitic stereotype of Jews as greedy, aggressive, overly powerful, or conspiratorial, is anti-Semitism and “should be distinguished from legitimate discourse regarding foreign policy. Anti-Semitic bigotry is no less morally deplorable when camouflaged as anti-Israelism or anti-Zionism.” U.S. Commission on Civil Rights’ Findings and Recommendations Regarding Campus Anti-Semitism, Finding 2.

administration knew about but failed to address, in violation of Title VI. The ZOA's complaint was the first case of anti-Semitic harassment that OCR ever agreed to investigate under Title VI, and will be discussed in more detail later in this statement.

In 2005, Susan B. Tuchman, the director of the ZOA's Center for Law and Justice, was invited to testify before this Commission at a briefing to examine the problem of campus anti-Semitism. The briefing, held in November 2005, led to significant findings and recommendations by the Commission, issued in April 2006.<sup>5</sup> Among the Commission's recommendations was that Title VI – the same statute that the ZOA relied on to remedy the problems that Jewish students were facing at the University of California, Irvine – should be vigorously enforced by OCR to protect students from anti-Semitic harassment.<sup>6</sup> Based on OCR's disposition of the ZOA's complaint against UCI – OCR eventually dismissed the complaint – it became clear that OCR was not following the Commission's recommendation.

In March 2010, the ZOA was joined by 12 other Jewish organizations in sending a letter to U.S. Education Secretary Arne Duncan, urging the Department of Education to enforce Title VI to protect Jewish students from anti-Semitic harassment and intimidation.

In June 2010, the ZOA was invited by then-U.S. Representative Ron Klein, co-chair of the Congressional Task Force Against Anti-Semitism, to brief members of Congress and their staff on anti-Semitic harassment on U.S. college campuses, and the federal government's role in addressing these incidents. The briefing led to letters from dozens of members of Congress to

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<sup>5</sup> U.S. Commission on Civil Rights' Findings and Recommendations Regarding Campus Anti-Semitism, *available at* <http://www.usccr.gov/pubs/050306FRUSCCRRCAS.pdf>.

<sup>6</sup> *Id.*, Recommendation 1.

Secretary Duncan, urging the Education Department to protect Jewish students from anti-Semitic harassment under Title VI.<sup>7</sup>

Last October, OCR finally clarified that Jewish students would be protected under the law.

**The Office for Civil Rights’ “Dear Colleague” Letter dated October 26, 2010**

On October 26, 2010, OCR issued a “Dear Colleague” letter that generally addressed bullying and harassment in publicly funded schools. Practically buried in that letter, OCR addressed anti-Semitic harassment and finally made it clear that Jewish students would be protected under Title VI. OCR stated, “While Title VI does not cover discrimination based solely on religion, groups that face discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics may not be denied protection under Title VI on the ground that they also share a common faith.”<sup>8</sup> OCR recognized that these principles applied to Jewish students, and also to “students from any discrete religious group that shares, or is perceived to share, ancestry or ethnic characteristics (e.g., Muslims or Sikhs).”<sup>9</sup>

OCR’s policy letter also clarified the responsibilities of schools under Title VI when discriminatory harassment has occurred. It would not be enough for a school simply to punish the perpetrators of the harassment. The “school must take prompt and effective steps reasonably

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<sup>7</sup> Triggered by the ZOA, several members of the U.S. House and Senate wrote to the Secretary of Education in 2008, urging the Department of Education to enforce Title VI to protect Jewish students. See <http://sherman.house.gov/Letter%20to%20US%20Sec%20of%20Education%20Spellings%20re%20Title%20VI%2004-30-08.pdf> (House letter) and <http://www.zoa.org/media/user/documents/publ/SenJudicCom0208.pdf> (Senate letter). Also triggered by the ZOA, the Conference of Presidents of Major American Jewish Organizations – the umbrella group for more than 50 Jewish organizations across the religious and political spectrums – wrote to the head of OCR, urging the agency to enforce Title VI to protect Jewish students and reverse its decision to dismiss the ZOA’s case against the University of California, Irvine, because the decision would “affect Jewish students not only at UCI, but also at other colleges and universities across the United States.”

<sup>8</sup> Russlynn Ali’s Dear Colleague Letter at 5.

<sup>9</sup> *Id.*

calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.”<sup>10</sup> OCR suggested several remedial steps, including: (1) counseling the perpetrators about the hurtful effects of their conduct; (2) reaffirming the school’s anti-discrimination policy; (3) publicizing how students may report harassment; (4) providing training to teachers, so that they can recognize and address anti-Semitic incidents; (5) creating age-appropriate student programs about the history and dangers of anti-Semitism; and (6) conducting outreach to involve parents and community groups.<sup>11</sup>

In addition, OCR recommended that schools could publicly label the incident as anti-Semitic.<sup>12</sup> This recommendation is similar to the one that this Commission issued after its briefing on campus anti-Semitism in November 2005. The Commission stated that “university leadership should set a moral example by denouncing anti-Semitic and other hate speech, while safeguarding all rights protected under the First Amendment and under basic principles of academic freedom.”<sup>13</sup> As part of its long campaign to ensure that Jewish students are provided with an educational environment that is safe, welcoming and conducive to learning, the ZOA has been stressing the importance of school administrators speaking out and publicly condemning anti-Semitism (including anti-Israel and anti-Zionist sentiment that crosses the line into anti-Semitism) whenever it occurs on campus, as well as condemning the perpetrators. Staying silent sends the message to the school community – including the victims and the perpetrators – that the anti-Semitism is acceptable and tolerable. That message is wrong and dangerous.

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<sup>10</sup> *Id.* at 2-3.

<sup>11</sup> *Id.* at 3, 6.

<sup>12</sup> *Id.* at 6.

<sup>13</sup> U.S. Commission on Civil Rights’ Findings and Recommendations Regarding Campus Anti-Semitism, Recommendation 2.

The ZOA commends OCR and Russlynn Ali, the Assistant Secretary for Civil Rights, for this crucial and very positive step forward. OCR's policy clarification now gives Jewish students an important legal tool if their schools are ignoring or ineffectively responding to anti-Semitic harassment and intimidation. We believe that this newly clarified policy will reduce litigation and provide valuable guidance to schools regarding how to respond to and eliminate an anti-Semitic hostile environment. Indeed, in the few short months since OCR clarified its policy for enforcing Title VI, the ZOA has used the policy to help a Jewish student at a high school in Maine, who had been subjected to more than one year of anti-Semitic harassment, threats and bullying by other students, which school officials had for the most part ignored.

#### **OCR's New Title VI Policy Has Already Been Used Effectively**

In November 2010, only a few short weeks after OCR issued its policy letter, the ZOA was contacted by the family of a high school student named David Smith,<sup>14</sup> who for more than one year had been harassed, threatened and intimidated by fellow students at his high school and in the school district. On information and belief, David was the only openly Jewish student at Caribou High School, located in Caribou, Maine. Reportedly, there was one other Jewish student who hid his/her Jewish identity, for fear of repercussions.

The first incident of harassment and intimidation occurred in the fall of 2009. Someone whom David had considered a friend admitted to drawing a swastika on a desk at the high school, accompanied by the words, "David Smith's enemies." The school responded to this threatening incident in a limited way, by suspending the perpetrator and calling in the perpetrator's family for a meeting with school officials and the victim's family. These steps plainly were not enough because David continued to be subjected to anti-Semitic harassment and intimidation by other students at the high school.

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<sup>14</sup> "David Smith" is a pseudonym.



In the summer of 2010, David received several phone calls on his cell phone that were hateful, threatening and anti-Semitic. David picked up the first call and his father picked up the second, and they could hear two boys talking and laughing. On both occasions, the caller said, “What’s the difference between a Jew and a frozen pizza?” David hung up and so did his father before either of them could hear the answer to the question. When the boys called a third time, no one picked up the phone. The boys left a message on David’s cell phone that was threatening, intimidating and exceeded all bounds of decency.

One of the boys asked, “What’s the difference between a Jew and a frozen pizza? Don’t know? A pizza doesn’t scream when it’s put in the oven. What’s the difference between a Boy Scout and a Jew?” The second boy responded, “What?” The first boy answered, “A Boy Scout comes back from camp.” The boys called a fourth time but David did not answer his cell phone and this time, the callers did not leave a message.

These chilling messages would be threatening and frightening for anyone to receive. It is unfathomable how those hate-filled anti-Semitic messages must have affected a young man in high school like David, particularly when he found out that the messages were left by two students he knew.

The Smith family contacted the police about the hateful and threatening messages, and the police subpoenaed the phone records and identified the perpetrators, who admitted that they were “probably” the ones responsible. The police took no action against the perpetrators – who implausibly claimed that the calls were randomly made and that they had not specifically targeted David, the only openly Jewish student in the school. The school district also took no action against the perpetrators. Reflecting the depth of the problem and the school district’s abysmal handling of it, the perpetrators did not even apologize to David and his family, nor did

the perpetrators' families contact the Smith family to apologize for their children's reprehensible conduct.

The anti-Semitic bullying and harassment that David experienced at the hands of his fellow students continued. On Labor Day weekend of 2010, David and three friends went to the movies in town. When they approached the theater, a group of four teenagers (two male and two female) were there. One of the male teenagers ran up to David and screamed in his face, "You're a Jew! You're a Jew! Why don't you act like a Jew?" The other three did not intervene; instead, they laughed, thereby encouraging the perpetrator. David knew all four of the individuals, who were students at his school. He called the police, who tracked down the culprits. But no action was taken against them.

After Labor Day weekend, Mr. and Mrs. Smith arranged a meeting with the principal of Caribou High School. They told him about the threatening and intimidating incident that had occurred over Labor Day weekend, and also about the threatening messages that were left for David on his cell phone. Understandably, the Smiths were concerned about David's physical and emotional well-being since all of the perpetrators were in his grade at the high school. The principal said that he would alert the guidance counselors, but he took no other action.

The anti-Semitic harassment that David was being subjected to continued. On November 3, 2010, David overheard other students in his class talking about what they thought was a Star of David etched into a desk in his classroom, with the words, "You, Jew, I come for you." When David asked what was going on and the other students told him, he reported it immediately to the head guidance counselor. A student confirmed to the principal that he had seen this anti-Semitic message on the desk. No one confessed to committing the anti-Semitic vandalism, and the school made little if any effort to identify the perpetrator(s). But the reaction of the student who

confirmed seeing the message is telling. Rather than feel outraged over this act of blatant anti-Semitism, he quite vocally complained at school that he was being “framed” for an incident that he viewed as trivial. He showed no understanding or appreciation of how threatening, anti-Semitic, and harmful this incident was.

On November 10, 2010, Mrs. Smith picked up David after school and learned that yet another anti-Semitic incident had occurred, this time in David’s Spanish class. A supposed friend of David had a piece of paper on his desk that had a smiley face bearing an Adolph Hitler moustache. Another student said, “Don’t show it to David.” But David saw it. Another student kept repeating, “Get rid of it” – apparently afraid of it being detected by the teacher.

At the end of the period, David reported the incident to his Spanish teacher. When Mrs. Smith called the teacher after school, she told Mrs. Smith that she would talk to David’s classmates on November 12th – two days after the incident, since the intervening day, November 11th, was Veterans Day and a school holiday. Mrs. Smith’s response was that the incident should be reported immediately to the principal, which is what she herself did. When Mrs. Smith contacted the principal, she made it clear to him that the hostile anti-Semitic school environment was affecting and harming David. She told the principal that David actually wanted to quit school, and that she was looking to the principal to handle the situation.

The principal contacted Mr. and Mrs. Smith on the evening of November 12th, and informed them that earlier that day, he had spoken to the students, individually and as a group, who were involved in the anti-Semitic incident that occurred in David’s Spanish class. The students denied any responsibility for the hateful and offensive picture; one student claimed that she found the drawing in or on her desk when she came to class and then gave it to another student. Significantly, not one of these students thought that it would be appropriate and indeed

necessary to report the picture to their teacher after they discovered it. Instead, they tried to hide and get rid of the picture, which they apparently did, because the picture was not recovered.

One of the students involved in the incident later sent a text message to David. He denied that he had drawn the offensive picture, claimed that he had tried to cross it out, and actually chastised David for bringing this anti-Semitic incident to the attention of school officials. Disturbingly, the student also texted David that “everybody draws those pictures,” which is more evidence of how severe and pervasive the anti-Semitic hostility was at Caribou High School.

When the principal spoke with the Smiths on November 12th, he told them how upset he was about the incident in David’s Spanish class. But neither he nor any other school official took any remedial steps to ensure that the anti-Semitic hostile environment that David was being subjected to was effectively addressed.

In December 2010, David was repeatedly harassed by students in the school cafeteria. Seated at a table, David was confronted by two male students who sneeringly said, “What are you doing here? Get out of here.” When David responded that he had the right to sit wherever he wished, another student approached (who had been present during the Labor Day weekend incident). Addressing the others, this student asked, “What’s he [David] still doing here?” Approximately a dozen students gathered around David and taunted him, calling for him to get out. Reportedly, cafeteria activities are taped, but the school did not use the tape to confirm the identity of the perpetrators and discipline them, nor did the school take any other steps to eliminate the hostile environment.

The impact of all the hostility on David was serious. At one time a straight “A” student, David’s academic performance fell. He became depressed and angry, and felt isolated, helpless, vulnerable and unsupported by school officials. He wasn’t sleeping well and suffered

nightmares. David's mother described his as looking "beaten," "tired" and "dead in the eyes," carrying himself lower, with his head hanging. David no longer wanted to go to school; he did not feel safe there.

The ZOA wrote to the high school principal and the superintendent of the district, describing in detail the severe and unrelenting harassment and intimidation that David was being subjected to. Enclosing a copy of OCR's policy letter of October 26, 2010, the ZOA apprised school officials of their legal obligation under Title VI to eliminate the hostile environment and ensure that it did not recur. There is virtually no doubt that this was the trigger that finally caused school officials to take the steps they could and should have taken months before to protect David and ensure that he could go to school and get his education in an environment that was physically and emotionally safe and conducive to learning.

The school finally provided counseling and supportive services to David, which had never before been offered or even mentioned as an option. The school provided staff with civil rights training on how to respond to suspected incidents of harassment, bullying, anti-Semitism, and other forms of intolerance and discrimination, and it conducted a district-wide staff meeting to discuss OCR's policy letter. The school conducted workshops on harassment, bullying and civil rights with each of the high school classes. School administrators met with the Caribou chief of police to discuss anti-Semitism and bias and hate crimes in the community, to promote police awareness of these concerns and to seek police cooperation in addressing them. David's school retained Steve Wessler, Executive Director of the Center for Preventing Hate (located in Portland, Maine), to conduct a school-wide assembly and exercise with students to raise awareness about bias and harassment – about the hurtful and harmful impact of name-calling and degrading language, and how words can escalate into violence. The school also invited Rachel's

Challenge – an organization that promotes civility and kindness in schools – to present programs to students and to the community. The superintendent sent a letter to all parents, explaining the importance of preventing harassment and bullying in school and describing the steps that the school district was taking to ensure that students can learn in a safe environment. In addition, the school arranged for the Maine Attorney General’s office to provide staff training regarding discrimination and harassment. The school arranged for one of David’s bullies to meet one-on-one with a Holocaust survivor, so that the bully could learn from the survivor’s first-hand experience with anti-Semitic hatred and bigotry. This bully finally apologized, repeatedly, to David for his actions. In addition, the school found a peer advocate for David, someone in his school whom David could count on and who would support him and help him stand up to the students who were threatening and harassing him.

In short, the school district finally took steps that it should have taken months before. David’s parents’ repeated entreaties to the school district had not been sufficient to get the school district to act. David’s obvious deterioration had not motivated the school to act. The ZOA strongly believes that it was OCR’s policy letter of October 26, 2010 – which made it clear that a school’s inaction in the face of anti-Semitic harassment and intimidation was a violation of federal law – that was the impetus for the school district to finally take the necessary steps to ensure that David Smith received the kind of educational environment that every student is entitled to: one that is physically and emotionally safe and conducive to learning. Only a few short months after it was issued, OCR’s policy clarifying civil rights protection for Jewish students was constructively used to remedy a hostile anti-Semitic school environment, without the need for litigation or government intervention.

**Protection against Anti-Semitic Harassment, Intimidation and Discrimination Must Be Enshrined in Federal Law**

The ZOA commends the Department of Education, and Russlynn Ali, the Assistant Secretary of Education for Civil Rights, for issuing the policy letter of October 26, 2010, and clarifying that OCR will protect Jewish students under Title VI when they are subjected to anti-Semitic harassment, intimidation or discrimination based on their ethnicity or ancestry. Jewish students now have an important and much needed legal tool. But there is more that the federal government could and should be doing to address the problem of anti-Semitism in federally funded schools.

To ensure that Jewish students' legal protection is guaranteed and not subject to policy changes within OCR, Congress must act. Legislation is needed to enshrine in the law itself that the federal government will not tolerate discrimination in federally funded schools based on a student's religion, just as it will not tolerate discrimination based on race, color or national origin.

History shows that OCR's newly-clarified Title VI policy may not endure. Prior to 2004, OCR did not enforce Title VI to protect Jewish students, viewing Jews simply as a religious group, outside the scope of Title VI which, by its terms, protects against discrimination based on "race, color, or national origin." In the fall of 2004, OCR issued two policy statements announcing that OCR would investigate complaints of students being harassed based on their membership in a group that exhibits both ethnic and religious characteristics, such as Jews.<sup>15</sup>

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<sup>15</sup> Kenneth L. Marcus, Deputy Assistant Sec'y of Educ. for Enforcement, Delegated the Auth. of Assistant Sec'y of Educ. for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter, Title VI and Title IX Religious Discrimination in Schools and Colleges (Sept. 13, 2004), *available at* <http://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>; Kenneth L. Marcus, Delegated the Auth. of Assistant Sec'y of Educ. for Civil Rights, U.S. Dep't of Educ., to Sidney Groeneman, Ph.D., Senior Research Assoc., Institute for Jewish & Community Research.

The agency stated that “OCR cannot turn its back on victims of anti-Semitism on the grounds that Jewish heritage may include both religious and ethnic characteristics.”<sup>16</sup>

At the time that these policy statements were issued, the ZOA filed a student-supported complaint against the University of California, Irvine (UCI), alleging that the university had failed to remedy years of anti-Semitic harassment, intimidation and discrimination that Jewish students had repeatedly complained about, in violation of Title VI. Based on OCR’s new policy statements, the agency agreed to investigate the allegations of the ZOA’s complaint.

During the investigation, the ZOA furnished OCR with substantial evidence of a hostile environment at UCI. Jewish students had been harassed, threatened and intimidated for years. Students posted signs displaying the Star of David and equating it with the swastika or dripping with blood. Students sponsored and promoted speakers and programs on a regular basis that demonized Jews and Israel – accusing Jews of controlling the world, the government, the media and other societal institutions, claiming that Jewish Israelis were behind the 9/11 terrorist attacks, comparing Jews to Satan, and referring to Jews as “the new Nazis.” One speaker claimed that “we have a psychosis in the Jewish community that is unable to co-exist equally and brotherly with other human beings. You can take a Jew out of the ghetto, but you cannot take the ghetto out of the Jew.”<sup>17</sup> It is important to note that this hateful anti-Semitic rhetoric was typically spewed from the center of the campus, the speech amplified so that it was virtually impossible to avoid.

Jewish students at UCI were physically threatened and actually physically assaulted. One student was shouted at to “Go back to Russia,” and “burn in hell,” and he was called a “f\_ \_king Jew.” Another Jewish student wearing a tee shirt bearing the words, “Everybody Loves a Jewish

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<sup>16</sup> Kenneth L. Marcus letter to Sidney Groeneman, Ph.D.

<sup>17</sup> Imam Muhammad al-Asi at UCI, February 2001.



Boy,” was walking by a table on campus where a student group called the Muslim Student Union was handing out its flyers. Rocks covered the flyers to keep them from blowing away. As the Jewish student passed the table, a rock flew right in front of his face, barely missing his head. He never wore a tee shirt that reflected that he was Jewish or pro-Israel ever again on campus.

Yet another Jewish student was walking toward the dean of students’ office one day, wearing a pin on his sweatshirt that said, “United We Stand,” with an imprint of the American and Israeli flags. He passed two Arab students who stared at his pin and said, “Slaughter the Jews” in Arabic. The Jewish student was of Sephardic descent and spoke and understood Arabic. He ignored the threat and kept walking. He was eventually surrounded by several Arab students who cursed at him and threatened to kill him. Approximately one month later, the same Jewish student was wearing a yarmulke and carrying a prayer book on campus. He greeted a familiar looking Arab student who was walking by. The Arab student made an obscene gesture, and began cursing and threatening the Jewish student, calling him a “dirty Israeli” and a “dirty Jew.” The Arab student threatened the Jewish student, yelling, “F\_ \_k you, my cousin’s in Hamas [a U.S.-designated foreign terrorist organization responsible for numerous terrorist attacks against Jews, and whose charter calls for the murder of Jews and the destruction of Israel]. He killed enough of you pigs.”

The effects of the hostile anti-Semitic environment on Jewish students were devastating. Students reported that their studies were negatively affected. Some students were afraid to wear anything that showed that they were Jewish or pro-Israel. Some were reluctant to affiliate with Jewish or pro-Israel programs and activities. Some stayed away from the campus when they knew that speakers and programs promoting the hatred of Jews and Israel would be taking place. Some students avoided the campus completely because they viewed it as hostile and

unwelcoming. Some Jewish students even feared for their physical safety. At least two students transferred from UCI and went to study elsewhere, because they could not endure the anti-Semitic harassment and intimidation any longer.

The evidence also showed how ineffectively UCI had responded to the problem. Jewish students repeatedly complained to administrators about the hostile anti-Semitic environment. But for the most part, university officials did nothing or made token efforts to address the problems. When one student appealed to the then-Chancellor of UCI, expressing concern about her physical safety on campus and urging the university to protect her, the Chancellor never even bothered to respond to her pleas. Another administrator who did respond actually suggested that the Jewish student visit the UCI counseling center – as if she was the one with the problem!

Despite the evidence establishing a severe, pervasive and persistent hostile environment that the university failed to effectively address, OCR dismissed the ZOA's complaint in November 2007.<sup>18</sup> It was later revealed why: A change in leadership at OCR led to a change in OCR's policy for enforcing Title VI. OCR reverted to its pre-2004 view that Jews were strictly a religious group and not also an ethnic group, and that therefore, Jews fell outside the scope of Title VI, which by its terms does not protect against discrimination based on religion.<sup>19</sup>

In short, Jewish students were denied the legal recourse that has been a given for other ethnic and racial groups since 1964, when Title VI was enacted. At the expense of Jewish

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<sup>18</sup> It took OCR more than three years to issue its decision, when most cases are reportedly resolved in 180 days. OCR's dismissal was affirmed on appeal by the head of OCR's regional office in San Francisco. The ZOA timely exercised its right to appeal to OCR headquarters in Washington, D.C. That appeal is still pending after more than three years.

<sup>19</sup> OCR investigators had actually determined that Jewish students at UCI were being subjected to a hostile anti-Semitic environment and that UCI had violated Title VI by failing to respond sufficiently to the problem. Nevertheless, OCR dismissed the ZOA's complaint because the agency was no longer interpreting Title VI to protect Jewish students from harassment and intimidation. See Kenneth L. Marcus, *A Blind Eye to Anti-Semitism?* Commentary (Sept. 2010), adapted from Kenneth L. Marcus, *Jewish Identity and Civil Rights in America*, Cambridge University Press (2010).

students at UCI and their emotional and physical safety and well-being, the federal government did not hold UCI accountable under the law for failing to provide these students with a campus environment that was physically and emotionally safe, free from harassment and intimidation, and conducive to learning.

OCR's new policy clarification will hopefully mean that another result like the one in the ZOA's case against UCI will not recur. But there is no guarantee; agency policies are plainly subject to change. That is why it is critical that Jewish students' protection from harassment and intimidation be unequivocally clear in the law.

In September 2010, U.S. Senator Arlen Specter and U.S. Representative Brad Sherman introduced legislation to fill the legal loophole and ensure that students are protected from religious discrimination. The proposed legislation provides: "No person in the United States shall, on the ground of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any educational program or activity receiving Federal financial assistance."

The Specter-Sherman bill contains provisions to ensure that it would not affect the operation of parochial schools and other types of non-secular institutions. In addition, the bill would not require schools to accommodate the religious obligations of students beyond what existing law already requires.

The ZOA worked closely with Senator Specter and Congressman Sherman and their staff in crafting this bill. We thank them for taking a leadership role in addressing anti-Semitic harassment and intimidation in schools and on campuses, and in recognizing that a legal loophole needs to be filled that would guarantee Jewish and other students protection from

religious discrimination, in the same way that students are protected from harassment and intimidation based on race, color and national origin.

Congress should move forward with such legislation and fill that legal loophole.

Respectfully, the ZOA requests that this Commission urge Congress to proceed with legislation that protects Jewish and other students from religious harassment and intimidation in federally funded schools.