

December 5, 2023

**VIA ELECTRONIC MAIL TO [OCR@ed.gov](mailto: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 identity<sup>1</sup> 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 Rutgers<sup>2</sup> 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.”<sup>3</sup> Megan Schumann, a Rutgers

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<sup>1</sup> 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).

<sup>2</sup> 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>.

<sup>3</sup> 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.<sup>4</sup> 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.”<sup>5</sup> 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.<sup>6</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>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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

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<sup>4</sup> 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/>.

<sup>5</sup> 42 U.S.C. § 2000d.

<sup>6</sup> 42 U.S.C. § 2000d-1.

<sup>7</sup> 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)).

<sup>8</sup> 34 C.F.R. § 100.7(c).

<sup>9</sup> 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.”<sup>10</sup> 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”.<sup>11</sup> 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.<sup>12</sup> 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

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<sup>10</sup> *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>).

<sup>11</sup> 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>.

<sup>12</sup> 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.



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 25<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005

RACHEL POMERANTZ  
DIRECTOR  
NEW YORK OFFICE

December 11, 2023

Sent by email only to [president@rutgers.edu](mailto:president@rutgers.edu)

Jonathan Holloway  
President  
Rutgers University  
7 College Avenue, Second Floor  
New Brunswick, New Jersey 08901

Re: Case No. 02-24-2122 – Rutgers University

Dear President Holloway:

On December 5, 2023, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint filed against Rutgers University. The complaint alleged that the University discriminated against students on the basis of their national origin (shared Jewish ancestry and/or Israeli) by failing to respond to incidents of harassment in October and November 2023.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, and national origin (including shared ancestry) in programs and activities receiving federal financial assistance from the Department. As a recipient of federal financial assistance from the Department, the University is subject to Title VI and its implementing regulations.

OCR will investigate the following issue: whether the University responded to alleged harassment of students based on national origin (including shared Jewish ancestry and/or Israeli) in a manner consistent with the requirements of Title VI.

Please understand that opening an investigation does not mean that OCR has made a decision about the allegation. During the investigation, OCR is neutral; OCR will collect and analyze the evidence it needs to make a decision about the allegation. OCR will ensure that its investigation is legally sufficient and addresses the allegation as required by OCR's [Case Processing Manual](#) (CPM). You may find additional information in OCR's [Complaint Processing Procedures](#). Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR intends to conduct a prompt investigation of this allegation. To reach an efficient and timely resolution of this matter, OCR is providing an opportunity for the University to present its response to the complaint's allegation and to submit supporting documentation. Within 20 days

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[www.ed.gov](http://www.ed.gov)

of the date of this letter, please provide to OCR the information listed in the attached data request. The regulations implementing Title VI, at 34 C.F.R. §§ 100.6(b) and (c), require that a recipient of federal financial assistance make available to OCR information that may be necessary for it to determine whether a recipient is in compliance with the regulations it enforces. Pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii), of the regulations implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality. OCR will take all proper precautions to protect the identity of any individuals named in the documents.

Complaints may be resolved in a variety of ways, including through mediation pursuant to Section 201(b) of OCR's CPM. Under 201(b) mediation, if both parties are interested and if OCR determines that the individual allegations are appropriate for mediation, the parties may voluntarily resolve these complaint allegations through mediation that OCR will facilitate. Note that in such case OCR does not monitor or enforce the agreement reached between the parties. Please inform OCR if you are interested in resolving this complaint through mediation.

When appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient expresses an interest to OCR to resolve the complaint. In such cases, OCR obtains a resolution agreement signed by the recipient. This agreement must be aligned with the complaint allegations or the information obtained during the investigation, and it must be consistent with applicable regulations.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the University with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Lauren Numeroff, Senior Compliance Team Attorney, at (646) 428-3895 or [lauren.numeroff@ed.gov](mailto:lauren.numeroff@ed.gov); or Sandy Araj, Compliance Team Attorney, at (646) 428-3879 or [sandy.araj@ed.gov](mailto:sandy.araj@ed.gov); or me, at (646) 428-3901 or [alexander.artz@ed.gov](mailto:alexander.artz@ed.gov).

Sincerely,

(b)(6); (b)(7)(A); (b)(7)(C)

Alexander H. Artz  
Compliance Team Leader

Attachment

cc: Julianne Apostolopoulos, Esq.

**Data Request**  
Case No. 02-24-2122  
Rutgers University (the University)

OCR requests that this information reach our office within **20 days from the date of the attached letter, which is January 2, 2024**. If any of the required items are available to the public on the Internet, you may provide the website address. While OCR prefers electronic submissions, you may send documents by any of the following means:

SharePoint: OCR may create an external sharing site through a browser-based portal in which the requested documents and information may be uploaded. Please contact Lauren Numeroff or Sandy Araj to receive online portal information to upload data.

Email: [lauren.numeroff@ed.gov](mailto:lauren.numeroff@ed.gov) or [sandy.araj@ed.gov](mailto:sandy.araj@ed.gov)

Fax: (646) 428-3843

Mail: U.S. Department of Education  
Office for Civil Rights  
New York Office  
32 Old Slip, 25th Floor  
New York, New York 10005

Please do **not** provide the information via an electronic cloud format such as Google Docs.

Because email is not reliably secure, please do not email any document that contains personally identifiable or private information without first encrypting this information. You may upload this information using the SharePoint option described above.

**Preservation of requested and relevant data and documents:** OCR may request supplemental data and documents that are relevant to the allegation under investigation. To ensure that OCR can assess the University's compliance with the statutory and regulatory obligations at issue in this investigation, please ensure that University employees preserve the data and documents requested below for the time frame specified in these requests and going forward until OCR closes this case. Please also ensure that University employees preserve other data and documents that are relevant to the allegation(s) under investigation until OCR closes this case. The regulations implementing Title VI, at 34 C.F.R. §§ 100.6(b) and (c), require that a recipient of federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination.

## Response Due: January 2, 2024

Please provide the following information for academic years 2022-2023 and 2023-2024, unless otherwise indicated, or indicate in writing if any of the requested items do not exist:

1. State whether any incidents of harassment on the basis of national origin, including shared ancestry, have been or are currently under investigation by the University or with another agency or court. If so, please provide the status of any investigation, any related complaint, and any determinations made by the University, the agency, or the court, including interim determinations.
2. Copies of the University's policies and procedures, and/or a description of the University's practices, governing the investigation of complaints or incidents of harassment of and other discrimination against students on the basis of national origin, including shared ancestry. Provide a detailed description of the complaint process, including each level of the process, the length of the process, and the types of records maintained. Also provide the name(s) and job title(s) of University staff responsible for handling complaints of discrimination, including harassment, on the basis of national origin, including shared ancestry, at each level of the process.
3. Explain how the University informs students and employees of the policies and procedures referred to in Item 2 above. Submit copies of all materials disseminated and websites that contain this information.
4. Copies of the University's policies and procedures, and/or a description of the University's practices, governing:
  - a. disciplinary or corrective actions that may be taken to address harassment and other discrimination against students on the basis of national origin, including shared ancestry; and
  - b. the provision of supports and remedies to students, employees, and other individuals found to have been discriminated against/harassed on the basis of national origin, including shared ancestry.
5. Copies and/or descriptions of all formal and informal reports and complaints, including records of oral reports and complaints of alleged discrimination, including harassment, based on shared Jewish ancestry, antisemitism, and/or being Israeli received during academic years 2022-2023, and 2023-2024. For each report/complaint/incident, please provide:
  - a. the name(s) and job title(s) of the person(s) to whom the report/complaint was made, and the date the report/complaint was made;
  - b. the name and relation to the University of the person making the report/complaint (e.g., student, faculty members, parent/guardian, counsel, member of the public);

- c. a detailed description of the report/complaint, including the name(s) of the alleged target(s) of discrimination/harassment and the alleged discriminators/harassers if not evident from the copy of the report/complaint;
  - d. a detailed description of the grievance procedures or other complaint processing procedures employed to resolve the report/complaint;
  - e. the length of the investigation and complaint resolution process;
  - f. the name, national origin, ancestry, and/or ethnicity of each student, employee, or other individual involved in the alleged incident(s) of discrimination/harassment;
  - g. the name(s) and relation to the University of any individual(s) who witnessed the alleged incident(s), including any University students, employees, or others;
  - h. the name(s) and relationship to the University of any witnesses interviewed by the University;
  - i. the name(s) and job title(s) of the individual(s) involved in the response to, investigation of, and resolution of the report/complaint;
  - j. all actions the University has taken in response to the report/complaint/concerns raised, including corrective action taken, disciplinary sanctions imposed, supportive services and remedies offered and/or provided to individuals (e.g., counseling, safety measures), and/or individual and/or University-wide remedies;
  - k. the final outcome of any investigation of the report/complaint, including copies of any incident/investigative reports, final determination, and any appeals;
  - l. if the University did not investigate any particular report/complaint, the reason(s) for not investigating, and the name(s) and job title(s) of the person(s) who made the decision;
  - m. any notice of the investigative findings provided to the complainant and/or other notice regarding the report/complaint, including notice of any outcomes on appeal; and
  - n. the complete case file for the report/complaint identified, including internal emails or other correspondence, internal and external memoranda, incident/investigative reports, video and audio recordings, witness statements, logs, forms, interview notes, notes regarding remedies provided, hearing transcripts, meeting minutes, and notes generated.
6. State whether the University conducts focus groups, other meetings, or trainings, and/or holds informational sessions with students and/or staff regarding students' rights under Title VI, how to report possible violations of Title VI, and/or the University's obligation to respond to Title VI complaints. If so, provide the dates of such events, a description of the attendees, and any materials presented and/or distributed.



7. A detailed description of any training regarding discrimination, including harassment, based on national origin, including shared ancestry, that the University provided to University staff responsible for responding to such complaints. For each such training provide the date(s) it was delivered, a description of the training, a list of the names and job titles of the individuals who attended the training, and copies of any materials distributed during the training.
8. The name, job title, address, telephone number, fax number and email address of the University's contact person for this complaint.
9. Any other information the University believes will assist OCR in this investigation.