



March 19, 2020

**VIA EMAIL AND FIRST-CLASS MAIL**

The Honorable Kenneth L. Marcus  
Assistant Secretary for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue S.W.  
Washington, DC 20202-1100

Dear Assistant Secretary Marcus:

Thank you for your tremendous leadership in vigorously enforcing Title VI of the Civil Rights Act to protect Jewish students from anti-Semitic harassment and discrimination.

We appreciate that in response to a complaint filed by the Zionist Organization of America (ZOA) last April, the U.S. Department of Education's Office for Civil Rights (OCR) opened an investigation into whether Duke University had failed to respond appropriately to a hostile anti-Semitic environment, in violation of Title VI. The investigation ultimately led Duke to sign a Resolution Agreement on December 3, 2019, thereby avoiding a determination of the university's liability under Title VI.

The Agreement requires Duke to take several steps – under OCR's monitoring – to demonstrate that it does not tolerate anti-Semitic harassment or discrimination. We write now to inform OCR that Duke has violated the Resolution Agreement in two respects.

First, the Agreement requires the university to respond to incidents of anti-Semitic harassment and discrimination consistent with Duke's policies (see Resolution Agreement, Section II). As detailed below, Duke is well aware that a student named [redacted] has been harassing, threatening, and intimidating Jewish and pro-Israel students, to the point that students fear for their physical safety. University officials know that [redacted] has threatened deadly violence and they recognize that she poses a danger to Jewish and pro-Israel students, yet they have turned a blind eye to the problem, in violation of their own protocol and policies.

Second, the Resolution Agreement requires Duke to host a meeting during the 2019-2020 academic year (and another one in the 2020-2021 academic year) in order to provide students, faculty and staff with the opportunity to discuss incidents of anti-Semitic harassment, which the university must then take appropriate steps to address (see Resolution Agreement, Section III). Duke's 2019-2020 academic year concludes on May 8, 2020, the day that final exams end. Yet

students have reported to us that Duke has not scheduled the required meeting, in violation of the Agreement.

For these reasons, we respectfully request that OCR: (1) reopen the ZOA's Title VI complaint against Duke University, supplemented by the allegations contained in this letter; (2) investigate whether Duke violated the Resolution Agreement; and (3) investigate whether Duke is failing to remedy a hostile anti-Semitic campus environment in violation of Title VI. Details of the ongoing problems are set out below.

Jewish Students have Endured Anti-Semitic Harassment and Intimidation and Threats of Deadly Violence, which Duke has Mishandled and Failed to Satisfactorily Address

[Redacted] – an undergraduate student at Duke – has a long history of harassing “Zionists” – meaning Jews – on the Duke campus. For example, when Tzipi Livni, a former Foreign Minister of Israel, was scheduled to speak at Duke on October 23, 2019, Duke's student paper, *The Chronicle*, published a column falsely accusing Livni of committing war crimes. Two Jewish students who are members of a pro-Israel group called Duke Israel Public Affairs Committee (DIPAC) published an opinion piece refuting the outrageous accusation and substantiating Livni's long record as a peacemaker.

[Redacted] responded on Twitter with an ugly, foul-mouthed attack on Livni, the two Jewish students and their student group, posting: “Tzipi Livni is a pussy ass bitch and you two are pussy ass bitches for defending her. And f—k DIPAC.”

At the Livni event itself, [redacted] – and other members of her anti-Israel, anti-Semitic group that calls itself “Students for Justice in Palestine” (SJP) – deliberately disrupted it. They stood up and shouted at Livni as she tried to speak, to the point that the program could not continue for several minutes. (See [https://www.youtube.com/watch?v=7Co\\_r1Yp9mc](https://www.youtube.com/watch?v=7Co_r1Yp9mc); [redacted] is speaking from approximately [redacted].)

[Redacted] and members of SJP violated Livni's right to speak and the right of students and others to assemble and learn from her. Duke strongly and unequivocally protects these rights, at least on paper. According to Duke's [policy](#) on “pickets, protests, and demonstrations,” the university “protect[s] the right of voluntary assembly, to make its facilities, available for peaceful assembly, to welcome guest speakers, to protect the exercise of these rights from disruption or interference.” Noting that disruptive conduct is not the exercise of “academic freedom,” Duke makes it clear that it “will not allow disruptive or disorderly conduct on its premises to interrupt its proper operation. Persons engaging in disruptive action or disorderly conduct **shall** be subject to disciplinary action, including expulsion or separation, and also charges of violation of law” [emphasis added].

Duke's policies thus mandated that [redacted] and the other SJP protestors be severely punished for their reprehensible behavior. But Duke did not punish them, nor did the university take any steps to protect the rights of Livni and those who assembled to hear her. University police were present during the harassment and disruption, but reportedly did nothing to stop it. (In contrast, at an April 2019 featuring anti-Semite and Israel-basher Linda Sarsour, Duke's

response was immediate when a protestor interrupted Sarsour during the question-and-answer period; security [removed](#) the protestor from the room right away.)

[Redacted] also has a long history of bullying and engaging in demeaning name-calling of Jewish and pro-Israel students. As just one of many examples, she falsely and outrageously accused DIPAC of being “a hate group” and “a racist anti-Palestinian organization made up of a bunch of racist clowns.” In fact, there is nothing hateful, racist or anti-Palestinian about DIPAC; it is a bipartisan group that works to support and strengthen the U.S.-Israel relationship.

[Redacted] is open about her intent to harass Jewish and pro-Israel students. In one Twitter post directed to DIPAC, she wrote: “Racists will get bullied, PERIOD.” In another, directed to a member of DIPAC who is Jewish and an open supporter of the Jewish state of Israel, [redacted] wrote, “Peepee Poopoo [redacted], and tell your organization to stop being racist and you won’t get bullied.”

On November 13, 2019, [redacted] posted a photo of DIPAC students, covering each student’s face with a clown face, along with this message: “Because y’all are a bunch of racist clowns.” [Redacted] made this clown picture her cover photo on Twitter and Facebook. Her actions frightened Jewish students, particularly those who were targeted in the doctored photo.

Several Jewish students immediately filed complaints with Duke’s Office of Student Conduct. Jeanna McCullers, an Associate Dean with the Office of Student Conduct, responded, requesting to meet with each complainant.

At the meetings, Ms. McCullers assured each student that the university would conduct a thorough investigation of [redacted]’s conduct in accordance with university policies. She assured them that there would be a disciplinary hearing at which the students would have the opportunity to be heard.

Ms. McCullers also understood that [redacted] posed a genuine physical danger to Jewish and pro-Israel students. In her meeting with two of the Jewish students who had filed harassment complaints, Ms. McCullers advised them to “watch your backs” and “watch out for each other.” She warned them that [redacted] might be dangerous and advised them to ask police to walk them to class if they felt threatened or at risk for their physical safety.

Jewish students made it clear to Ms. McCullers that they feared for their safety. One emailed Ms. McCullers with the subject line “Please keep us SAFE.” Referring to the photo of DIPAC students, which [redacted] had doctored with superimposed clown faces, this student wrote: “I don’t feel safe on campus. I am not a racist clown and I am relying on DUKE and YOU to protect my safety. I am the girl in the blue dress.”

Another Jewish student emailed Ms. McCullers to tell her that because of another of [redacted]’s tweets, “I am terrified to walk to class right now. I accidentally screamed because someone brushed past me in the hallway.” Later that day, this Jewish student emailed Ms. McCullers again: “The onslaught continues. I fear for my safety and the safety of Jewish students.”

As for [redacted], she showed no remorse for her harassing and bullying conduct and its harmful impact on Jewish students – even after the Office of Student Conduct intervened. In fact, she continued her bullying. On December 2, 2019, she tweeted: “So Duke’s Office of Student Conduct reached out to me regarding this photo [of DIPAC students with clown faces] saying they want to talk. So I’m going to repeat myself again, f—k DIPAC and every Zionist on campus.”

Ominously, [redacted] let Jewish students know that her harassment would not stop and would get worse. On the same day, she tweeted, “Stay tuned for Apartheid Week next semester [a reference to SJP’s annual “Israeli Apartheid Week,” during which Israel is viciously and unrelentingly demonized with false accusations, and SJP speakers call for Israel’s destruction]. Y’all haven’t seen anything from me yet.” Jewish and pro-Israel students justifiably worried about what [redacted] could do next and whether she was threatening physical violence.

One of the Jewish students who filed a harassment complaint emailed Ms. McCullers again, to let her know that [redacted] “continues to harass us . . . I continue to feel unsafe on this campus.”

Still, Duke took no action to put a stop to the harassment and assure Jewish students’ safety. Ms. McCullers responded to the email, apologizing that “this matter is taking longer than anticipated and it continues to negatively affect you.” She also said, “Our office will continue to review and assess this situation for potential policy violations” and urged the student to “continue to keep me updated.”

On December 5, 2019, Ms. McCullers emailed the Jewish students who had filed harassment complaints, notifying them of the following: “Our office has reviewed this matter and **taken the action deemed appropriate**. We will continue to monitor this situation moving forward” [emphasis added].

Ms. McCullers’ email said nothing about the action that her office had taken to stop the harassment and ensure Jewish students’ safety and well-being. Ms. McCullers did not explain why Duke had failed to hold the disciplinary hearing she had promised, where the complainants would have the opportunity to be heard. University policies required the protocol. “Monitoring this situation” was a useless and ineffectual response. When students followed up with Ms. McCullers, she did not explain.

One Jewish student’s follow-up email to Ms. McCullers said, “I’m really beginning to feel helpless and lose hope. This campus still feels hostile to me.” In an email, another Jewish student expressed justifiable concern that the harassment and intimidation rendered Jewish and pro-Israel students afraid to express their Jewish identity and support for Israel: “As long as students feel that intimidation and harassment are potential outcomes for publicly speaking on this issue [i.e., Israel], many will inevitably weigh the cost-benefit calculation of participating in discussion and decide that the costs outweigh the benefits.”

Not surprisingly, Duke’s inaction emboldened [redacted] and the threats against Jewish and pro-Israel students became even more menacing. On December 16, 2019, she tweeted:

“Dear DIPAC, I am honored to be one of these ‘certain students’ who is vicious in attacking racist organizations like yours. And I will continue to viciously attack y’all. Best, [redacted].” On the same day, she tweeted a message that strongly suggested that her verbal assaults would escalate to actual deadly violence:

Me before college: confused about my political identity, adopted centrism, “we really need to hear both sides[.]”

After coming to college:

Following these words, [redacted] posted a photo of a woman pointing a gun. The woman pictured was [redacted].

On December 18, 2019, [redacted] tweeted another picture of a woman pointing a gun, with this message: “Now I have to go present these aa [sic] evidence that I’m not a terrorist and that it’s a viral meme. I hate y’all so much.”

Whether [redacted] used a viral meme was irrelevant. The message and impact were clear: [redacted] was still threatening deadly violence and causing Jewish students justifiable fear for their physical safety. Yet still, Duke did not take action, as its own policies mandate. On December 19, 2019, [redacted] tweeted, “For now I’m good since **no action will be taken against me**” [emphasis added].

Because Duke imposed no consequences on [redacted], her harassment continued. On January 22, 2020, she bragged on Twitter about her bullying of Jewish and pro-Israel students – disparagingly referring to them as “racist clowns.” She also suggested that more bullying was to come. We understand that at some point, [redacted] made her Twitter account private, which means that only her followers could see what she was posting. Her private posts may be even more hateful, threatening and dangerous.

Jewish students remain fearful. They are afraid to express their Jewish identity and their support for Israel. They are afraid for their physical safety. They also feel betrayed by their university for failing to protect them, as Title VI, the Resolution Agreement, and Duke’s own policies require.

#### Duke has Ignored Abhorrent Anti-Semitic Threats and Harassment in Violation of Its Own Policies

Duke’s [policies](#) could not be clearer: “Threat[s] of physical violence against a person or group” or “any action that endangers the health, safety, or welfare of a person or group” are strictly prohibited. Although [redacted] plainly violated this policy, the university ignored the violation and imposed no consequences.

In addition, “[h]arassment of any individual for any reason is not acceptable at Duke University.” The policies distinguish harassment from “behavior that, even though unpleasant or disconcerting, is appropriate to the carrying out of certain instructional, advisory, or supervisory responsibilities.”

Duke defines harassment as including visual and electronic conduct “that is so severe, persistent, and/or pervasive that it alters the conditions of education, employment or participation in a program or activity, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive.” In short, harassment is exactly the kind of conduct that [redacted] has been engaging in, creating a hostile, intimidating and abusive environment for Jewish and pro-Israel students.

Duke’s policies identify four means by which alleged violations of university policies may be resolved: mediation, arbitration, alternative/informal resolution (for misconduct in the residence halls), and disciplinary action. Each one mandates a process before a neutral third party, so that cases can be fairly and effectively resolved and the parties have the opportunity to be heard.

The policies provide that “In order for a case to be referred for disciplinary action, there must be sufficient information to believe that a policy violation may have occurred and that the alleged individual/group may be responsible.” That standard was plainly met here, as Associate Dean McCullers assured all the students who filed harassment complaints against [redacted] that there would be a disciplinary hearing at which they would be heard. Yet Duke reneged on that promise and failed to follow its own protocol.

Duke also failed to comply with its obligation to immediately protect the Jewish students whose safety and well-being were in jeopardy, even before the investigation of [redacted]’s conduct could be completed and the matter resolved. Duke’s [policies](#) authorize the Office of Student Conduct to place “interim measures” on a student “to protect the health, safety, or welfare of the university community or any member of it.” Such measures might include “a ‘no contact order,’ removal of privileges, removal from or relocation within the residential community, and suspension of activity.” The policies even authorize an interim suspension.

Ms. McCullers herself clearly recognized that [redacted] was a danger to Jewish students and that they needed protection, urging Jewish students to “watch your backs” and “watch out for each other.” Yet the Office of Student Conduct failed to impose any interim measures to protect Jewish students’ safety and well-being.

Had Duke followed its own policies and proceeded with disciplinary action, the university could have imposed a number of sanctions on [redacted], which would have addressed her harassing and threatening behavior, and assured the safety and well-being of Jewish students. Available sanctions include, but are not limited to, expulsion, degree revocation, suspension, a no contact order, and a fine. [Redacted] could also be required to seek a mental health assessment and treatment.

Duke’s policies also provide that if “a violation was motivated in part or whole by race, color, religion, national origin” and several other categories – as [redacted]’s anti-Semitic, anti-Israel harassment was – then a more stringent sanction should be imposed. But Duke imposed no sanctions whatsoever.

Instead, the university disgracefully sent the message to Jewish students that *they* had a problem that they should address. Some Jewish students whom [redacted] harassed were encouraged to seek mental health counseling. They did not need mental health counseling. They needed their university to live up to its moral and legal obligations to provide a non-hostile learning environment and protect their emotional and physical safety and well-being.

#### Duke Failed to Schedule the Meeting Required by the Resolution Agreement

Duke did not even schedule the meeting required by the Resolution Agreement, which was supposed to give students, faculty and staff the opportunity to discuss incidents of anti-Semitic harassment, so that the university could address them. The Jewish students who complained to the university are leaders of DIPAC. If Duke had complied with this requirement and scheduled the meeting, these students would and should surely have known about it.

#### Duke Must Be Held Accountable for Allowing a Hostile Anti-Semitic Environment

OCR should be aware that [redacted] – a student who makes it clear that she relishes mocking, bullying and threatening other students for their identity and beliefs, and is contemptuous of Duke’s institutions and policies, is a Duke “University Scholar.” She is the beneficiary of an incredibly generous University Scholarship that funds her four years of undergraduate education at Duke. Her scholarship is valued at more than \$250,000.00, and it covers full tuition, room, board and all mandatory fees.

Given [redacted]’s harassment, her threats of deadly violence, her menacing taunts about what she might do in the future, and her total lack of remorse for all her horrific conduct, it is disgraceful that Duke did not withdraw the scholarship and expel [redacted] immediately. Those are the consequences she deserved.

Reportedly, [redacted] is graduating this spring. Duke’s inaction strongly suggests that university officials are simply awaiting the semester’s end, anticipating that once [redacted] graduates, the university will be relieved of its responsibility for this student’s misconduct.

The problem at Duke is not simply its tolerance of a student who is harassing and physically threatening Jewish and pro-Israel students. At least two Duke employees are contributing to creating a hostile anti-Semitic learning environment, and the university is tolerating them, too.

One employee, [redacted], a Duke graduate who has since held a number of positions at the university, is an open and admiring fan on Twitter of [redacted]’s harassing behavior. For example, in one tweet, he mocked how threatened and harassed Jewish and pro-Israel students were feeling, posting, “now I can’t wait for the inevitable op-ed: ‘they said incredibly hurtful things about me online. on twitter, they said peepee poopoo.’”

Another employee named [redacted], an [redacted] at Duke University Press, reportedly participated in the disruption of the Tzipi Livni event and staffed SJP’s so-called anti-Israel “apartheid wall” last spring while SJP members were in class. [Redacted] has a long and well-documented record of supporting terrorists, whitewashing terrorism, perpetuating anti-Semitic

conspiracy theories, demonizing Israel and Zionists, and denying the Jewish people's connection to the land of Israel. As just one example, on June 4, 2017, [redacted] tweeted a video of members of an anti-Israel group that calls itself "Jewish Voice for Peace" (JVP). They were disrupting LGBTQ Jews marching in the annual Salute to Israel Parade. [Redacted]'s comment about the JVP protestors: "the best kind of jews!!! #CelebrateEndingApartheid."

It is inconceivable that Duke would ever tolerate behavior by an employee that contributed to creating a hostile environment for African American students, or LGBTQ students, or students who belong to any other targeted group – nor should it. Given the alarming rise in anti-Semitism here and around the world, it is truly reprehensible that Duke looks the other way when its employees contribute to creating a hostile campus environment for Jewish students who love and support the Jewish state of Israel.

Duke is sending the message to the university community that threatening Jewish students is tolerable and that anti-Semitic harassers will suffer no consequences. Duke is conveying to the community that the university will indulge a viciously anti-Semitic student at the expense of Jewish students' physical and emotional safety and well-being.

We urge OCR to reopen the ZOA's Title VI complaint, supplement it with the foregoing allegations, and investigate the university's actions. We would be pleased to provide OCR with additional information to support our allegations, including the long trail of [redacted]'s physically threatening and harassing Twitter posts, her total lack of remorse, and her threats to continue her behavior and do even worse. In addition, Jewish students at Duke are ready and willing to come forward and provide information to your office about the harassment and intimidation they are enduring, and about their numerous unsuccessful efforts to get their university to address these problems.

Thank you.

Respectfully,



Morton A. Klein  
National President



Susan B. Tuchman, Esq.  
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