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## United States Senate

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February 27, 2008

Secretary Margaret Spellings  
U.S. Department of Education  
Office of the Secretary  
400 Maryland Avenue, SW  
Washington, DC 20202-1510

Dear Secretary Spellings,

We are writing to express concern regarding anti-Semitic incidents aimed at Jewish students at several colleges and universities and the response to such incidents by the Department of Education's Office for Civil Rights (OCR). On October 11, 2004, the Zionist Organization of America (ZOA) filed a complaint with the OCR alleging that Jewish students at the University of California-Irvine (UCI) had been repeatedly intimidated and harassed. Such conduct allegedly interfered with the ability of UCI's Jewish students to participate in and benefit from academic and extracurricular activities. Many of the students reportedly felt threatened, causing some to transfer to other schools. The complaint further alleged that UCI's administration failed to take meaningful steps to prevent anti-Semitic conduct on campus and was therefore complicit in the harassment and intimidation of Jewish students.

Over three years later, on November 30, 2007, the OCR concluded that there was "insufficient evidence to support ZOA's allegations that UCI failed to respond promptly and effectively to complaints by Jewish students." However, OCR also concluded that many of the allegations were beyond its authority under Title VI of the Civil Rights Act of 1964 (Title VI) because they constituted discrimination based solely on religion.

As we are sure you are aware, the U.S. Supreme Court held that for the purpose of extending civil rights protections under the Civil Rights Act of 1866, "Jewish" may be interpreted as an ethnic or racial category. *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987). Consequently, it seems likely that the U.S. Supreme Court, were it to take up the issue, would find that the Civil Rights Act of 1964 also incorporates the same broad protections afforded by the Reconstruction era statutes, including protections against anti-Semitism.

Additionally, OCR's conclusion is inconsistent with its prior policy statements. In 2004, OCR issued a series of policy statements announcing that it would assert jurisdiction under Title VI to pursue claims alleging harassment of Jewish students. On September 13, 2004, OCR sent a letter informing colleges and universities of its new policy. In the letter, OCR recognized that there are "students who may be targeted for harassment based on their membership in groups

that exhibit both ethnic and religious characteristics, such as Arab Muslims, Jewish Americans and Sikhs.” According to OCR, “[g]roups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith.” Unless the alleged harassment or discrimination is “based on religion per se,” OCR made clear that it would treat anti-Semitic harassment as racial or ethnic harassment prohibited by Title VI.

In another letter to the Institute for Jewish and Community Research dated October 22, 2004, OCR, relying upon on the Court’s decision in *Shaare Tefila Congregation*, explained that:

The question . . . is not whether ‘Jewish’ is a racial or national-origin category *per se*, but whether anti-Jewish incidents may be covered within Title VI’s broad protections against racial or ethnic discrimination. In the matter of anti-Semitism, the federal courts have been rather firm, and it is this agency’s intention to be equally strong . . . . OCR recognizes that anti-Semitic harassment may include adverse action taken against individuals based on a victim’s ethnic background or ancestry, notwithstanding the prospect that such harassment may constitute religious discrimination as well. In short, OCR recognizes that Title VI covers harassment of students of Jewish heritage regardless of whether the students may be Caucasian and American born. OCR cannot turn its back on victims of anti-Semitism on the grounds that Jewish heritage may include both religious and ethnic characteristics.

We are also aware of the conclusions reached by the United States Commission on Civil Rights after it studied the issue of anti-Semitism on college campuses. The Commission was concerned with the seriousness of the problems Jewish students were facing and specifically recommended that OCR vigorously enforce Title VI to ensure that they were protected from anti-Semitic harassment.

Given that case law and prior policy statements by both the OCR and the Commission on Civil Rights indicate that OCR has a legal obligation under Title VI to pursue claims alleging harassment of Jewish students, we ask that you provide a timely response to the following questions:


- 1) Is it OCR’s current policy that Jewish students are protected against racial and ethnic discrimination under Title VI, regardless of whether the students may be Caucasian and American born?
- 2) If OCR has narrowed its policy in any way since the fall of 2004, what is the explanation for such a change in policy?
- 3) Why did OCR take over three years to issue a decision on the complaint filed by the ZOA on behalf of Jewish students at UCI? According to OCR’s decision, agency representatives did not visit the campus until 2006, and it is our understanding that


OCR did not interview UCI officials until then. It is also my understanding that the ZOA proffered witnesses whom OCR did not interview. Is three years typical of the amount of time OCR takes to complete investigations under Title VI? Why did OCR delay making site visits to UCI and interviewing university officials, and why did OCR fail to interview all of the available witnesses?

We appreciate your assistance in this matter and look forward to receiving a prompt response to these inquiries.

Sincerely,

  
Arlen Specter

  
Jon Kyl

  
Sam Brownback

Cc: Grace C. Becker, Acting Assistant Attorney General  
Office of Civil Rights, Department of Justice