

**Congress of the United States**  
**Washington, DC 20515**

April 30, 2008

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

RE: Title VI Applies to Anti-Semitism

Dear Secretary Spellings,

We are writing to express our 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). In particular, we are concerned about whether OCR is enforcing Title VI of the Civil Rights Act of 1964 (Title VI) to protect Jewish students from anti-Semitic discrimination.

**FACTUAL BACKGROUND**

On October 11, 2004, the Zionist Organization of America (ZOA) filed a complaint with OCR alleging a pattern of anti-Semitic harassment, intimidation, and discrimination on the campus of the University of California at Irvine (UCI). 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, and some transferred to other schools due to the harassment. The complaint further alleged that because UCI's administration failed to respond effectively to repeated complaints about anti-Semitism on campus, UCI had violated Title VI.

Over three years later, on November 30, 2007, OCR concluded that it lacked jurisdiction under Title VI over many of the allegations in the ZOA's complaint. Title VI prohibits discrimination based on "race, color, or national origin." Because OCR reasoned that none of these categories generally apply to anti-Semitism, OCR did not have the authority under Title VI to pursue most of the alleged claims of discrimination. **This reversed OCR policy, as clarified in 2004, of protecting Jews against anti-Semitism.**

**CASE LAW**

Jewish students are entitled to protection under Title VI. Under the federal courts' interpretations of various civil rights statutes, Jews are both a racial and a national

origin group. In interpreting the Civil Rights Act of 1866, the U.S. Supreme Court held that Jews are a race. *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615 (1987).

Furthermore, federal courts have held that in the context of civil rights legislation, national origin groups are those with common ethnic characteristics. See *Almendares v. Palmer*, No. 3:00-CV-7524, 2002 WL 31730963 at \*10 (N.D. Ohio Dec. 3, 2002) (relying on the Equal Employment Opportunity Commission's Guidelines on Discrimination Because of National Origin stating that to prove a national origin claim, it is enough to show that the complainant was treated differently than others because of his or her foreign accent, appearance or physical characteristics); see *Janko v. Illinois State Toll Highway Authority*, 704 F. Supp. 1531 (N.D.Ill 1989) (holding that the Roma people, often referred to as "Gypsies", are a national origin group because of common ethnic characteristics and despite the fact that those referred to as "Gypsies" are not descendant from a particular nation-state). Widely-accepted historical and scientific genetic evidence prove that virtually all Jews are descended from the Kingdom of Judea and thereby share a common national origin and common ethnic characteristics. Under relevant case law, therefore, Jews are a national origin group.

Even though the concept of race and national origin may be subject to debate in other contexts, OCR, in enforcing civil rights legislation such as Title VI, has a statutory responsibility to interpret these concepts broadly and expansively. As the Supreme Court stated, "Congress intended to protect from discrimination identifiable classes of people who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics." *Saint Francis College v. Al-Khazraji*, 481 U.S. 604, 613 (1987). In the vast majority of cases where Jews face discrimination, it is precisely because the individual victim shares cultural and ethnic characteristics with other Jews. Consequently, it seems likely that the U.S. Supreme Court, were it to take up the issue, would find that Title VI protects Jewish students against anti-Semitism.

### OCR POLICY

OCR's conclusion with respect to the UCI case 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.** In a September 13, 2004 "Dear Colleague" 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 the Court's decision in *Shaare Tefila Congregation*, explained that "[i]n short, OCR recognizes that Title VI covers harassment of students of Jewish heritage regardless of whether the students may be Caucasian and American born."

This interpretation was endorsed by the United States Commission on Civil Rights. On April 3, 2006, the Commission on Civil Rights recommended that OCR vigorously enforce Title VI to ensure that Jewish students are protected from anti-Semitic harassment due to the seriousness of the problems Jewish students were facing on school campuses.

**REQUESTED RESPONSE**

Given that case law and prior policy statements by OCR reflect that OCR has a legal obligation under Title VI to pursue claims alleging harassment of Jewish students, we ask that you provide timely responses to the following questions:

Is it OCR's current policy that Jewish students are protected against racial and ethnic harassment, intimidation, and discrimination under Title VI, regardless of whether other forms of discrimination are alleged?

If OCR has narrowed its policy for enforcing Title VI to protect against anti-Semitic harassment, intimidation, and discrimination in any way since the fall of 2004, what is the explanation for such a change in policy?

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

Sincerely,



BRAD SHERMAN  
Member of Congress



ALLYSON SCHWARTZ  
Member of Congress



LINDA SANCHEZ  
Member of Congress



ROBERT WEXLER  
Member of Congress



STEVEN ROTHMAN  
Member of Congress

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

ADDITIONAL COSIGNER



SHELLEY BERKLEY  
Member of Congress