

April 24, 2018

VIA E-Mail (andrew.hamilton@nyu.edu)

Andrew Hamilton
President
New York University
Office of the President
70 Washington Square South
New York, New York 10012

RE: Discrimination Against Pro-Israel Organizations at New York University

Dear President Hamilton,

We write on behalf of StandWithUs, an international, non-profit Israel education organization, and the Louis D. Brandeis Center for Human Rights Under Law, a national non-profit legal advocacy organization that works to combat anti-Semitism on college campuses, in regard to a discriminatory [joint statement](#) (“statement”) signed by 51 NYU student organizations. This statement promotes the anti-Semitic Boycott, Divestment and Sanctions (BDS) movement and vows to “[boycott] NYU’s pro-Israel clubs, Realize Israel and TorchPAC, by not co-sponsoring events with them.” It also targets organizations based on their support of the only Jewish nation; effectively discriminates against Israeli students at NYU on the basis of their national origin; and effectively discriminates against many Jewish students, as Zionism is the movement for Jewish self-determination, and this statement seeks to denigrate this vital aspect of mainstream Jewish identity.

We commend you on your recent statements condemning BDS. We agree this is a “moment for leadership,” and ask you to role model that call to action. We agree that reaching out to the Office of Student Affairs and Multicultural Center is a good first step, but we disagree that dialogue is sufficient. Dialogue is an important tool, but only after a wrong has been righted. There are violations of NYU policy here, and conduct foreseeably undertaken in support of this statement could potentially violate state and federal law. Moreover, it indicates a reprehensible joint effort to marginalize and stigmatize the Jewish student community at your university. We urge your administration to investigate this matter, and if violations of student conduct rules or applicable laws are found, discipline responsible organizations accordingly.

I. Violations of NYU Policies

a. Equal Opportunity

NYU's Student Activities CSALS Guide to Club Management requires that each student organization provide equal opportunities to the entire NYU community. Specifically, [Provision 93](#) states that each club constitution "state a commitment to a policy of equal treatment and opportunity in every aspect of their relations with faculty, students and staff members, without regard to race, color, religion, sex, sexual orientation, gender, gender identity or expression, marital or parental status, national origin..."

The statement is directly at odds with the CSALS equal opportunity requirement. First, the statement facially discriminates against two pro-Israel clubs, preventing students in each club from full participation and enjoyment in student club life. Second, the statement solely targets Israel, thereby denying Israeli students equal treatment based on national origin, and Jewish students equal treatment based on race and religion, as Israel is a fundamental aspect of mainstream Jewish identity. Because the statement denies these two clubs the same right to co-sponsor events afforded to all clubs on campus, and does so by solely targeting Israeli and Jewish students, each signing organization has indicated an intention to act contrary to the University's equal opportunity requirements.

b. Discrimination

NYU's [Non-Discrimination and Anti-Harassment Policy](#) defines prohibited discrimination as "adverse treatment of any student based on race, gender and/or gender identity or expression, color, religion, age, national origin...rather than on the basis of his/her individual merit." As stated above, the statement announces an intention, by signatory organizations, to discriminate against Israeli NYU students who belong to the boycotted groups based on their national origin, and Jewish NYU students based on race and religion. Such discrimination would preclude full enjoyment and participation of campus life at NYU for no other reason than because they support the one and only Jewish State.

II. Potential Violation of New York State Law

a. New York Human Rights Law

Under the New York Human Rights Law (N.Y. Exec. Law §269.13), it is unlawful for *any person* to boycott or blacklist, or to refuse to buy from, sell or trade with, or otherwise discriminate against any person because of race, creed, color, [and] national origin . . . ". The boycotting signatories, by discriminatorily singling out and blacklisting pro-Israel organizations, whose members are predominately either Israeli or Jewish, target particular NYU students on the basis

of both “creed” and “national origin.” Such action may run afoul of §269.13 and therefore potentially violate the New York Human Rights Law.

III. Potential Violation of Federal Law

a. Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs that receive federal funds. The U.S. Department of Education’s Office for Civil Rights (OCR) announced that Title VI applies to discrimination on the basis of Jewish ethnicity or ancestry in guidance issued in 2004 (see Kenneth L. Marcus, Dear Colleague Letter (Sep. 13, 2004), <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>). In 2017, OCR reminded us that, “Title VI protects all students, including Jewish students, from discrimination based on race, color, and national origin (including language and actual or perceived shared ancestry or ethnic characteristics). Schools must take immediate and appropriate action to respond to complaints of discrimination, including harassment or bullying based on race, color, or national origin.” (See OCR, *Combating Discrimination Against Jewish Students*, U.S Dept. of Educ. (2017), <https://www2.ed.gov/about/offices/list/ocr/docs/jewish-factsheet-201701.pdf>.) Earlier, OCR clarified that unlawful harassment need not include intent to harm, be directed at a specific target, or involve repeated incidents (see Russlynn Ali, Dear Colleague Letter (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html>).

This anti-Zionist statement, if not properly addressed by NYU’s administration, could create a hostile environment for students of Jewish and/or Israeli backgrounds on campus, in violation of Title VI.

IV. Conclusion

In summary, the statement indicates an intention among the signatory organizations to engage in conduct that potentially violates both NYU Equal Opportunity and Anti-Discrimination Policies and state and federal civil rights law. While this letter focused on your legal obligations, we hope that it is clear to you that the effort to marginalize and stigmatize Jewish student organizations implicates not only issues of potential legal liability but also moral obligations as well. As the U.S. Commission on Civil Rights has advised, “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.” We urge your administration to take appropriate responsive actions, including:

- Reject this discriminatory statement firmly, specifically, and unequivocally to the entire campus community, including that conduct undertaken by student groups to boycott, marginalize, stigmatize, or otherwise harass other NYU students based on their group identities is unacceptable at NYU;
- Thoroughly investigate this matter, and if violations are found under NYU Policies, discipline the responsible student organizations as warranted, consistent with applicable constitutional protections;
- Provide training and education, on an annual basis, to all student organizations, as well as all students, faculty, and administrators, on bias and intolerance, including how anti-Semitism can often manifest as anti-Zionism - and how it should not be tolerated on campus, just like all other forms of discrimination should not be tolerated.

We are available to further discuss our recommendations with you, and can be reached at the e-mail addresses listed below. We thank you for your prompt attention to this matter.

Sincerely,



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