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August 17, 2022

By email to Catherine.Lhamon@ed.gov

Hon. Catherine Lhamon
Assistant Secretary for Civil Rights
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW, 4th Floor
Washington, D.C. 20202

Re: Combating Anti-Semitism by Implementing Executive Order 13899

Dear Assistant Secretary Lhamon:

We write to express our hope that the Department of Education will implement Executive Order 13899 on Combating Anti-Semitism as quickly as possible, and to offer you some background information about the Middle East Studies Association (“MESA”), which has weighed in opposing EO 13899.

EO 13899 would help fight anti-Semitism, and DOE should implement it without delay

Legal Insurrection Foundation (“LIF”) is a tax-exempt non-profit devoted, among other things, to combatting campus anti-Semitism. Since 2008 our website has reported on and documented how the anti-Zionist movement has stoked anti-Semitism and stifled campus speech through aggressive intimidation targeting Jews.

Much contemporary anti-Semitism poses as obsessive hatred of the State of Israel. The world’s only Jewish state is portrayed as uniquely lacking the right to exist. That is anti-Semitism in and of itself, but even if it were not, anti-“Zionism” easily slips over into obvious anti-Semitism. A report by the AMCHA Initiative documented an alarming correlation between anti-Zionism and

actions intended to harm Jewish students.¹ Similarly, the Anti-Defamation League (“ADL”) reported that for academic year 2020-21:

ADL experts identified a pattern of anti-Israel groups and activists blatantly demonizing pro-Israel and Zionist students, which disproportionately impacted Jewish students. Occasionally, these activists espoused antisemitic tropes, such as those alleging Jewish or Zionist power and control over the media and political affairs. Such language can create a corrosive climate for many Jewish students on campus. ADL’s Center on Extremism, which monitors anti-Israel activities across the country, found this language primarily came from a handful of student activist organizations that often work in concert to spread anti-Israel and anti-Zionist messages on U.S. college campus.²

A joint Hillel-ADL survey from 2021 found that almost a third of Jewish students had experienced anti-Semitism directed at them, and another 31 percent of Jewish students witnessed on-campus anti-Semitic activity directed against others. Fifteen percent of Jewish students reported that they felt the need to hide their Jewish identity from others on campus, and 12 percent said they had been blamed for the actions of the Israeli government because they are Jewish.³

A sampling of campus anti-Semitic incidents of abuse and harassment, from the most obvious hate-crimes to others often justified as anti-Zionism, includes the following:

1. At City University of New York (“CUNY”), a visibly Jewish student (*i.e.*, he was wearing a headcover) was punched in the head, face, and stomach, and told, “leave the school, you Jew.”⁴ Furthermore, as described by witnesses at a June 30, 2022 New York City Council committee hearing,⁵ CUNY faculty and students regularly harass Jewish faculty and students, particularly Jewish students who are supportive of Israel. One student described how she found CUNY law school’s atmosphere so hostile that she transferred to Yeshiva University. Jewish faculty described being targeted, by the school and by the faculty union.

¹ <https://amchainitiative.org/alarming-spike-antisemitism-2016-7.26.16-pr>. The AMCHA Initiative report is available at <https://amchainitiative.org/wp-content/uploads/2016/07/Report-on-Antisemitic-Activity-During-the-First-Half-of-2016.pdf>.

² <https://www.adl.org/resources/press-release/adl-report-inflammatory-anti-israel-activity-and-bds-calls-are-vilifying>. The ADL report may be found at <https://www.adl.org/resources/report/anti-israel-movement-us-campuses-2020-2021>.

³ <https://www.adl.org/resources/press-release/one-third-jewish-students-experienced-antisemitism-college-campuses-last>. The survey is available at https://www.adl.org/resources/report/adl-hillel-campus-antisemitism-survey-2021?_gl=1*1130sbd*_ga*Ntk0MjA2NTQ5LjE2NDE2ODY1Mjk.*_ga_S9QB0F2PB5*MTY1NzY1OTIxOS4zM S4wLjE2NTc2NTkyMjluNTc.

⁴ <https://www.timesofisrael.com/jewish-student-assaulted-at-brooklyn-college/>.

⁵ <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=983693&GUID=E7EE2FB1-6E25-40B7-9725-EE3943422CB7&Options=info|&Search=>.

CUNY's atmosphere is very anti-Zionist. Last May, its law school faculty passed a resolution to boycott, divest from, and sanction ("BDS") Israel.⁶ A few months before the faculty resolution, the law school's student government had adopted a pro-BDS resolution.⁷ In June 2021, the CUNY faculty union adopted a resolution claiming Israel "massacred innocent Palestinians during the spring conflict in Gaza. The measure did not mention, much less condemn, any actions by Hamas."⁸ A number of faculty members subsequently resigned from the union. By June 30, 2022, that number had reportedly reached 300.⁹

2. In May 2022, a Chabad House serving Jewish students at Florida State University was burned to the ground in a possible arson attack.¹⁰
3. Max Price, a Jewish student at Tufts who was a member of Tufts Community Union Judiciary (TCUJ), was repeatedly targeted for harassment because he questioned the propriety of a proposal put forward by the student group Students for Justice in Palestine ("SJP") to include its "Deadly Exchange Campaign" referendum in the student election ballot. The proposal blamed Israel and American Jewish supporters of Israel for fueling supposed "racist conduct" by law enforcement in the United States and tried to link Israel to white supremacy and police brutality.

The TCUJ, of which Price was a member, is tasked with fact-checking and removing bias in student government legislation. For his efforts to fulfill that role, Price was subjected to anti-Semitic harassment targeting him on the basis of his ethnic and ancestral Jewish identity. He was forced to sit through meetings by Tufts student-government leadership questioning his personal beliefs and identity as a pro-Israel Jew. The TCUJ determined that there was no evidence of bias and no need for Price to recuse himself, but he was placed on "mute" for the entire final Zoom meeting when TCUJ members considered the referendum.¹¹ Even that was not the end of the matter; SJP tried to impeach Price, but eventually gave up the idea.¹²

4. Similar incidents have occurred at the University of California at Los Angeles ("UCLA") and at Stanford University. Rachel Beyda, a Jewish student running for UCLA's student government judicial board, was challenged about her ability to be unbiased in light of her religion: "Given that you are a Jewish student and very active in the Jewish community, how do you see yourself being able to maintain an unbiased view?"¹³ Likewise, during an endorsement interview regarding her candidacy for

⁶ <https://nypost.com/2022/05/18/cuny-law-faculty-back-anti-israel-bds-resolution/>.

⁷ <https://nypost.com/2021/12/10/cuny-law-students-warring-with-faculty-over-anti-israel-resolution/>.

⁸ <https://www.tabletmag.com/sections/news/articles/cuny-kc-johnson>.

⁹ <https://twitter.com/kcjohnson9/status/1542684138502856704>.

¹⁰ <https://jewishmiami.info/tallahassee-chabad-burned-to-the-ground-in-possible-arson-attack/>.

¹¹ <https://www.jns.org/following-anti-semitic-harassment-tufts-student-seeks-administrative-help/>.

¹² <https://www.jns.org/sjp-drops-complaint-targeting-jewish-student-at-tufts-university/>.

¹³ http://www.nytimes.com/2015/03/06/us/debate-on-a-jewish-student-at-ucla.html?_r=0.

student senate at Stanford, Molly Hurwitz, was asked, “Given your strong Jewish identity, how would you vote on divestment?”¹⁴

Because of the obvious connections between anti-Zionism and anti-Semitism, the U.S. Department of State adopted the International Holocaust Remembrance Alliance (“IHRA”) definition of anti-Semitism back in 2010, during the Obama Administration.¹⁵ That definition carefully explains that while ordinary criticism of Israel is not anti-Semitism, denying the Jewish State’s right to exist, *i.e.*, denying the Jewish people their right to self-determination (or claiming it is a racist endeavor) *is* anti-Semitism. Likewise, applying double standards to Israel by requiring of it behavior not expected or demanded of any other democratic nation; using symbols and images associated with classic anti-Semitism (*e.g.*, claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis; or drawing comparisons of contemporary Israeli policy to that of the Nazis – all of these are anti-Semitism.

Furthermore, holding Jews collectively responsible for actions of the State of Israel; or accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations, are also manifestations of anti-Semitism. The IHRA definition also covers classic anti-Semitic tropes, such as making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as a collective. That includes the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.

I hope you will agree that many of the activities now increasingly common on college campuses fit within the IHRA definition. Implementing Executive Order 13899, which includes consideration of the IHRA definition, would help combat anti-Jewish discrimination.

It would be anomalous should the Department of Education reject use of this thoughtful definition when it analyzes anti-Semitism on American campuses, while the State Department uses it to report on anti-Semitism in other countries.

MESA is now just an anti-Israel political lobbying group

We are aware that MESA has submitted a contrary letter to you. MESA has sacrificed its claim to being a credible academic organization in order to become an anti-Israel political advocacy group. Over the course of several years, anti-Israel academic activists systematically took it over, leading many moderate and pro-Israel members to drop their membership or participation. (Under the leadership of leading scholars Bernard Lewis and Fouad Ajami, a number of academics saw where MESA was headed and decamped from it back in 2007 to form a separate academic association – the Association for the Study of Middle Eastern and Africa (“ASMEA”) – which has remained rigorous and non-political.)

¹⁴ <https://www.timesofisrael.com/stanford-student-candidate-questioned-over-her-jewish-faith/>.

¹⁵ <https://www.state.gov/defining-antisemitism/>.

In 2017, MESA even amended its bylaws to remove the word “non-political” from its Nature and Objectives, removing an impediment to its endorsing anti-Israel statements.¹⁶ Earlier this year, MESA adopted a pro-BDS resolution.¹⁷ That is, a supposed academic organization whose mandate concerns the study of the Middle East has endorsed boycotting a Middle Eastern country.

MESA’s Committee on Academic Freedom (“CAF”) regularly bashes Israel and, to a lesser extent, Arab countries such as Egypt that have made peace with Israel. Since 2017, MESA’s CAF has had little to say about Arab dictatorships that regularly abuse their people – unless they happen to have made peace with Israel, or (like the Saudis) to have quietly supported Arab countries making peace with Israel. As for the Palestinian Authority, MESA’s Committee on Academic Freedom has not seen fit to issue any complaints to the Palestinian Authority about its security police “invading” West Bank universities, violating Palestinian students’ protest rights by using force to disperse protesters, arresting ten students into a corrupt judicial system, failing to keep campuses as “safe spaces” by maintaining order on campus, or periodically shutting them down, all of which has happened in the past academic year.¹⁸

Conclusion

The Department of Education’s Office for Civil Rights needs to move quickly (hopefully before its projected December¹⁹ date) to confront the rising problem of anti-Jewish discrimination on campus. The problem is serious and growing, and needs strong measures including implementation of Executive Order 13899. As for MESA’s comments on the subject, MESA at this point is strictly an anti-Israel political organization, and its comments should be understood in that light.

Respectfully submitted,

/s/ William A. Jacobson

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/s/ Johanna E. Markind

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¹⁶ <https://www.algemeiner.com/2017/03/29/scholars-middle-eastern-studies-associations-vote-to-remove-self-description-as-non-political-indicates-its-preparing-to-pass-anti-israel-boycott-resolution/>;
<https://www.chronicle.com/article/why-the-middle-east-studies-association-must-remain-non-political/>;
<https://mesana.org/elections/Bylaws-amendment-2017.html>.

¹⁷ <https://legalinsurrection.com/2022/03/academic-ethnic-cleansing-middle-east-studies-association-signs-onto-boycott-of-israel/>.

¹⁸ *E.g.*, <https://twitter.com/KhaledAbuToameh/status/1534489061846487040>.

¹⁹ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1870-AA15>.