UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

September 25, 2020

Sent by email only to joelsiegal@litigateforjustice.com and nealsher@gmail.com

Joel H. Siegal, Esq.
Siegal & Richardson, LLP
235 Montgomery Street, Suite 1060
San Francisco, California 94104

Neal M. Sher, Esq.
551 Fifth Avenue, 31st Floor
New York, New York 10176

Re: Case No. 02-19-2174
New York University

Dear Mr. Siegal and Mr. Sher:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint you filed against New York University (the University). You alleged that the University discriminated against students of Jewish descent, on the basis of their national origin, by failing to respond appropriately to incidents that created a hostile environment for Jewish students at the University. The former student, on whose behalf you filed the complaint, will be referred to as "the Complainant."

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d, et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Title VI.

A violation of Title VI may be found if a recipient has created or is otherwise responsible for a hostile environment due to national origin-based harassment; *i.e.*, harassing conduct (*e.g.*, physical, verbal, or graphic conduct) that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the recipient. A recipient has subjected an individual to discrimination based on national origin if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a hostile environment of which it has notice.

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Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. What constitutes a reasonable response to harassment will differ depending upon the circumstances; however, in all cases, the recipient must conduct a prompt, thorough, and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment, and remedy the effects of the harassment on the individual who was harassed. The recipient must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

The Complainant informed OCR of multiple incidents of alleged harassment of students based on their shared Jewish ancestry, from academic year 2017-2018 through academic year 2018-2019. These incidents included, for example, grabbing a microphone away from a student, wounding the student, during the "Rave in the Park" event hosted by a University student group, Realize Israel, on April 27, 2018; and a student tweeting that he wanted "all Zionists to die," on or about December 12, 2018, which led to the closure of the University's Bronfman Center for approximately 48 hours. The University informed OCR of additional reports and complaints concerning incidents of alleged discrimination and/or harassment of students based on shared Jewish ancestry, from academic year 2017-2018 through academic year 2019-2020.

In its investigation to date, OCR conducted interviews with administrators from the University's Offices of Student Affairs; Student Conduct and Community Standards; Global Inclusion, Diversity, and Strategic Innovation; and the Department of Public Safety. During those interviews, OCR sought clarification in areas where it lacked sufficient information to make a compliance determination, such as whether the University investigated concerns that were raised; communicated its findings to persons who filed complaints or made reports alleging anti-Semitism; offered interim and remedial measures where appropriate; properly considered disciplinary action for respondents; and, more generally, whether any incidents created a hostile environment for Jewish students at the University.

Prior to the completion of OCR's investigation, the University expressed an interest in resolving the allegation and OCR determined resolution was appropriate. Accordingly, pursuant to Section 302 of OCR's *Case Processing Manual*, on September 15, 2020, the University signed the enclosed resolution agreement (Agreement) to voluntarily resolve the Complainant's allegation without further investigation. OCR will monitor the implementation of the Agreement.

The Agreement requires the University to, among other things, revise its *Non-Discrimination and Anti-Harassment Policy* to include a statement that the University prohibits discrimination on the bases of shared ancestry and ethnic characteristics, including anti-Semitism (as defined in Section 2(a)(i) of the *Executive Order on Combating Anti-Semitism* (Exec. Order No. 13899)); take appropriate action to address and ameliorate discrimination and harassment based on shared ancestry and ethnic characteristics, including anti-Semitism that involves student clubs; issue a statement by the President of the University that the University does not tolerate acts of discrimination or harassment on the bases of shared ancestry and ethnic characteristics, including anti-Semitism; and conduct outreach to the University community in order to inform students,

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faculty, staff, and the Complainant of the University's commitment to take all necessary actions, including pursuant to its student discipline process where appropriate, to address and ameliorate discrimination and harassment based on shared ancestry or ethnic characteristics, including anti-Semitism. The University will invite participants at these outreach activities to share any concerns that they may have about incidents of discrimination and harassment within the educational programs and activities of the University; and if complaints about specific incidents of such harassment or discrimination are identified during the outreach activities, the University will take steps, including disciplinary action where appropriate, to address complaints and respond to the incidents. Additionally, pursuant to the Agreement, the University will conduct training regarding the revised *Non-Discrimination and Anti-Harassment Policy* for the University community and senior leadership, staff, and administrators responsible for responding to reports or complaints of anti-Semitism.

This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because the individual has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; Sandy Araj, Compliance Team Attorney, at (646) 428-3879 or sandy.araj@ed.gov; or Andy Artz, Senior Compliance Team Attorney, at (646) 428-3901 or alexander.artz@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: Adela Cojab

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RESOLUTION AGREEMENT

New York University
Case No. 02-19-2174

In order to resolve Case No. 02-19-2174, New York University (the University) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the following actions pursuant to Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d, et seq., and its implementing regulation, 34 C.F.R. Part 100.

The University affirms its commitment to equal treatment and opportunity for its students and the entire University community and to maintaining an environment that is free of bias, prejudice, discrimination, harassment, and retaliation. This agreement was entered into voluntarily and does not constitute an admission of liability, non-compliance, or wrongdoing by the University. The University will ensure that all actions undertaken pursuant to this resolution agreement are consistent with principles of free speech and expression protected by the First Amendment of the U.S. Constitution.

Action Item I – Policy Revision and Implementation

A. By September 15, 2020, the University will revise its *Non-Discrimination and Anti-Harassment Policy* (*Policy*), to include a statement that the University prohibits discrimination on the bases of shared ancestry and ethnic characteristics, including anti-Semitism (as defined in Section 2(a)(i) of the *Executive Order on Combating Anti-Semitism* (Exec. Order No. 13899), attached hereto as Exhibit A). The University will ensure that the *Policy* sets forth the procedures for addressing and responding to incidents and complaints of discrimination and harassment based on shared ancestry and ethnic characteristics, including incidents and complaints of anti-Semitism. The revised *Policy* will include a description of the forms of anti-Semitism that can manifest in the University environment and provide examples of discrimination on the bases of shared ancestry and ethnic characteristics. The University will further revise the *Policy* to include representative examples of discrimination on the bases of shared ancestry and ethnic characteristics, including anti-Semitism. The *Policy* will also include a statement of the University's commitment to academic freedom and free speech.

B. Pursuant to the procedures set forth in its revised *Policy* and/or the University's student discipline process, the University will take appropriate action to address and ameliorate discrimination and harassment based on shared ancestry and ethnic characteristics, including anti-Semitism that involves student clubs.

Reporting Requirements:

a) By September 15, 2020, the University will submit to OCR, for review and approval, copies of the *Policy*, revised in accordance with Action Item I.A above. OCR will respond within 15 calendar days.

b) By October 15, 2020, the University will provide documentation to OCR demonstrating that it adopted the revised *Policy* and disseminated the *Policy* to University students, faculty, and staff

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through its website, as well as by any other means the University deems effective to ensure that the information is widely disseminated.

Action Item II – Commitments to Address Discrimination and Harassment

In furtherance of the University's commitment to address and ameliorate incidents and complaints of discrimination and harassment based on shared ancestry and ethnic characteristics, including anti-Semitism, the University will take the following steps:

A. Statement by the President of the University

By September 30, 2020, in conjunction with the dissemination of the *Policy*, the President of the University or designee will issue a statement to all University students, faculty, and staff stating that the University does not tolerate acts of discrimination or harassment on the basis of shared ancestry and ethnic characteristics, including anti-Semitism, and that the University will take all necessary actions, including pursuant to its student discipline process, to address and ameliorate such discrimination and harassment. The statement will include a description of the forms of anti-Semitism that can manifest in the University environment, and will encourage any student, faculty or staff member who believes he or she has been subjected to such discrimination or harassment to report it to the University and include information about the University's Bias Response Line.

Reporting Requirement: By October 15, 2020, the University will provide documentation to OCR demonstrating that the statement referenced in Action Item II.A was issued and disseminated to University students, faculty, and staff, through its website, as well as by any other means the University deems effective to ensure that the information is widely disseminated.

B. Outreach to the University Community

1. During academic years 2020-2021 and 2021-2022, the University will host town hall meetings in order to inform students, faculty, and staff of the University's commitment to take all necessary actions, including pursuant to its student discipline process where appropriate, to address and ameliorate discrimination and harassment based on shared ancestry or ethnic characteristics, including anti-Semitism. The University will invite participants to share any concerns that they may have about incidents of discrimination and harassment that have occurred within the educational programs and activities of the University. If complaints about specific incidents of such harassment or discrimination are identified during the meetings, the University will take steps, including disciplinary action where appropriate, to address the complaints and respond to the incidents.

2. By October 31, 2020, the University will express to the core Jewish student community leadership, including but not limited to students from the Hillel senior board, Realize Israel, and TorchPAC, its commitment to take all necessary actions, including pursuant to its student discipline process where appropriate, to address and ameliorate discrimination and harassment based on shared ancestry or ethnic characteristics, including anti-Semitism. The University will invite participants to share any concerns that they may have about incidents of discrimination and harassment that have occurred within the educational programs and activities of the University. If complaints

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about specific incidents of discrimination and harassment are identified during the meeting, the University will take appropriate steps, including disciplinary action where appropriate, to address the complaints.

3. By October 31, 2020, the University will continue its practice to meet with student club leaders. In meetings with student club leaders, the University will express its commitment to take all necessary actions, including pursuant to its student discipline process where appropriate, to address and ameliorate discrimination and harassment based on shared ancestry or ethnic characteristics, including anti-Semitism.

4. By October 31, 2020, the University will invite the alumna who filed the complaint to discuss with select University administrators any concerns that she may have about incidents of anti-Semitic discrimination and harassment that have occurred within the educational programs and activities of the University. If complaints about incidents of such harassment or discrimination are identified during the meeting, the University will take appropriate steps, including pursuant to its student discipline process where appropriate, to address the complaints.

Reporting Requirements:

a) By May 31, 2021, and May 31, 2022, the University will provide documentation to OCR demonstrating that it has implemented Action Item II.B.1 above during academic years 2020-2021 and 2021-2022, respectively, including the date(s) the meeting(s) were held; the names, titles and qualifications of the individuals who led the meeting(s); copies of any written materials distributed during the meeting(s); a list of complaints and/or incidents reported during the meeting(s); and a description of the steps the University took to address the complaints and/or incidents reported during the meeting(s), if any, including any remedial action and an explanation justifying the University's action.

b) By November 15, 2020, the University will provide documentation to OCR demonstrating that it has implemented Action Item II.B.2 above, including the date the meeting was held; the names, titles and qualifications of the individuals who led the meeting; copies of any written materials distributed during the meeting; a list of meeting attendees; a list of complaints and/or incidents reported during the meeting; and a description of the steps the University took to address the complaints and/or incidents reported during the meeting, if any, including any remedial action and an explanation justifying the University's action.

c) By November 15, 2020, the University will provide documentation to OCR demonstrating that it has implemented Action Item II.B.3 above, including the date(s) the meeting(s) were held; the names, titles and qualifications of the individuals who led the meeting(s); a list of meeting attendees; and copies of any written materials distributed during the meeting(s).

d) By November 15, 2020, the University will provide documentation to OCR demonstrating that it has implemented Action Item II.B.4 above, including the date the meeting was held; the names, titles and qualifications of the individuals who led the meeting; copies of any written materials distributed during the meeting; a list of meeting attendees; a list of complaints and/or incidents reported during the meeting; and a description of the steps the University took to address the

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complaints and/or incidents reported during the meeting, if any, including any remedial action and an explanation justifying the University's action.

e) On May 31, 2021, and May 31, 2022, the University will provide documentation to OCR describing in detail its student discipline process and reporting each student who has been alleged to have violated the Policy and/or the University's student conduct rules during the prior twelve months; the grounds for each such alleged violation; a detailed explanation of the process for and resolution of each such alleged violation; and a certification the University has treated and resolved every allegation of anti-Semitism as defined in Section 2(a)(i) of Exec. Order No. 13899 in the same way as any allegation of any other discrimination or harassment covered by the Policy and/or the University's student conduct rules.

Action Item III – Training

A. For academic years 2020-2021 and 2021-2022, each new training module and/or orientation session that the University offers to, or requires of, students, faculty, and staff, concerning the *Policy* and its implementation, shall include a component on national origin discrimination and harassment, including but not limited to anti-Semitism. The component of the training modules that addresses anti-Semitism may incorporate examples of anti-Semitism referenced by Exec. Order No. 13899.

B. By October 31, 2020, the University will provide training to relevant staff and administrators responsible for responding to reports or complaints of anti-Semitism, regarding the *Policy*, revised per Action Item I.

C. By October 31, 2020, the University's Office of General Counsel will provide training to senior leadership regarding the *Policy,* and prohibitions against discrimination and harassment based on shared ancestry and ethnic characteristics, including anti-Semitism.

D. The University has advised OCR that during academic year 2020-2021, it will also take the following steps:

1. The University will present an interactive customizable program regarding anti-Semitism. The University may, at its option, do so in partnership with a third-party provider with appropriate subject-matter expertise. The University will extend an open invitation to the University community to attend the training.

2. The University's Center for Multicultural Education and Programs (CMEP) will partner with the University's Bronfman Center to develop a training module based on the *Policy* and including Section 2(a)(i) of Exec. Order No. 13899 and Title VI with respect to anti-Semitism.

Reporting Requirements:

a) By May 31, 2021, and May 31, 2022, the University will provide documentation to OCR demonstrating that training was provided for academic years 2020-2021 and 2021-2022, respectively, consistent with Action Item III.A. This documentation will include, but will not be limited to, the date(s) of the training; the name and credentials of the trainer; copies of any training

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materials used, including any handouts, guides, or other materials; and a description of the group(s) or attendees.

b) By November 15, 2020, the University will provide documentation to OCR demonstrating that the University provided training in accordance with Action Items III.B and III.C above, including the date(s) of the training; the name and credentials of the trainer; copies of any training materials distributed; the agenda and/or a short summary of the material covered; and, a list of attendees, by name and title.

c) By May 31, 2021, the University will provide documentation to OCR demonstrating that training was provided consistent with Action Item III.D above, including the date(s) of the training; the name and credentials of the trainer; copies of any training materials distributed; and a description of the attendees.

The University understands that by signing this resolution agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the resolution agreement. Further, the University understands that during the monitoring of the resolution agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms and obligations of the resolution agreement. Upon the University's satisfaction of the commitments made under the resolution agreement, OCR will close this case.

The University understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this resolution agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This resolution agreement will become effective immediately upon the signature of the University's representative below.

15 Sept. 2020
Date

Terrance J. Nolan
Senior Vice President, General Counsel and Secretary
New York University

9/25/2020
Date

Timothy C.J. Blanchard
Regional Director
U.S. Department of Education
Office for Civil Rights

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