



December 14, 2021

VIA EMAIL

President Vincent E. Price
Duke University
207 Allen Building, Box 90001
Durham, NC 27708
president@duke.edu

Dear President Price:

We are attorneys at the Louis D. Brandeis Center for Human Rights Under Law, a national non-profit legal advocacy organization that works to combat anti-Semitism in higher education and protect the rights of Jewish students. We are deeply troubled by the student government's decision to revoke the formal recognition of Duke University's chapter of Students Supporting Israel ("Duke SSI"). We write to explain why you are legally obligated to take corrective action in response to the unlawful treatment of Duke SSI by formally recognizing the student organization and ensuring it has equal access to resources.

While we appreciate your efforts to address the matter in your recent statement, it is not sufficient under the law merely to provide "options to secure financial and programmatic support" without formal recognition.¹ A similar response by Williams College President, Maud Mandel – made after the student government took similarly discriminatory action by refusing to recognize a pro-Israel student organization based on a rationale that had never been applied to a non-Jewish student organization – was no less inconsistent with federal law and ultimately triggered a Resolution Agreement resolving a federal complaint filed with the U.S. Department of Education's Office for Civil Rights ("OCR").² President Mandel finally took appropriate corrective action by formally recognizing the student organization and guaranteeing full and equal access to resources.³

¹ President Vincent E. Price and Provost Sally Kornbluth, "Statement on DSG Action Regarding 'Students Supporting Israel,'" Nov. 24, 2021, *available at* <https://today.duke.edu/2021/11/statement-dsg-action-regarding-students-supporting-israel>

² <https://web.archive.org/web/20190503210721/https://president.williams.edu/letters-from-the-president/college-council-vote-on-williams-initiative-for-israel/>

³ <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/01192129-a.pdf>

Following this example, Duke should formally recognize Duke SSI and provide public assurances that Duke SSI will have equal access to the same benefits and resources that are available to other recognized student organizations. This is the only way to ensure the University's compliance with applicable laws, including Title VI of the Civil Rights Act of 1964 and federal education regulations incorporating certain commitments that Duke has made to its students, and Duke's compliance with its own policies.

Duke SSI is Duke's chapter of an international student organization composed of students who support the State of Israel.⁴ Many of its members are Jewish students for whom such support is an integral part of their identity as Jews. From the moment of its inception, Duke SSI was treated differently than other student organizations by the Duke Student Government (DSG). When Duke SSI applied for recognition, it was subjected to special scrutiny that other groups did not have to endure. Student representatives from Duke SSI were subjected to extensive questioning before the DSG senate voted on whether to approve the chapter's application for formal recognition.⁵ On information and belief, student group representatives usually do not even show up for such hearings because they are considered pro forma; once a prospective student group fulfills all the application requirements, as did Duke SSI, the student government is highly deferential to the group seeking recognition and usually approves recognition unanimously. What is more, prior to the vote on Duke SSI's recognition, Duke's Student Organization Finance Committee had met with members of Duke SSI and advised the student senate to approve Duke SSI's recognition. Although Duke-SSI's recognition was ultimately approved by the DSG senate, several senators took the highly unusual, if not unprecedented, position of opposing the student group's recognition.

When Duke SSI was finally recognized on Wednesday, November 10th, 2021, it expressed its desire to provide "a clear and confident pro-Israel voice" on your campus.⁶ Five days later, in an unprecedented act, the president of DSG, Christina

⁴ https://www.instagram.com/ssi_duke/

⁵ "Duke University Hands a Big Win to Antisemites – and BDS," Ben Stone, Nov. 24, 2021, *available at* <https://www.algemeiner.com/2021/11/24/duke-university-hands-a-big-win-to-antisemites-and-bds/>

⁶ "DSG charters pro-Israel group, updates House Rules procedures at Wednesday meeting," Audrey Wang, No. 11, 2021, *available at* <https://www.dukechronicle.com/article/2021/11/students-supporting-israel-duke-student-government-house-rules-sofc-funding>.

Wang, vetoed Duke SSI's recognition.⁷ Wang's stated reason for withdrawing recognition was Duke SSI's rather anodyne response in social media to one of its campus critics:

To Yana and others like her, please allow us to educate you on what "settler colonialism" actually is and why Israel does not fall under this category whatsoever. These types of narratives are what we strive to combat and condemn, which is why Duke's chapter of Students Supporting Israel has been officially established & is here to stay!!⁸

No other non-Jewish student group has been treated this way by Duke or its student government. Before this incident, the presidential veto power had never been used to revoke DSG's formal recognition of a student organization. In fact, the presidential veto had not been exercised since 2016, when a former DSG president vetoed funding for the student yearbook.⁹ DSG did not take action when a member of Duke's Students for Justice in Palestine student chapter posted a photograph of students affiliated with another pro-Israel group on campus (DIPAC) with the antagonizing caption, "Because y'all are a bunch of racist clowns," and tweeted, "So I'm going to repeat myself again, f**k DIPAC and every Zionist on campus."¹⁰

On November 17, 2021, DSG's student senate voted to uphold the President's veto, thus affirming Wang's unlawful silencing of Duke SSI's voice and effectively denying it the right to exist as a formally recognized campus organization.¹¹ The DSG's actions were discriminatory, and require action by the University. A university violates Title VI when its student government rejects a Jewish student organization's request for recognition based on standards that are not applied to non-Jewish

⁷ "Duke student government president vetoes pro-Israel club recognition over social media post," Sabrina Conza, Nov. 17, 2021, *available at* <https://www.thefire.org/duke-student-government-president-vetoes-pro-israel-club-recognition-over-social-media-post/>.

⁸ "DSG President Christina Wang vetoes recognition of Students Supporting Israel, citing inappropriate social media conduct," Nov. 15, 2021, *available at* <https://www.dukechronicle.com/article/2021/11/duke-university-students-supporting-israel-ssi-veto-student-government-dsg>

⁹ *Id.*

¹⁰ Stone, *supra* note 5.

¹¹ "Duke Student Government senators uphold veto of Students Supporting Israel after nearly 3-hour session," Nadia Bey and Audrey Wang, Nov. 18, 2021, *available at* <https://www.dukechronicle.com/article/2021/11/duke-students-supporting-israel-student-government-veto-upheld-president>

groups.¹² Duke must cure this violation by providing Duke SSI with formal recognition and guaranteeing that it has access to the same resources and services that other student groups have.

Even if the denial of recognition was based only on opposition to Duke SSI's exercise of free speech – and not also on its Jewish identity – it would be unlawful and require correction. Duke has made clear promises to its community members to protect the freedom of its students to speak on matters of public importance.¹³ And these commitments to free speech and open expression have legal ramifications pursuant to applicable federal regulations.

Duke has repeatedly emphasized its commitment to free speech in various policies, such as those pertaining to “pickets, protests and demonstrations,” academic freedom, and harassment.¹⁴ Duke's proclamation of “shared values” includes the University's commitment to being “a community of leaders, students, scholars, health care providers and staff who affirm and encourage open expression, academic freedom, regard for others and respect for laws and regulations.”¹⁵

You yourself have been eloquent in your public defense of freedom of speech at Duke, stressing Duke's “longstanding commitment to open inquiry, which is at the foundation of research and discovery, of teaching and healing.”¹⁶

Your predecessor defended these principles in the context of speech that was hostile to the Jewish people. When anti-Semitic expression was alleged at a conference

¹² See 42 U.S.C. §§2000d *et seq.*; see also 49 CFR 21.

¹³ “Fire Letter to Duke University,” Nov. 17, 2021, *available at* <https://www.thefire.org/fire-letter-to-duke-university-november-17-2021/>; see also “The State of Free Speech on Campus: Duke University,” Samantha Harris, May 6, 2009, *available at* <https://www.thefire.org/the-state-of-free-speech-on-campus-duke-university/>

¹⁴ See *e.g.*, Duke University Office of Student Conduct & Community Standards, “Pickets, Protests & Demonstrations,” <https://studentaffairs.duke.edu/conduct/z-policies/pickets-protests-and-demonstrations-0>; Duke University undergraduate policies on Academic Freedom, <https://dfkpgq46c119o7.cloud-front.net/pdfs/2a563ba8168f721134561370e3260202.pdf>; Duke University Harassment Policy and Procedures, <https://dfkpgq46c119o7.cloud-front.net/pdfs/497ea276f16c94ceea992f9a0f1de8f0.pdf>

¹⁵ <https://values.duke.edu/>

¹⁶ <https://president.duke.edu/2021/05/05/remarks-at-sanford-school-of-public-policy-commencement/>

concerning the State of Israel, former President Richard Brodhead argued that such speech could not be curbed “without violating a fundamental principle, a principle that has general application but also a special saliency in a university setting.”¹⁷ Surely, this “fundamental principle” must protect Jewish speech that responds to anti-Israel hate as forcefully as it protects the hate speech itself. Simply put, Jewish students cannot be denied the same rights that Duke affords to their antagonists.

It is important to recognize that Duke’s promises and commitments amount to more than eloquent articulations of “fundamental principles” of higher education, although they are that as well. They also constitute a binding legal requirement which Duke is compelled to honor. The U.S. Department of Education’s regulation on *Religious Liberty and Free Inquiry*, implementing Executive Order 13864 (Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities), provides that private universities must honor their own policies regarding freedom of speech as a condition of any and all grants received from the Department.¹⁸

Each grantee that is an institution of higher education, as defined in 20 U.S.C. 1002(a), that is private (hereinafter “private institution”) must comply with its stated institutional policies regarding freedom of speech, including academic freedom, as a material condition of the Department’s grant.¹⁹

This federal regulation incorporates Duke’s policies regarding freedom of speech, including those mentioned above, into Duke’s grant conditions with the Education Department. Duke’s commitments to free speech are publicly known and relied upon by current and prospective Duke students, their families, federal agencies, and non-profit organizations. Duke has violated its commitments by permitting Duke SSI’s recognition to be revoked purely on the basis of its lawful speech. To this extent, these principles are enforceable through the federal Education Department, as well as under contract law.

This is not the first time Duke has faced incidents of anti-Semitism on its campus. Not too long ago, Duke entered into a Resolution Agreement with OCR in which it

¹⁷ https://today.duke.edu/2004/10/brodheadaddress_1004.html

¹⁸ U.S. Secretary of Education Betsy DeVos Delivers on Promise to Protect Free Inquiry and Religious Liberty, *Press Release*, Dept. of Educ., Sept. 9, 2020, <https://www.ed.gov/news/press-releases/us-secretary-education-betsy-devos-delivers-promise-protect-free-inquiry-and-religious-liberty>

¹⁹ Free Inquiry Final Rule, *available at* <https://www2.ed.gov/about/offices/list/ope/factsheetreligiouslibertyandfreeinquiry09032020.pdf>, amending 34 CFR § 75.500 (c)(1).

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agreed to take certain measures to address allegations of anti-Semitism.²⁰ In light of that pending Agreement, the University should be particularly sensitive to its legal obligation to address instances of anti-Semitic discrimination on campus in a prompt and effective manner. Anything less suggests that, despite the agreement with OCR, the University does not fully appreciate the problem or its legal responsibilities.

Duke has been a leader within academia on so many issues, and we hope that you and your University will rise again to this occasion. We will not dwell any further on what is required in this instance by the letter and spirit of Duke's Resolution Agreement with OCR. We will instead commend you and your general counsel for entering into the Resolution Agreement in which you committed to take certain steps to address an identified problem; and we hope that you will continue in that vein to respond to the new and disturbing incidents that have arisen. The issue has been made more, not less, concerning by the encroachment on principles of free speech that you have forcefully defended.

We urge you to respond within one week of the date of this letter, indicating whether you will ensure that Duke SSI is fully recognized and guaranteed equal resources and access to resources and opportunities at Duke. We are available at the emails listed below to share our expertise on these issues and further discuss our recommendations with you.

Sincerely,



Alyza D. Lewin
President



Denise Katz-Prober
Director of Legal Initiatives

cc: Pamela Bernard, Esq., Vice President & General Counsel

²⁰ <https://zoa.org/wp-content/uploads/2019/12/Duke-Resolution-Agreement-with-OCR-12-3-19.pdf>