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VIA EMAIL

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Re: Civil Rights Violations at The State University of New York New Paltz

I. Introduction

Jewish and Israeli students at The State University of New York at New Paltz (“SUNY NP” or “the University”) have been vilified, marginalized, harassed, and excluded from the New Paltz Accountability (“NPA”) student group, which was formed to support survivors of sexual assault. NPA provides valuable educational programs and activities for these survivors and their allies on campus. The exclusion of Jewish and Israeli students from NPA on the basis of their ethnic and national origin identities has left survivors of sexual assault without a place at SUNY NP to receive these programs and services while openly expressing their Jewish identity. By failing to provide the same services to all survivors of sexual assault at SUNY NP, the University has violated Title VI of the Civil Rights Act of 1964 (“Title VI”).

This complaint is filed on behalf of two SUNY NP students: Cassandra Blotner, a Jewish survivor of sexual assault, and Ofek Preis, a Jewish-Israeli survivor (the “Complainants”). Both were excluded from NPA and publicly vilified by its leadership, then were subjected to further sustained harassment, including threats and intimidation on social media. Although the University knew about and publicly acknowledged the exclusion and harassment, it failed to intervene, either to discipline NPA or the organization’s leaders or to ensure opportunities for all victims of sexual assault on campus. It also failed to address the Complainants’ safety concerns arising from the harassment; as a result, both students were unable to attend classes and Ms. Blotner was afraid to spend time on campus.

These incidents have created a hostile environment on campus not only for the Complainants, but also for the larger community of Jewish sexual assault survivors at SUNY NP. In a letter to the campus community, the Jewish Student Union (“JSU”) explained how the University’s “half-measures and empty rhetoric” have effectively signaled that anti-Semitic discrimination is acceptable on campus and that the University’s values of tolerance and inclusivity don’t apply to Jewish sexual assault survivors and their allies.¹ To this day, the University continues to tacitly accept the exclusion of Jewish students (and especially “Zionists”—Jewish students for whom connection to the State of Israel is inseparable from their Jewish identity) from NPA.²

Although the University knew about and publicly admitted that NPA’s actions were exclusionary, discriminatory, and motivated by anti-Semitism,³ the University failed to take prompt and effective steps to protect Jewish and Israeli students from discrimination or eliminate the hostile environment and its effects. To date, the University has not held NPA or the organization’s leaders accountable for the discriminatory conduct or otherwise addressed the situation. Instead, the University has openly dismissed its legal obligations by claiming that its ability to intervene is limited because NPA is not a recognized student organization,⁴ all the while allowing NPA and the organization’s leaders to operate on campus like any other recognized student group, providing educational opportunities and services to sexual assault survivors and their allies on campus, while denying those opportunities to Jewish students for whom Zionism is integral to their Jewish identity.

SUNY NP is permitting a hostile environment that marginalizes and excludes these Jewish (Zionist) and Israeli sexual assault survivor students. SUNY NP is also denying Jewish and Israeli survivors of sexual assault on campus equal access to the educational opportunities and services they need, on the basis of their shared ancestry, ethnicity and national origin in violation of Title VI.

For the foregoing reasons, and as detailed more fully in this Complaint, Cassandra Blotner, Ofek Preis, Jewish on Campus (“JOC”)⁵, and the Louis D. Brandeis Center for Human Rights Under Law (the “Brandeis Center” or “LDB”) request that the Office for Civil Rights (“OCR”) initiate an

¹ “Letter to the Community,” The New Paltz Oracle, (Feb. 17, 2022), <https://oracle.newpaltz.edu/letter-to-the-community/>.

² Newpaltz_Accountability, INSTAGRAM, Tile 12, posted Feb .11 https://www.instagram.com/newpaltz_accountability/.

³ Donald P. Christian, Message from President Christian: Acknowledging antisemitism, and hope for healing,” (Feb. 17, 2022), https://sites.newpaltz.edu/news/2022/02/acknowledging-antisemitism-and-hope-for-healing/?utm_source=newsletter&utm_medium=email&utm_content=President%20Christian&utm_campaign=20220218%20Daily%20Digest..

⁴ *Id.*

⁵ Jewish on Campus (“JOC”) is a 501(c)(3) nonprofit organization founded and run by Jewish college students, for Jewish college students. Since its founding in 2020, JOC has collected stories of anti-Semitism from thousands of students around the world and has assisted in creating change on campus.

investigation of SUNY NP, a recipient of federal financial assistance,⁶ for violations of Title VI and the statute's implementing regulations.⁷

II. For many Jewish students, including at SUNY NP, Zionism is an integral part of Jewish ethnic identity.

Historically and legally, Judaism is understood to be both a faith and an ethnicity. Jews share not only religious traditions, but also a deep historical sense of Jewish peoplehood. The Jewish people's history, theology, and culture are deeply intertwined with the Land of Israel.⁸ For many Jews, including Ms. Blotner, Ms. Preis, and other Jewish students at SUNY NP, expressing support for the Jewish homeland is a sincere and deeply felt expression of the Jewish people's shared ancestral, religious, and ethnic identification with the Land of Israel.

For many Jews, Zionism is as integral to Jewish identity as observing the Jewish Sabbath or maintaining a kosher diet. Of course, not all Jews observe the Sabbath or keep kosher, but those who do clearly are expressing important components of their Jewish identity. Similarly, not all Jews are Zionists. But for many Jews, including Ms. Blotner and Ms. Preis, identifying with and expressing support for the Jewish homeland is also a sincere and deeply felt expression of their Jewish ethnic identity. Harassing, marginalizing, demonizing, and excluding these Jewish students on the basis of the Zionist component of their Jewish identity is just as discriminatory and unlawful as attacking a Jewish student for observing the Sabbath or keeping kosher.

III. Statement of Facts

a. Ms. Blotner and another student form a group to combat sexual assault on campus.

In May 2021, Ms. Blotner and another SUNY NP student founded NPA "to combat sexual violence at New Paltz" by "demand[ing] transparency and accountability from the school through a strong student-led movement."⁹ In the Fall of 2021, NPA, which had gained considerable support on campus, welcomed the involvement of Ofek Preis, a Jewish Israeli student, who participated in various NPA activities on campus during the Fall semester, including tabling and attending NPA

⁶ See, e.g., SUNY New Paltz, HEERF Student Aid Funds, <https://www.newpaltz.edu/heerf/>; SUNY New Paltz, Student Financial Services, Undergraduate Federal Student Loans, <https://www.newpaltz.edu/financialaid/loansug.html>; see also "Multi-million dollar statewide funding for SUNY campus childcare centers," (Mar. 11, 2022), <https://wrrv.com/suny-campus-childcare-funding/>.

⁷ See 42 U.S.C. § 2000d *et seq.*; see also 34 CFR §§ 100.3(b)(1)(i), (iv), (vi).

⁸ Alyza D. Lewin, *Zionism: The Integral Component of Jewish Identity that Jews are Historically Pressured to Shed*, 26 ISRAEL AFFAIRS 330 (2020), available at <https://brandeiscenter.com/wp-content/uploads/2020/08/Zionism-The-integral-component-of-Jewish-identity-that-Jews-are-historically-pressured-to-shed.pdf>.

⁹ Newpaltz_Accountability, INSTAGRAM, post Sept. 19, 2021, https://www.instagram.com/newpaltz_accountability/ (last visited May 21, 2020).

meetings. NPA leaders granted Ms. Preis access to internal documents and invited her to speak as an assault survivor at a public forum that NPA hosted on campus in November 2021.

NPA is a student group, composed of SUNY NP students, which is operating on SUNY NP's campus and using the University's resources to provide programming and services to SUNY NP's community of sexual assault survivors and their allies. Throughout the 2021-2022 academic year, NPA acted, and was treated by the University, like other recognized student clubs on campus. Through its Instagram account and word-of-mouth, NPA encouraged SUNY NP students to become involved with the organization's activities on campus.¹⁰ The University provided NPA with free use of university facilities to table, host meetings and events, and post flyers on campus. NPA also circulated a petition among the student body to solicit students' support for the organization's demands on behalf of sexual assault survivors at SUNY NP.

In Fall 2021, NPA student leaders were invited by professors to speak to several classes about the organization's work on campus, and members of SUNY NP's administration, including President Donald Christian, held a meeting with NPA's student leaders to discuss NPA's demand for more transparency from the University about sexual assault statistics.¹¹ NPA later claimed credit for convincing the University to publish these statistics.¹² On November 18, 2021, NPA hosted a "Public Forum on Sexual Violence" on campus.¹³ As reported by the student newspaper, the University's ██████████ was present and representatives from the ██████████ office spoke at the event.¹⁴ NPA used the event to further publicize its work on campus. Ms. Blotner, Ms. Preis, and other students involved with NPA gave first-hand accounts of the University's response to their reports of sexual assault.¹⁵

In short, the University has been providing survivors of sexual assault and their allies with educational programs and activities on campus through NPA.

b. Ms. Blotner and Ms. Preis are maligned and forced out of NPA due to their Jewish ethnic identity and Ms. Preis's Israeli national origin.

On or about December 14, 2021, Ms. Blotner posted to her personal Instagram account an infographic that described the Jewish people's thousands-year-old ethnic and ancestral connection to the Land of Israel, which stated in relevant part:

¹⁰ See Newpaltz_Accountability, INSTAGRAM, https://www.instagram.com/newpaltz_accountability/.

¹¹ Newpaltz_Accountability, INSTAGRAM, https://www.instagram.com/newpaltz_accountability/.

¹² Newpaltz_Accountability, INSTAGRAM, Tile 11, Feb. 4, 2022, https://www.instagram.com/newpaltz_accountability/.

¹³ Lilly Sabella, "SUNY New Paltz Students Demanding Sexual Violence Accountability," The New Paltz Oracle, (Dec. 1, 2021), <https://oracle.newpaltz.edu/suny-new-paltz-students-demanding-sexual-violence-accountability/>.

¹⁴ See Sabella, *supra* note 13.

¹⁵ See Sabella, *supra* note 13.

Jews are an ethnic group who come from Israel. This is proven by genealogical, historical and archeological evidence. Israel is not a 'colonial' state and Israelis aren't 'settlers.' You cannot colonize the land your ancestors are from.¹⁶

Beginning on December 16, 2021, NPA's four other leaders sent Ms. Blotner a series of text messages in the NPA's WhatsApp group chat denouncing her for expressing her pride in her Jewish ethnic identity and the Jewish people's connection to Israel. "We saw your story post about Zionism and how it isn't colonialism, and we feel like we should address this ... Israel is a settler colonial state." The NPA leaders told Ms. Blotner that her social media post "made claims none of us feel [sic] comfortable with," and that needed to be addressed by the entire group because the post "concerns the organization as a whole"; "As a group focused on combating oppression, we simply cannot stay silent when it appears that a member may be condoning imperialism and settler-colonialism." The NPA leaders demanded that Ms. Blotner meet with them to clarify her views about Israel and Zionism.

No other members of NPA were asked to explain or justify their identities or questioned about their core beliefs, as Ms. Blotner pointed out to the NPA leaders, challenging their attempt "to corner Jews into talking about I/P [Israel/Palestine]." She declined the meeting, explaining that, "I also do not believe it would be safe for me [to meet] given that I am the only Jew of the group and it seems that I am being held accountable for the actions of a foreign government (which is something that I am not and is antisemitic) ... [A]ttempting to redefine the definition of Zionism indicates a lack of understanding and antisemitism." Ms. Blotner added that, "I am worried for the future of the group and other survivors who come seeking support. Will they too be made to feel this way due to misperceptions of shared posts, lack of cultural/religious understandings, or general difference of opinions?"

On January 17, 2022, after she consulted with the Chabad Rabbi and other Jewish community leaders on campus, Ms. Blotner invited the NPA leaders to meet with her and the JSU to discuss the implications and larger impact of NPA's stance on Zionism.

The NPA leaders refused to meet, stating on January 22, 2022 that "we do not wish to have a debate on Zionism." NPA then clarified that Zionists like Ms. Blotner were not welcome in NPA, saying: "We, as a group focused on combating oppression, can only consist of members who stand against all forms of oppression. We believe that having a member that does not share this viewpoint is not conducive to ending all forms of oppression and thus is not the right fit for [NPA]." The message was signed "New Paltz Accountability," making it clear that Ms. Blotner was no longer considered a member of the group she had helped form.

By declining to meet with Jewish students, NPA demonstrated that they were not interested in coexistence or having any dialogue about the Israeli-Palestinian conflict with Jews who support Israel's right to exist as the homeland of the Jewish people. NPA made clear that it did not have

¹⁶ Henmazzig, INSTAGRAM, https://www.instagram.com/p/CXYq9fNNkoc/?utm_source=ig_web_copy_link.

space in its organization for survivors of sexual assault who also support Israel's right to exist as a Jewish state.

Ms. Preis, who identifies as a Jewish Israeli, no longer felt welcome or comfortable at NPA after learning about NPA's hostility towards Israel and that Ms. Blotner had been cast out due to her Jewish identity. In addition to maligning Jews on the basis of their ethnic connection to Israel, NPA's anti-Zionist hatred invokes classic anti-Semitic tropes about Jewish power and control to demonize all Israelis as racist, settler-colonialists who ruthlessly oppress powerless Palestinians. Calling all Israelis "colonialists" denies and erases Jewish history – specifically the presence of Jews in Israel since ancient times – thereby denying Jewish and Israeli heritage and delegitimizing the very existence of the State of Israel. In addition, NPA's discriminatory conduct holds all Israelis (and Zionist Jews) responsible for the alleged acts of the Israeli government – another anti-Semitic practice. Thus, NPA's antagonism towards Israel targeted Ms. Preis on the basis of her Israeli national origin identity as well as her Jewish ethnic identity.

To show support for Ms. Blotner, on or about January 18, 2022, Ms. Preis shared on her personal Instagram account the same post about Israel that Ms. Blotner had posted. By posting the infographic, Ms. Preis was expressing her pride not only in her Jewish ethnic identity but also in her Israeli national origin identity. Soon after, NPA stopped contacting Ms. Preis about the organization's activities and blocked her access to shared organizational documents. The hostility from NPA left Ms. Preis with no choice but to resign. In her resignation statement, Ms. Preis explained "NPA is no longer a safe space for all survivors, as Jewish [sic] and Israeli survivors like myself will no longer feel comfortable associating with the organization if it continues to be run by the people who signed off on the WhatsApp message [to Ms. Blotner]."¹⁷

NPA responded by telling Ms. Preis the group was open only to those who reject Zionism: "The colonization and the violent and oppressive occupation of Palestine is simply unacceptable... The post you shared on Insta[gram] does not align with NPA's views. NPA will continue to fight for all survivors and is open to everyone who stands against all forms of oppression." In other words, according to NPA, Ms. Preis could not support victims of sexual assault without also opposing the existence of the State of Israel, her country of national origin.

c. NPA tells all Jewish students they are unwelcome in NPA unless they renounce their Jewish ethnic and ancestral identity.

Following these events, NPA publicly doubled down on its stance that all Zionists, including Ms. Blotner and Ms. Preis, are not welcome in NPA and advanced the anti-Semitic narrative that

¹⁷ NPA leaders later publicly admitted that after Ms. Preis posted the pro-Israel infographic on social media they stopped inviting her to NPA meetings, and that if she had not resigned they would have dismissed her from NPA due to her Zionist beliefs. See *newpaltz_accountability*, INSTAGRAM, "Interview Between NPA and the New Paltz Oracle, conducted on Monday, 02/07/22," at 0:24 and 34:00, available at <https://docs.google.com/document/d/1Vd0hxAqxwmygGJbc4FfbfeZX-OdWKYO96EBcm6Y7mAk/edit>.

Zionism is a form of racism. In a document titled “NPA Views on Zionism” posted on NPA’s Instagram page, NPA stated:

After a couple of NPA members shared [posts](#) justifying the Israeli occupation of Palestine, we realized we needed to clarify our political stance. New Paltz Accountability does not support imperialism, settler-colonialism, nor white-supremacy. Therefore, we do not support Zionism nor the actions of the Israeli gov. To fight against sexual violence, we must oppose all forms of oppression. This includes the ethnic-cleansing of Palestinians.

Supporting a settler-colonial state goes against what we stand for and thus we cannot organize with members who do so. Those members have left the organization due to our political differences. We stand in solidarity with Palestine and all other oppressed groups! 🇵🇸🇵🇸🇵🇸🇵🇸¹⁸

The same document is replete with anti-Semitic narratives delegitimizing Israel’s existence, denying the Jewish people’s ancestral connection to the Land of Israel, and demonizing Israel and Israelis by advancing blood libels about Israel’s alleged “mass genocide and attempted complete eradication of the Palestinian people.”¹⁹ Thus, NPA attempted to justify and rally support for its exclusion of Jewish survivors, by castigating, vilifying and marginalizing Zionism, Israelis, and all supporters of Israel.

On February 10, 2022, the SUNY NP student newspaper published an article describing how NPA had forced Ms. Blotner and Ms. Preis out of the group on the basis of their Jewish identity.²⁰ Initially, the response by members of the SUNY NP community to the article was supportive of Ms. Blotner and Ms. Preis. Students, including those who were sympathetic to the Palestinian cause, chastised NPA on social media for excluding survivors of sexual assault merely because of their support for Israel.

In response to the news article, NPA further clarified on Instagram its stance that Zionists are not welcome in the group:

Organizing with anyone who denies the fact that Israel is colonizing Palestine would be counter to our movement. It would be hypocritical of us to advocate for survivors while ignoring the oppression Palestinians face. NPA is for all marginalized peoples, and if we allow a pro-Zionism member in the group, we would essentially be sending a message to all Palestinians that they are not welcome. Denouncing Zionism is crucial

¹⁸ newpaltz_accountability, “NPA Views on Zionism,” INSTAGRAM, https://docs.google.com/document/d/1PoiMayDnIDSqZir5SarQ8_7tGxTuFYjH4ZT684QqnC4/edit.

¹⁹ *Id.*

²⁰ Zoe Woolrich and Kyra Russo, “Students Demand New Paltz Accountability be Held Accountable,” The New Paltz Oracle, (Feb. 10), <https://oracle.newpaltz.edu/students-demand-new-paltz-accountability-be-held-accountable/>.

to ending all forms of colonialism and oppression. Regardless of how Zionism is defined, it is a form of white supremacy in practice.²¹

Thus, NPA extended its exclusionary and discriminatory stance to the entire Jewish community at SUNY NP. The message from NPA to Jewish students on campus was clear: NPA is not open to Zionists, and Zionists are not welcome to participate in NPA's work to combat sexual assault.

In a further attempt to publicly castigate Ms. Blotner and Ms. Preis, NPA exposed the private texts exchanges between the Complainants and NPA about their ouster from the group due to their Jewish and Israeli identities.²²

Ms. Blotner and Ms. Preis reached out to the Title IX office requesting help and support after NPA had kicked them out on the basis of their Jewish identity. The University's [REDACTED], told the Complainants that because she herself was not Jewish, she could not understand the anti-Semitic nature of the incident they had reported and was therefore unable to assist them. [REDACTED] referred Ms. Blotner and Ms. Preis to a Jewish faculty member in SUNY NP's Department of [REDACTED] who never responded.

On February 11, 2022, SUNY NP President Donald Christian sent an email to the campus community referencing the student newspaper's article about NPA. The President's message downplayed the anti-Semitic nature of the incident and did not condemn NPA's discriminatory conduct.

d. Ms. Blotner is subjected to threats and intimidation, and Ms. Preis is subjected to hostility, making them feel unsafe attending class in person.

NPA's public attempts to vilify, shame and marginalize the Complainants and other Jewish students on campus on the basis of their ethnic identity fueled further harassment on social media towards Ms. Blotner. On or about February 11, 2022, following NPA's posts about Zionism, messages appeared on Yik Yak threatening to "spit on [Ms. Blotner]" and stating ominously that "cassie needs to go lmfaoooo." Others stated that, "this dumb b*tch c@ssie is literally a zionist like ur supporting mass genocide !!!!!!" and "cassie is wrong. Stop taking her side. STFU."

Ms. Blotner reported to [REDACTED] that she felt unsafe on campus due to the Yik Yak threats, and asked for a security escort to accompany her to class. The University declined her request and advised her simply not to attend class. Unable to attend class safely, Ms. Blotner left campus to be with her family. As a result of missing class, Ms. Blotner fell behind in her coursework and received incompletes in all her classes.

²¹ Newpaltz_Accountability, INSTAGRAM, posted Feb. 11, 2022, https://www.instagram.com/newpaltz_accountability/.

²² "NPA Response to the Oracle Article Published on 2/10/22," available at https://docs.google.com/document/d/1P0zSErkGRh2vwHew549TTcHWOSNKNC2B_BjFZyZb7vc/edit.

Though Ms. Preis was not explicitly named in the Yik Yak messages, she also felt targeted and intimidated by the hostility directed at Zionists and Israel on campus after she was publicly identified and spurned by NPA as a Zionist and an Israeli; indeed, Ms. Preis felt threatened by the antagonism towards her Jewish ethnic identity as well as her Israeli national identity. The hostile atmosphere caused her to feel so anxious about her own safety that she was also unable to attend class. As a result of missing class, Ms. Preis fell behind in her coursework and received poor grades in several classes. Due to her inability to pass several courses, Ms. Preis will not have enough credits to complete her double major before graduation and was forced to change her second major to a minor.

On or around February 15, 2022, Ms. Blotner reported the harassment to University Police Department (“UPD”). UPD informed Ms. Blotner they were unable to investigate the matter due to the anonymous nature of Yik Yak. UPD did not provide further assistance to address the Complainants’ safety concerns. On information and belief, UPD has investigated other issues arising on Yik Yak.

On February 17, 2022, President Christian issued a second statement acknowledging that NPA’s actions were exclusionary, discriminatory, and motivated by anti-Semitism, but claiming that the University’s ability to respond was limited because NPA was not a recognized student organization.²³

Ms. Blotner and Ms. Pries ultimately decided not to file a grievance complaint through the University because they were so disappointed by the University’s insufficient response after it became aware of what happened to the Complainants. The University was aware of the details of the NPA leaders’ discriminatory conduct because the NPA leaders had publicized their exchange with the Complainants. The Complainants were so discouraged by SUNY NP’s failure to protect them and the administration’s ignorance about the anti-Semitic nature of the discrimination they faced, that they had no confidence in the school’s ability to properly investigate anti-Semitic discrimination or to protect them from it.

IV. SUNY NP has Violated Title VI of the Civil Rights Act of 1964

Title VI prohibits discrimination on the basis of race, color, and national origin in educational institutions that receive federal funding.²⁴ Title VI protects individuals from exclusionary conduct by the university that denies individuals the ability to participate in or benefit from university programs and activities, as well as from harassment that creates a hostile environment on campus.

²³ Donald P. Christian, Message from President Christian: Acknowledging antisemitism, and hope for healing,” (Feb. 17, 2022), https://sites.newpaltz.edu/news/2022/02/acknowledging-antisemitism-and-hope-for-healing/?utm_source=newsletter&utm_medium=email&utm_content=President%20Christian&utm_campaign=20220218%20Daily%20Digest.

²⁴ See 42 U.S.C. § 2000d *et seq.*

Guidance issued by OCR and the Department of Justice in 2004, 2010, and 2017 has extended the protections under Title VI to cover discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”²⁵ As clarified in Executive Order 13899 (the “Executive Order”), which has been incorporated into OCR’s current policy guidance, Title VI must be enforced “against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”²⁶ Further, the Executive Order directs the Department of Education to refer to the International Holocaust Remembrance Alliance working definition of antisemitism (the “IHRA Definition”) and its contemporary examples when investigating allegations of anti-Semitism under Title VI.²⁷

The Executive Order, which has been incorporated into OCR guidance, is particularly useful here, where the unlawful exclusion, harassment and discrimination are motivated by anti-Semitic bias and target SUNY NP students on the basis of their actual or perceived shared ancestry and ethnic identity. The IHRA Definition provides that denying the Jewish people’s right to self-determination (and by extension, denying Jewish students’ right to support the Jewish homeland) is an indicium of anti-Semitism.²⁸ Other examples of anti-Semitism under the IHRA Definition include “holding Jews collectively responsible for actions of the State of Israel”; “making mendacious, dehumanizing, [or] demonizing...allegations about Jews as such”; and “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.” The suggestion that students’ Jewish ethnic identity renders them unfit to be part of NPA revives the age-old anti-Semitic accusation of dual-loyalties; it implies that these students are more loyal “to Israel, or to the alleged priorities of Jews worldwide,” than to the interests or mission of NPA to combat sexual assault and oppression.²⁹

By denying educational programs and services to Jewish and Israeli survivors of sexual assault on the basis of their ethnic and national origin identities, failing to address severe harassment

²⁵ See *Know Your Rights: Title VI and Religion*, U.S. DEP’T EDUC.–OFFICE FOR C.R. (Jan. 17, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>, see also Russlynn Ali, “Dear Colleague Letter” at 2, U.S. DEP’T EDUC.–OFFICE FOR C.R. (Oct. 26, 2010) [hereinafter 2010 Dear Colleague Letter], <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>; Letter from Thomas E. Perez, Assistant Att’y Gen., U.S. Dep’t of Just.–C.R. Div., to Russlyn H. Ali, Assistant Sec’y for C.R., U.S. Dep’t of Educ.–Office for C.R., *Re: Title VI and Coverage of Religiously Identifiable Groups* (Sep. 8, 2010), https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf; Kenneth L. Marcus, *Title VI and Title IX Religious Discrimination in Schools and Colleges: Dear Colleague Letter*, U.S. DEP’T OF EDUC.–OFFICE FOR C. R. (Sep. 13, 2004), <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

²⁶ Exec. Order No. 13899 §1, 3 C.F.R. 68779-68780 (2019); see also *Questions and Answers on Executive Order 13899 (Combating Anti-Semitism and OCR’s Enforcement of Title VI of the Civil Rights Act of 1964)*, U.S. DEP’T EDUC.–OFFICE FOR C.R. (Jan. 19, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf>.

²⁷ See Exec. Order No. 13899 §2(a)(i) and (ii); see also INT’L HOLOCAUST REMEMBRANCE ALLIANCE, *Working Definition of Antisemitism*, <https://www.holocaustremembrance.com/working-definition-antisemitism> (last visited Oct. 1, 2021) [hereinafter IHRA Definition].

²⁸ See IHRA Definition, *supra* note 27 (explaining that “[d]enying the Jewish people their right to self-determination” is a form of anti-Semitism).

²⁹ See IHRA Definition, *supra* note 27 (articulating the contemporary examples of anti-Semitism).

of the Complainants, and permitting a hostile atmosphere on campus for Jewish and Israeli sexual assault survivors, the University is in violation of Title VI.

a. By excluding Jewish and Israeli students from NPA, SUNY NP is unlawfully denying educational programs and activities to survivors of sexual assault on the basis of their ethnic and national origin identities.

Under Title VI, universities may not discriminate by excluding individuals from participating in educational programs or activities or by denying individuals the benefits of such programs on the basis of race, color or national origin.³⁰

OCR guidance incorporating the IHRA Definition explains that “the denial to Jews of opportunities or services available to others” is “antisemitic discrimination.” Thus, the exclusion of Ms. Blotner, Ms. Preis, and other Jewish students from NPA, denying them the ability to participate in and benefit from educational programs for sexual assault survivors on the basis of their Jewish identities, constitutes anti-Semitic discrimination under Title VI. When Jewish students like Ms. Blotner and Ms. Preis are castigated as “Zionists” and marginalized and disqualified from student organizations for demonstrating pride in their Jewish ancestry and heritage, they are being targeted, excluded and harassed on the basis of their “actual or perceived shared ancestry or ethnic characteristics” in violation of Title VI.³¹

In his February 17, 2022 statement, SUNY NP President Donald Christian incorrectly asserted that the University’s ability to hold NPA accountable for its discriminatory actions is limited because NPA is not a recognized student organization.³² This assertion is belied by the fact that SUNY NP has treated NPA as a de facto recognized student group on campus, providing survivors of sexual assault and their allies with educational programs and activities on campus through NPA.

Under the University’s rules, all student groups “seeking to operate at SUNY New Paltz *must* be recognized by a student governing body and/or the college” (emphasis added).³³ There are a number of ways to obtain recognition, which permits a group “rights and privileges to reserve space, host campus events, recruit fellow students, advertise, access funding resources, etc.”³⁴ Despite not being formally recognized, NPA has throughout the 2021-2022 academic year recruited fellow students, tabled on campus, and hosted meetings and events using the University’s facilities. The University’s rules do not allow unrecognized groups to operate on campus.³⁵

³⁰ 34 CFR §§ 100.3(a), (b).

³¹ Lewin, *supra* note 8.

³² SUNY New Paltz, Office of the President, <https://t.e2ma.net/webview/asbzop/7c88c1a5fec3b954730d5609c5c684f4>.

³³ SUNY New Paltz, Center For Student Engagement, Student Involvement, About Club Recognition, <https://www.newpaltz.edu/studentengagement/student-involvement/clubrecognition.html>.

³⁴ *Id.*

³⁵ In fact, contrary to President Christian’s claims, the conduct of NPA and its student leaders patently violates the rules set forth in the University’s Student Handbook and regulations concerning student organizations, recognized or not. According to the Student Handbook, Statement of Principles and Responsibility, Part B, section 1.00, the Principle of

Either SUNY NP has informally recognized NPA in violation of its own rules or it is permitting an unrecognized student group that discriminates against Jewish students to provide services in violation of both SUNY NP's rules and federal law. Either way, the University is in violation of Title VI. If SUNY NP is going to provide services and educational programs for sexual assault survivors and their allies – as it is doing through NPA – it must do so in an inclusive manner that provides all students equal access to University benefits and services.

b. SUNY NP has failed to address the harmful impact of harassment against the Complainants and has not taken action to eliminate the hostile environment for Jewish students.

For purposes of Title VI, harassment creates a “hostile environment” when it “is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.”³⁶ A Title VI recipient “*must* take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.”³⁷ Further, OCR has explained that a university can violate Title VI if peer harassment “is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.”³⁸

Under Title VI, a university must respond to discriminatory harassment when such harassment “negatively affect[s] the ability and willingness of Jewish students to participate fully in the school’s education programs and activities.”³⁹ Here, SUNY NP has failed to address the severe harassment against the Complainants on Yik Yak – including threats of assaultive conduct (spitting)

Equality mandates that all student organizations, along with classes and community facilities, be “open to all who desire to participate.” See SUNY New Paltz Student Handbook (Aug. 2021), <https://www.newpaltz.edu/media/student-affairs/Student%20Handbook%20August.2021.pdf>. The Responsibility requires members of the academic community to “ensure through word and action that discrimination of the basis of” enumerated protected categories, including ethnic background, race, and religion, “is not present in College activities or in the College community.” *Id.* NPA violated both the Principle and the Responsibility listed here by excluding and forcing students out based on their Jewish ethnic identity. Moreover, the NPA student members who participated in discrimination against Jewish students also violated the University’s *Non Discrimination/Non Harassment Policy*, which prohibits harassment and discrimination on the basis of protected categories including race, national origin and religion, and applies to all members of the University community. See *Non Discrimination/Non Harassment Policy Statement and Procedures*, <https://www.newpaltz.edu/media/human-resources/antiharassment.pdf>.

³⁶ See 2010 Dear Colleague Letter, *supra* note 25 (“[Under Title VI, a] school is responsible for addressing harassment incidents about which it knows or reasonably should have known”).

³⁷ See 2010 Dear Colleague Letter, *supra* note 25, at 2-3 (emphasis added).

³⁸ See 2010 Dear Colleague Letter, *supra* note 25, at 1; see also *See Know Your Rights: Title VI and Religion*, U.S. DEP’T EDUC.–OFFICE FOR C.R. (Jan. 17, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>.

³⁹ 2010 Dear Colleague Letter, *supra* note 25, at 5–6.

and intimidation that led the Complainants to feel physically unsafe on campus.⁴⁰ The University declined Ms. Blotner's request for a campus security escort to accompany her to classes. As a result of the University's failure to address her safety concerns, Ms. Blotner felt so unsafe that she left campus to be with her family and both Ms. Preis and Ms. Blotner stopped attending classes in person.⁴¹ The impact on Ms. Blotner's and Ms. Preis' academic records as a result of missing classes was devastating – both students fell behind in their coursework and received poor final grades in several classes. Ms. Preis now does not have enough credits to graduate as a double major and was forced to change her second major to a minor. Thus, as a result of its failure to provide the Complainants with the supportive measures they requested to address their safety concerns, the University has denied these students educational opportunities and benefits they are entitled to receive, in violation of Title VI.

Additionally, the Yik Yak harassment triggered anxieties related to the Complainants' trauma as sexual assault survivors; prior to these events, Ms. Preis and Ms. Blotner had made great strides in overcoming their fears of attending class in person. The University knew Ms. Blotner and Ms. Preis were survivors, and should have provided them with the supportive measures they sought – specifically a campus escort – to address the effects of the Yik Yak harassment.⁴²

Finally, SUNY NP has failed to address the hostile environment on campus for Jewish survivors of sexual assault. NPA's anti-Semitic conduct towards Ms. Blotner and Ms. Preis, its public proclamation excluding the Complainants and all Zionists from the club, and the ensuing harassment on social media against Jewish students, has left Jewish and Israeli survivors of sexual assault at SUNY New Paltz shunned, isolated and fearful. Indeed, the Jewish Student Union's letter to the community in response to these events describes the harmful impact that NPA's behavior and the University's insufficient response has had on the Jewish community at SUNY NP:

We wish this letter was not necessary; we wish that SUNY New Paltz was the open-minded, tolerant, place that we thought it was going to be coming in, but it is not. As

⁴⁰ See *Feminist Majority Found. v. Hurley*, 911 F.3d 674 (4th Cir. 2018)(holding university exerted substantial control over the context in which online student-on-student sexual harassment occurred; finding harassing messages on Yik Yak originated on or within immediate vicinity of campus, concerned events on campus and targeted students).

⁴¹ See *Fennell v. Marion Ind. Sch. Dist.*, 2014 WL 4274299, p.18 (W.D. Tex. 2014) (University providing escort treated as evidence that school fulfilled its responsibility to take harassment seriously under Title VI); see also *Kowalski v. Berkeley County Schools*, 652 F.3d 565, 573-74 (4th Cir. 2011) (holding cyberbullied students can successfully argue school district maintained sufficient authority over student perpetrators to address off-campus harassment that was significantly interfering with the victim's education).

⁴² 34 CFR §106.44 (university with actual knowledge of sexual harassment must offer "supportive measures...to a complainant"); see also 34 CFR §106.30 (defining "supportive measures" to include "campus escort services"). OCR policy guidance under Title IX recommends the use of campus escort services as an interim measure before or during pendency of investigation. See U.S. DEP'T EDUC.–OFFICE FOR C.R., OCR Docket No. 15-18-1010 (Feb. 24, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/15181010-a.pdf>. Courts have concluded that a university's failure to act - including declining to provide an escort to class - raised an issue of fact regarding its deliberate indifference to the threats and harassment a student received. See e.g., *Rullo v. University of Pittsburgh Commonwealth System of Higher Education*, 2020 WL 1472422, p.7 (W.D.Pa. 2020); *Keel v. Delaware State University Board of Trustees Candy Young*, 2020 WL 2839222, p.7 (D.Del. 2020).

much as we love the diversity and inclusivity of New Paltz, that inclusivity has not always included Jews.... NPA has isolated Jewish survivors of sexual assault and their allies, and has, ironically, made it so that Jewish survivors no longer have a place to turn to.⁴³

As a result of their exclusion from NPA, Jewish and Israeli survivors of sexual assault at SUNY NP including Ms. Blotner and Ms. Preis no longer have a place on campus where they can work to combat sexual assault and also present themselves openly as Jews whose ethnic and national origin identities include identification with the State of Israel.

V. Suggested Remedies

In light of SUNY New Paltz's failure to (1) ensure that the University provides all survivors of sexual assault on campus with equal access to the educational programs and services they need; (2) take prompt and effective steps to protect the Jewish students who have been unlawfully targeted, excluded and harassed on the basis of their Jewish and Israeli identities; and (3) eliminate the hostile environment for Jewish and Israeli student survivors on its campus, OCR should require SUNY NP to take the following steps to come into compliance with Title VI:

- (1) Take action to ensure that Ms. Blotner, Ms. Preis and all students who seek programs and activities for sexual assault survivors are provided access on a non-discriminatory basis. This should include:
 - a. Establishing a fully inclusive, recognized student organization or similar opportunity on campus for sexual assault survivors and their allies to engage in the kind of empowering advocacy work that these students previously did with NPA. The University should make it clear that it will provide a safe alternative space that is open and welcoming to all survivors of sexual assault at SUNY NP, including all Jewish survivors, and that does not exclude or otherwise discriminate on the basis of ethnic or ancestral identity. The University must make clear that all student groups on campus must abide by the University's nondiscrimination policies;
 - b. Conducting a full investigation of harassment, exclusion, and other discriminatory conduct against sexual assault survivors in connection with NPA and take all appropriate measures, including disciplinary matters, that are recommended as a result of the investigation;
 - c. Conducting an assessment to determine whether additional support services are required by SUNY NP's sexual assault survivors (including the Complainants) as a result of being subjected both to sexual assault and also to other offenses, including anti-Semitic harassment, discrimination, and exclusion;

⁴³ "Letter to the Community," The New Paltz Oracle, (Feb. 17, 2022), <https://oracle.newpaltz.edu/letter-to-the-community/>.

- d. Providing Ms. Blotner and Ms. Preis with security escorts, and any other necessary safety protections and support services they need to ensure they feel safe enough on campus to attend classes in person and participate in all educational opportunities offered by SUNY New Paltz;
 - e. Taking necessary steps, including grade adjustments, to rectify any harmful impact on Complainants' academic records as a result of being unable to attend classes due to the University's failure to provide appropriate support services to address their safety concerns;
 - f. Ensuring that exclusionary organizations that discriminate against students on the basis of their ethnicity or ancestry are no longer allowed to operate on campus as in violation of University policies and regulations pertaining to nondiscrimination and student organizations and federal law;
 - g. Working with the excluded students, particularly Ms. Blotner and Ms. Preis, to provide services and educational programs for sexual assault survivors and their allies in an inclusive manner, in accordance with the University's nondiscrimination policies and federal law;
- (2) Make sure that the University community is able to understand and recognize the type of anti-Semitic discrimination that targeted Ms. Blotner and Ms. Preis, and how contemporary anti-Semitism manifests. This should include:
- a. Incorporating the IHRA working definition of antisemitism, including its guiding examples, into the SUNY NP *Non Discrimination / Non Harassment Policy Statement and Procedures for Reporting Incidents of Harassment, Discrimination and Sexual Violence* ("Policy Statement"), consistent with Executive Order 13899 and the values of free speech and academic freedom;
 - b. Providing training on anti-Semitism to University administrators, faculty, staff and students based upon SUNY NP's revised *Policy Statement*. The training should familiarize administrators and other members of the community with traditional as well as contemporary anti-Semitic stereotypes and conspiracy theories and their social and political functions, so that the campus community will be able to better identify and respond to anti-Semitic incidents in the future;
- (3) Model inclusivity for the University community by:
- a. Incorporating Jewish identity into the University's DEI programming, which should include education and understanding about the Jewish experience and the Jewish people as a religious community and ethnic group that also share a common ancestry.

Such programming should also include a training on the different manifestations of anti-Semitism as described more fully in section (2)(b) above;

- b. Issuing a statement declaring the University's support for the SUNY NP students who have been targeted by NPA's discriminatory views and conduct. The statement should explicitly and clearly condemn anti-Semitism in all its forms, including anti-Zionism, and recognize that Zionism is a key component of Jewish identity for many SUNY NP students. We suggest the following language:

We condemn anti-Semitism in all its forms, including anti-Zionism. We recognize that Zionism is a key component of the religious and ethnic identity of many students on our campus. Efforts to stigmatize Zionism and make SUNY New Paltz students feel unsafe expressing this religious and ethnic identity is contrary to our University's basic values of mutual respect and inclusion. Our University must be a place for the free and open exchange of ideas. It is never acceptable to harass, intimidate, marginalize, exclude, stigmatize, or demonize any part of our University community on the basis of identity; and

- c. Declaring the month of May "Jewish pride month," to coincide with the national commemoration of Jewish American Heritage Month. In the spirit of inclusion, the University should use this annual opportunity to celebrate and educate the campus community about the positive contributions that Jews have made to America, the world and humanity, and to express solidarity with the Jewish people against rising anti-Semitism

VI. Conclusion

For the foregoing reasons, the Complainants, the Brandeis Center, and JOC strongly urge investigation into SUNY NP's compliance with Title VI.

Respectfully Submitted,



Alyza D. Lewin
President



Denise Katz-Prober
Director of Legal Initiatives