



The Louis D. Brandeis Center  
for Human Rights Under Law



April 18, 2024

VIA E-MAIL

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**Re: Civil Rights Violations at Occidental College**

Dear Assistant Secretary Lhamon and Director Pelchat:

**I. Introduction**

This complaint is filed on behalf of the Louis D. Brandeis Center for Human Rights under Law (the Brandeis Center), a national non-profit legal advocacy organization that works to combat anti-Semitism in education and protect the rights of Jewish students, and the Anti-Defamation League (ADL), a leading anti-hate organization committed to stopping the defamation of the Jewish people and securing justice and fair treatment for all. Over the past six months, Jewish students at Occidental College have experienced discrimination, disparate treatment, and harassment on the basis of their shared ancestry. All of the students discussed in this complaint prefer to remain anonymous, but are willing and able to provide testimony to the Office for Civil Rights (OCR) about the hostile environment that has developed for Jewish and Israeli students at Occidental.

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With increasing frequency, Jewish college and university students across the country are being targeted due to the Jewish people's connection to Israel. Students report being shunned, harassed, and marginalized as "Zionists." The U.S. National Strategy to Counter Antisemitism, released in May 2023, noted that "Jewish students and educators are targeted for derision and exclusion on college campuses, often because of their real or perceived views about the State of Israel. When Jews are targeted because of their beliefs or their identity, when Israel is singled out because of anti-Jewish hatred, that is antisemitism. And that is unacceptable."<sup>1</sup> According to the International Holocaust Remembrance Alliance Working Definition of Antisemitism (the "IHRA Definition"), "[h]olding Jews collectively responsible for actions of the state of Israel" is an example of anti-Semitism.<sup>2</sup>

As illustrated by ADL's Pyramid of Hate,<sup>3</sup> shunning and exclusion do not occur in a vacuum. When biased attitudes are not addressed or challenged, they frequently escalate to biased and discriminatory conduct. As OCR recognizes, Jews share more than a common faith; they are a people with a shared history and heritage deeply rooted in the land of Israel. Indeed, according to a Pew Research Center survey, eight in ten Jews say that caring about Israel is an essential or important part of what being Jewish means to them.<sup>4</sup> It is not a mere viewpoint or political opinion. For most Jews, Zionism represents their Jewish ancestry – the historic reality that the Jews as a people originated in ancient Israel. For most Jews, therefore, the ancestral connection to Israel (*i.e.*, Zionism) represents an integral component of their Jewish identity.

Occidental is one of the many campuses where anti-Semitism has been allowed to run rampant because the administration has refused to adequately respond to the problem, despite having been repeatedly put on notice.

Anti-Semitic discrimination and harassment of Jewish and Israeli students on the basis of their shared ancestry and national origin have flourished on Occidental's campus in the wake of October 7, 2023, when Hamas carried out a terrorist attack

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<sup>1</sup> White House, *The U.S. National Strategy to Counter Antisemitism*, at 9 (May 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf>.

<sup>2</sup> International Holocaust Remembrance Alliance (IHRA), *Working Definition of Antisemitism*, <https://holocaustremembrance.com/resources/working-definition-antisemitism>.

<sup>3</sup> ADL, *Pyramid of Hate*, (2021), [https://www.adl.org/sites/default/files/pyramid-of-hate-web-english\\_1.pdf](https://www.adl.org/sites/default/files/pyramid-of-hate-web-english_1.pdf).

<sup>4</sup> Pew Research Center, *Jewish Americans in 2020: U.S. Jews' connections with and attitudes toward Israel*, (May 11, 2021), <https://www.pewresearch.org/religion/2021/05/11/u-s-jews-connections-with-and-attitudes-toward-israel/>.

in Israel, massacring, torturing, and kidnapping 1400 innocent civilians, including infants, children, and the elderly. The October 7 massacre was the deadliest day for Jews since the Holocaust. While many were horrified, a number of students and faculty at Occidental cheered the terrorist attack and engaged in protests and other activities that obstructed the ability of Jewish and Israeli students to move freely about the campus, engage in their school-affiliated employment, or enjoy the educational opportunities offered by Occidental.

Occidental's knowing failure to take prompt and effective steps reasonably calculated to address incidents like the following has resulted in a hostile environment for Jewish and Israeli students:

- Protestors regularly accost Jewish and Israeli students on campus, shoving anti-Semitic flyers in their faces, impeding their ability to move forward, and/or following them if they decline the flyers;
- Jewish and Israeli students with college-affiliated employment find themselves unable to carry out their jobs as a result of anti-Semitic conduct by peers and staff; and
- Jewish students are told by fellow students to “go back to the gas chambers,” and are called derogatory names like “kike” and “fucking Jew.” (Ethnic slurs and Holocaust “jokes” are expressly noted by OCR as examples of the kind of incidents that may raise Title VI concerns.)<sup>5</sup>

Instead of taking immediate action to stop such conduct, as the law requires, Occidental has exacerbated the hostile environment by according disparate enforcement standards to violations of school policies. As discussed below, policies that are generally enforced are not enforced when the victims of the policy violations are Jewish. The most egregious example of this disparate treatment arose from the “occupation” of the Arthur G. Coons Administrative Center (“the Coons Center”), led by the Occidental Students for Justice in Palestine (“SJP”). The occupation was in violation of numerous Occidental safety and security policies, which Occidental generally enforces and which the administration announced it would enforce if the occupiers failed to follow Campus Security’s instructions to vacate the building. But Occidental did not enforce its policies, and instead rewarded SJP for its violation of campus rules by publicly agreeing to meet some of their “demands.”

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<sup>5</sup> Office of Civil Rights, *FACT SHEET: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics*, (Jan. 4, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>.

The hostile environment on campus has been repeatedly reported to Occidental's most senior administration. Parents and students wrote to and met with the college president and dean of students on several occasions to bring the problem to their attention. Moreover, Occidental is a small school: the hostility in the environment is apparent to everyone – students, parents, faculty, and staff. Indeed, as discussed below, faculty are not only aware of the hostile environment, but they were key participants in fostering it. Yet, the administration has ignored the pleas for help.

As a result, Jewish students have been deprived of the ability to fully and equally participate in the educational opportunities available to other Occidental students. The harm to Jewish students has been substantial. Several Jewish students chose to transfer out of the school due to the persistent anti-Semitism. At least two students suffered exacerbation of medical conditions as a direct result of the stress created by the anti-Semitic environment. Many have experienced impediments to their ability to study. And, during SJP protests, Jewish students often confined themselves to their dorm rooms, skipping meals and classes, to avoid the targeted anti-Semitic harassment.

For the reasons detailed below, the Brandeis Center and ADL request that OCR initiate an investigation of Occidental College, a recipient of federal financial assistance,<sup>6</sup> for violations of Title VI and the statute's implementing regulations. We further request mediation at the time of filing pursuant to Section 201(a) of OCR's Case Processing Manual, to be followed by an investigation if the mediation is not successful.

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<sup>6</sup> See Occidental College, *Federal Direct Loans*, <https://www.oxy.edu/financial-aid/financial-aid-awards/student-loans/federal-direct-loans>.



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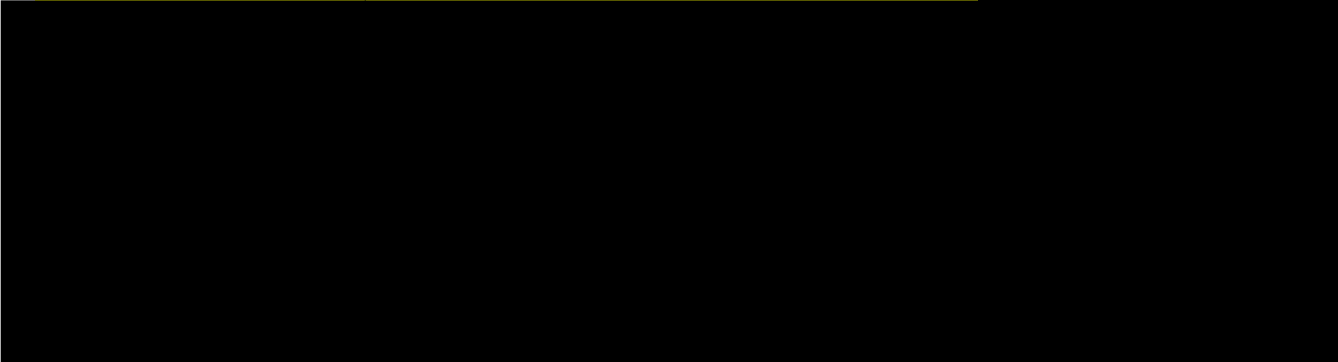
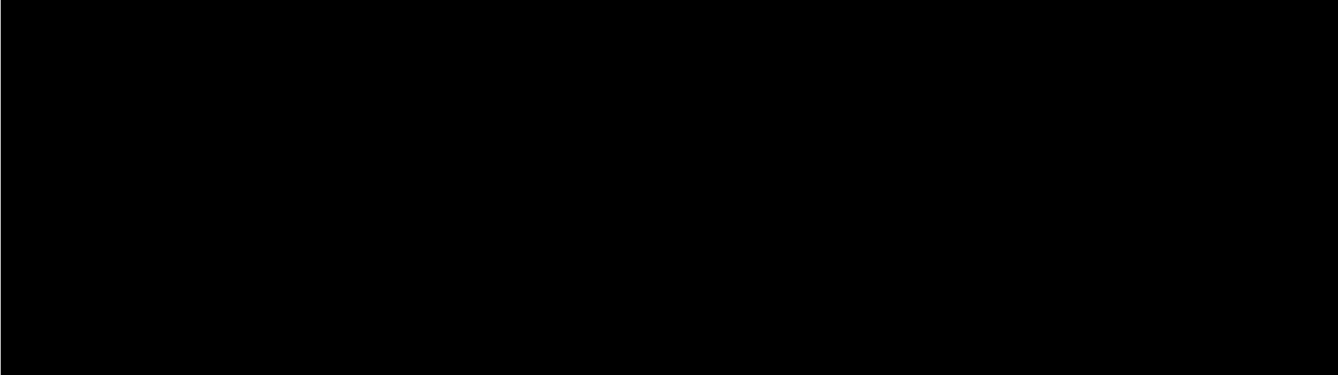
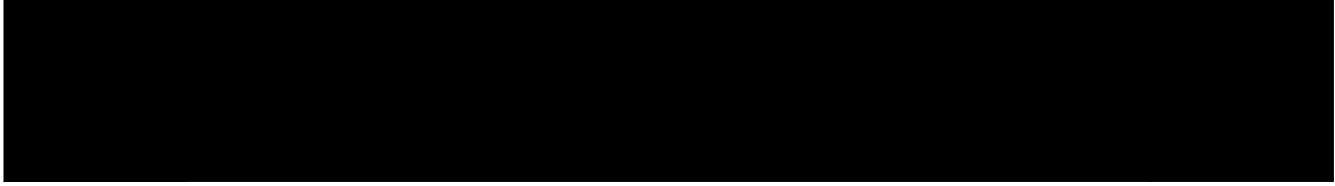
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2. [Redacted] – Student 2.

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### **3. The Library – Student 3.**

The Occidental library also employs students. Like other student jobs on campus, library employment is an opportunity for both income and learning. Student 3 is a Jewish student with family in Israel.

Student 3 works night shifts at the library. While the shortest path from her dorm to the library is well lit and well-traveled, because of safety concerns, Student 3 feels compelled to avoid that route and take an alternative dimly-lit, isolated route when significant anti-Israel protests are ongoing. Student 3 was informed by other Jewish students of the abuse they incurred during the protests (as described in detail below) and Student 3 was herself harassed by groups of protesting students who blocked her path, coercing her to take flyers.

Student 3's only alternative to taking the dimly-lit path is to walk with co-workers. However, her co-workers made a practice of telling Holocaust and other anti-Semitic jokes, which presented Student 3 with having to make the difficult choice

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<sup>8</sup> See Office of Civil Rights *FACT SHEET*, *supra* note 5.

between taking a less safe solo travel route or subjecting herself to continuous cruel, callous, and demeaning anti-Semitic rhetoric.

Not only did this substantially impair the benefits of her library employment but Student 3 had to change her work-related routine to take a dimly-lit, isolated path between the library and her dorm due to the hostile environment on campus.

#### **4. The Campus Coffee Shop – Student 4.**

The campus coffee shop is a student-run operation that teaches students how to run a small business while also enabling them to earn some money. Student 4 worked at the campus coffee shop until her supervisor made it untenable for her, as a Jewish student, to continue doing so. Student 4 was present when the coffee shop supervisor approached a friend of Student 4's at the shop and asked if it was true that the friend is a Zionist. The friend felt compelled to lie and say "no." The supervisor then told the friend that she had better start showing up to SJP's events or risk having students believe that she is a Zionist and she would not "want people thinking that."

Student 4 was compelled to quit her job at the campus coffee shop to avoid a similar confrontation with her supervisor. It was clear to Student 4 that the only way to remain employed at the campus coffee shop without being subjected to harassment was to hide her identity, which she chose not to do. She did, however, discontinue wearing a Star of David necklace after being confronted about it in the dining hall. She did not feel that she could continue publicly affirming her Jewish identity without incurring harassment.

#### **B. Jewish students who decline to take pro-Hamas flyers thrust in their faces are subjected to physical and verbal harassment.**

On numerous occasions, anti-Israel student protesters try to force Jewish students to take pro-Hamas pamphlets or pamphlets containing ancestry-based anti-Semitic content. If Jewish students refuse to take the pamphlets, protesters engage in physical and verbal harassment. For example, protesters block the path so that the Jewish students cannot walk past. In some cases, Jewish students who try to walk away are tailed by the protesters, who continue to demand they take the flyers. Or protesters shout that the Jewish student is a "fucking Zionist," "fucking Jew," or "kike" who should "go back to the gas chamber."<sup>9</sup> The protesters are often masked, compounding the anxiety created by their conduct.

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<sup>9</sup> Such verbal harassment is expressly noted by OCR as examples of the kinds of incidents that may raise Title VI concerns. *See Id.*



Harassment of this sort clearly violates Occidental policy, which states that “individuals may not be forced, coerced, or otherwise pressured to accept materials.”<sup>10</sup>

Jewish and Israeli students victimized by this form of harassment have repeatedly reported their experiences to the Occidental administration, but Occidental has failed to respond. As a result, Jewish students are denied the right to walk through campus without harassment or impediment – a benefit to which all students are entitled.<sup>11</sup>

**C. Jewish and Israeli students are subjected to disparate treatment on the basis of their shared ancestry and/or national origin.**

**1. The Coons Center occupation.**

The Coons Center is the main administration building on campus, containing the Financial Aid office, the Career Center, the Title IX office, the Registrar’s Office, the President’s Office,<sup>12</sup> and a variety of other administrative and student-service offices. Pro-Hamas protesters “occupied” the building in early and mid-November, substantially impeding college functions. The “occupying” students brought in mattresses and other items that impeded access to offices, tampered with the building’s electrical system, and removed and damaged building furniture.<sup>13</sup> The first-floor walls of the Coons Center are largely made up of glass windows, which were plastered with anti-Semitic and anti-Israel posters, in violation of school policies on postings (discussed in more detail below). And protesters refused to leave when instructed to do so, despite being told that their continued presence in the building was unauthorized and a risk to safety and security. Occupying students (and faculty) engaged in loud chanting of “there is only one solution... Intifada revolution” and similar exhortations. This “Intifada solution” chant invokes the Nazi’s final solution as well as the Intifadas that claimed the lives of over a thousand Israeli civilians.

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<sup>10</sup> Occidental College, *Posting and Publicity*, <https://www.oxy.edu/policy-directory/posting-and-publicity>.

<sup>11</sup> See 34 C.F.R. section 100.3(b)(1)(iii) (unlawful discrimination includes, “Subject[ing] an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program.”).

<sup>12</sup> See Occidental College, *Interactive Campus Map*, <https://cms.concept3d.com/map/accessible.php?id=1103&cId=22122&mId=267726>.

<sup>13</sup> Email from Dr. Harry J. Elam Jr., President of Occidental College, to Oxy Students Occupying the AGC (November 14, 2023, 4:07 pm) (on file with author).

This conduct violated numerous Occidental rules, including policies on the following topics:<sup>14</sup>

- Security in academic buildings;
- Activities that create a nuisance or endanger the safety of the community;
- Failure to comply with the reasonable directions of Campus Safety officers;
- Damage to college property;
- Conduct that could result in the violation of any federal, state, or local law (i.e. trespassing and destruction of property);
- Substantially interfering with normal college activities, including administration and emergency services;
- Key card access policies;
- Dissent and demonstrations; and
- Posting and publicity.

Faculty and staff actively participated in the occupation, including enabling the occupiers' violations of Occidental policy by using their staff access cards to get students into the building after hours, providing food and water for the protestors who refused to leave, supplying art materials for posters that were posted in the windows in violation of school rules, and participating in pro-Hamas chanting inside the building.

Several professors moved their classes online or to locations near the Coons Center to enable students to attend class while participating in the occupation; they also granted extensions to assignments expressly to encourage participation in the occupation.

The administration instructed the occupying students to leave and repeatedly reminded them that their failure to do so and their conduct in the Coons Center violated Occidental policies and endangered the safety of the community via, among other things, the creation of serious fire code violations. President Elam and Dean Sternberg informed students via email on November 10 that the “[Coons Center] closes at 5 p.m., and only staff who are there for business purposes should access the building.”<sup>15</sup> The November 10 email further specified that remaining in the

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<sup>14</sup> See Occidental College, *Code of Student Conduct*, at 9-11, [Oxy Code of Student Conduct Doc 8.5x11 2023 V3 Linked.pdf](#); see also Occidental College, *Key Card Access Policy & Procedures*, <https://www.oxy.edu/policy-directory/key-card-access-policy-procedures>; *Posting and Publicity*, *supra* note 10; Occidental College, *Right to Dissent and Demonstration Policy*, <https://www.oxy.edu/policy-directory/right-dissent-and-demonstration-policy>.

<sup>15</sup> See President Elam, *supra* note 13.

Coons Center after it closes would impede the school's security operations.<sup>16</sup> Dean Flot and other Student Affairs and Campus Safety personnel also provided several in-person warnings to students gathered in the building after hours, stating that they were not authorized to be there. President Elam even sent an email enumerating the many Occidental policies that the students were violating.<sup>17</sup> In light of the many violations, the disruption, and the risks being created, Dean Flot told the students on November 13 that remaining in the Coons center without authorization would result in referral to the conduct process for both students and staff.<sup>18</sup> Dean Flot explained that the occupation created "safety and security" issues.<sup>19</sup> President Elam echoed this warning, telling students that "conduct matters will be addressed consistent with the procedures stated in the Code of Student Conduct."<sup>20</sup> When the occupying students called the administration's bluff, the warnings turned out to be empty rhetoric.

While the entire campus community was impeded from using the school's administrative functions during the occupation, the impact was greatest on the Jewish students. The event as a whole – from the destruction of property and trespassing to the "Intifada solution" chants – was directed against Zionism, which is a core component of Jewish identity for many Jews, including Jews at Occidental. Jewish students stayed away from the Coons Center during the occupation. There can be no question that school rules prohibiting, *inter alia*, the destruction of school property, the impeding of access to offices, and the failure to comply with reasonable instructions of campus security officers are generally enforced at Occidental. In this circumstance, where the impact of the violations was felt most keenly by Jewish students, the rules were not enforced, notwithstanding warnings issued in advance by the administration. No conduct proceedings were instituted against any of the students, organizations, staff, or faculty that violated Occidental's rules in connection with the occupation.

To the contrary, the occupiers were *rewarded* for their misconduct. President Elam sent an email to the entire school listing the demands of the group that organized the occupation, SJP, and stating that the administration looked forward to a continued dialogue and relationship with SJP. SJP proclaimed victory on Instagram.<sup>21</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See email from Rob Flot, Dean of Students, to Oxy Students, Faculty, and Staff (November 13, 2023, 4:43 pm) (on file with author); see also President Elam, *supra* note 13.

<sup>19</sup> See President Elam, *supra* note 13.

<sup>20</sup> *Id.*

<sup>21</sup> See SJP @ Oxy [@oxysjp] (2023, November 15). "OXY SJP ARE PROUD TO ANNOUNCE HUGE WINS TODAY!!!" [Photograph]. Instagram.

The failure to enforce policies is not only disparate treatment; it was also a substantial contributor to the hostile environment at Occidental. The administration's inaction put Jewish students on notice that rule violations which adversely affect their lives on campus will not be enforced.

## 2. Posting of student flyers and "chalking."

Occidental requires students seeking to post flyers to obtain approval from Student Leadership, Involvement, & Community Engagement ("SLICE"). SLICE's approval is reflected by a SLICE stamp which must appear on every posted flyer.<sup>22</sup> In addition, flyers to be posted in dorms must be approved and stamped by Office of Residential Education and Housing Services.<sup>23</sup> On November 30, 2024, Occidental reminded students that the school enforces these rules.<sup>24</sup>

These rules are regularly applied to Jewish students and to students generally. The policy was applied to Student 4's [REDACTED] flyers, both before and after the November 30 reminder. Occidental residential life employees took down Student 4's flyers on the grounds that she failed to get the requisite approval to post her flyers in dormitories. Similarly, when Student 5 – without prior approval from SLICE – tied blue ribbons to trees in solidarity with Israeli victims of Hamas's terrorist attack, all of her ribbons were removed within days.

However, Occidental did not enforce these policies when it came to SJP's anti-Semitic and anti-Israel flyers, which were plastered all over campus including inside dorms, bathrooms (often in every stall and on every mirror inside of bathrooms), academic buildings, the dining hall,<sup>25</sup> and more. Few, if any, of the SJP flyers contained the proper stamps of approval. Indeed, the SJP flyers were hung in the same location as the Student 4 posters that were removed due to her failure to comply with the policy. Occidental administration was aware of these unauthorized, anti-Semitic posters, which they walked by every day. And many of these unauthorized posters were reported by Jewish students, to no avail. The disparate

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[https://www.instagram.com/p/CzsVHsRO0xT/?utm\\_source=ig\\_web\\_copy\\_link&igsh=MzRlODBiNWFlZA%3D%3D](https://www.instagram.com/p/CzsVHsRO0xT/?utm_source=ig_web_copy_link&igsh=MzRlODBiNWFlZA%3D%3D). Project SAFE, an initiative of the Title IX Office focused on prevention education and advocacy to end sexual violence on campus, "liked" SJP's Instagram post announcing victory.

<sup>22</sup> See *Posting and Publicity*, *supra* note 10.

<sup>23</sup> See Occidental College, *Promotion and Advertising Guidelines*, <https://www.oxy.edu/student-handbook/res-ed-housing-policies/promotion-and-advertising-guidelines>.

<sup>24</sup> Email from Dr. Harry J. Elam Jr., President of Occidental College, to Occidental College Community (November 30, 2023, 3:37 pm) (on file with author).

<sup>25</sup> See Occidental College, *Marketplace*, <https://www.oxy.edu/student-life/campus-dining/where-eat/marketplace>.

enforcement of flyer approval protocols is yet another example of Occidental's willingness to have two sets of standards for different groups of students.

The same issues occurred with chalk messages, which similarly must be approved by SLICE.<sup>26</sup> Students from various student groups wrote messages and advertisements for events in chalk on the sidewalk. Facilities erased all chalk except for SJP's anti-Israel and anti-Semitic chalks.<sup>27</sup> The school took no action as to the SJP chalks, which remained until washed away by the rain. Occidental engaged in disparate treatment by failing to enforce its posting and chalking policies in the case of anti-Semitic posts and chalks.

### **3. Use of amplification devices.**

Occidental's "Event Policies" expressly prohibit the use of amplification devices (e.g., bullhorns, microphones) during class hours.<sup>28</sup> SJP student protesters repeatedly violated this policy, using amplification devices during class hours that conveyed their chants into classrooms. These chants included: "There is only one solution . . . Intifada revolution." Occidental, of course, was aware of the violation of the amplification rule: the amplified protests could be heard all over campus. Yet the policy was not enforced as to the SJP protests.

Jewish students were disproportionately affected by Occidental's choice to allow SJP to violate this policy. How can Jewish or Israeli students pay attention to their professors and studies when such chants are loudly competing with the instruction? As Student 4 explained, it is extremely difficult to focus on the professor's instruction when everyone in the classroom clearly hears chants calling for the murder of a class of people of which you are a member.

### **D. Faculty are actively involved in the creation of a hostile campus environment for Jewish students.**

Faculty participation in anti-Semitic conduct sends the message to students that the college supports the creation of an anti-Semitic environment.

As discussed above, faculty participated in the Coons Center occupation, and cancelled classes in order to support the SJP "walk-outs" and protests, depriving Jewish students (and any others who did not want to attend the rallies) of instruction during class time.

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<sup>26</sup> See *Posting and Publicity*, *supra* note 10.

<sup>27</sup> *Id.*

<sup>28</sup> See Occidental College, *Event Policies*, <https://www.oxy.edu/student-life/clubs-organizations/plan-events/event-policies>.

Faculty also engaged in hateful rhetoric that emboldened the student protestors. On the first day of class following October 7, a professor told her students that she felt “invigorated” from Hamas’ October 7 terrorist attack and encouraged students to share their excitement. Students clapped and snapped in response to their professor while an Israeli student watched in horror. Faculty also made hateful, anti-Semitic statements on social media and “liked” anti-Semitic Instagram posts. On October 21, 2023, (*before* Israeli troops entered Gaza), 37 Occidental faculty members sent an email denying Israel’s right to self-defense and denying that Hamas’ actions were terrorism.<sup>29</sup> The October 21 letter now has 61 faculty signatories.<sup>30</sup>

### **E. Jewish and Israeli students across Occidental are harmed by the hostile environment.**

The harassment experienced by Jewish and Israeli students causes them significant harm. Several Jewish students chose to transfer to other schools to avoid the anti-Semitic environment at Occidental, including one student who chose to attend a community college next semester rather than continuing to endure the Occidental environment. Some Jewish students leave campus for days when they know that there are protests planned. Other students remain in their dorm rooms during the protests, sometimes skipping meals and class. Many students report that their ability to study is impaired.

Both Student 1 and Student 3 suffered medical harm as a result of Occidental’s failure to address anti-Semitism on campus. Student 1’s [REDACTED] reoccurred as a result of her stressful experiences at [REDACTED] and her reluctance to eat at the dining hall where she would be subjected to anti-Semitic harassment. Student 3 has a medical condition that [REDACTED]. Her condition was seriously exacerbated in the Fall, due to her discomfort with eating in the dining hall, where she was often accosted by students pressing flyers on her, and her discomfort in using the restrooms in her dorm, which were covered with unapproved, anti-Semitic posters. [REDACTED]

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<sup>29</sup> Email from Students for Justice in Palestine at Occidental College, to Oxy Students, Faculty, and Staff (October 21, 2023, 3:38 pm) (on file with author); *see also* SJP @ Oxy [@oxysjp] (2023, October 27). “On Saturday, October 21st, a group of Occidental College faculty released this letter to express their solidarity with the Palestinian” [Photograph]. Instagram. <https://www.instagram.com/p/Cy6Yugzvloh/>.

<sup>30</sup> Students for Justice in Palestine, *Letter to the Editor: Yes, Israel is a settler-colonial state. Calling it so matters*, The Occidental News, (Feb. 21, 2024), <https://theoccidentalnews.com/opinions/tes/2024/02/21/letter-to-the-editor-yes-israel-is-a-settler-colonial-state-calling-it-so-matters/2911297>.



In addition, as described above, several students suffered diminution of employment opportunities due to the impact of the anti-Semitic hostile environment at their on-campus employment.

**F. Occidental failed to take prompt and effective steps to respond to the anti-Semitic environment.**

Occidental had actual knowledge of the rampant anti-Semitism on campus. Both students and parents emailed senior Occidental administration raising these concerns. Parents met twice with senior Occidental administration officials. There were also two substantial student meetings with senior school administrative personnel, including President Elam and Dean of Students Flot. The ADL sent two letters to President Elam. And, as discussed above, Student 1 met with a co-chair of the Task Force on Community and Safety, disclosing both the misconduct at [REDACTED] and the impact of the environment on her own medical condition. The Co-Chair told Student 1 it was her problem.

Most, if not all, the events described in this complaint were set forth in these communications, some of them repeatedly.

Notably, when parents of Jewish students met with President Elam and Dean Flot on November 21, 2023, they offered specific proposed actions that the administration could take to address the hostile environment, including that Occidental enforce already existing policies that had generally been enforced prior to October 7.

In addition to all these communications, Occidental was on notice of the hostile environment because its faculty actively promoted anti-Semitic conduct, as described above. Yet, when confronted with numerous complaints, concerns, letters and meetings explicitly bringing these matters to their attention, Occidental's administration did nothing of substance; they failed to act in any meaningful or effective way.

### III. Occidental has engaged in discrimination against Jewish and Israeli students

#### A. Under Title VI, federally-funded schools like Occidental are required to prevent discrimination, including severe or pervasive harassment of protected groups, including Jewish and Israeli students.

Title VI prohibits discrimination on the basis of race, color, and national origin in educational institutions that receive federal funding.<sup>31</sup> Guidance issued by the OCR and DOJ in 2004, 2010, 2017, and 2023 specifies that Title VI covers discrimination against Jews on the basis of their “actual or perceived shared ancestry or ethnic characteristics.”<sup>32</sup>

According to 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.”<sup>33</sup> The Executive Order incorporates the IHRA Definition, which states that “the denial to Jews of opportunities or services available to others” is “antisemitic discrimination.” As the IHRA Definition states, criticism of Israel similar to that leveled against any other

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<sup>31</sup> See 42 U.S.C. § 2000d et seq.

<sup>32</sup> See *Dear Colleague Letter*, U.S. DEP’T OF EDUC.—OFFICE FOR C. R. (Nov. 7, 2023), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf>; See also *FACT SHEET, supra* note 5; *Know Your Rights: Title VI and Religion*, U.S. DEP’T EDUC.—OFFICE FOR C.R., January 17, 2017, available at <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>; Letter from Assistant Secretary for Civil Rights Russlyn Ali, U.S. DEP’T OF EDUC.—OFFICE FOR C. R., October 26, 2010, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (“2010 Dear Colleague Letter”); 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*, September 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](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), available at <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

<sup>33</sup> EO 13899, §1; see also Questions and Answers on Executive Order 13899 (Combatting 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., January 19, 2021, available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf>.



country is not anti-Semitism. But demonizing the Jewish State, calling for its destruction, blaming Jewish students for the actions of the Israeli government, denying the Jewish people the right to self-determination, and/or subjecting Israel to double standards are classic earmarks of anti-Semitism.

Discriminatory actions include selective enforcement of rules, failure to adequately address and investigate anti-Semitic incidents on campus, and disparate treatment of students on the basis of their Jewish ethnic identity or Israeli national origin.

For purposes of Title VI, harassment creates a “hostile environment” when, based on the totality of the circumstances, the harassment “is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.”<sup>34</sup> A Title VI recipient “must take immediate and effective action to respond to harassment that creates a hostile environment.”<sup>35</sup> Further, 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.”<sup>36</sup> And 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.”<sup>37</sup>

**B. Occidental has permitted a hostile environment for Jewish and Israeli students to develop and flourish on its campus, denying Jewish and Israeli students the ability to engage fully in the school’s educational opportunities and benefits, in violation of Title VI.**

As discussed above, harassment creates a “hostile environment” when, based on the totality of the circumstances, the harassment “is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to

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<sup>34</sup> See 2023 Dear Colleague Letter, *supra* note 32, at 2; see also 2010 Dear Colleague Letter, *supra* note 32, (stating that 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”).

<sup>35</sup> See 2023 Dear Colleague Letter, *supra* note 32, at 2 (emphasis added); see also 2010 Dear Colleague Letter, *supra* note 32 at 2-3 (stating that 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”).

<sup>36</sup> See 2010 Dear Colleague Letter, *supra* note 32, at 1; see also 2017 Know Your Rights: Title VI and Religion, *supra* note 32.

<sup>37</sup> See 2010 Dear Colleague Letter, *supra* note 32, at 5–6.

participate in or benefit from the recipient's education program or activity."<sup>38</sup> A Title VI recipient "must take immediate and effective action to respond to harassment that creates a hostile environment."<sup>39</sup>

Occidental has violated Title VI by failing to take effective steps "reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring." Instead, despite repeated notifications of the problems, the administration has allowed the hostile environment to flourish.

As discussed in the Statement of Facts, *supra*, Jewish and Israeli students have reported feeling fearful and anxious at Occidental. Some choose to hide their Jewish identity to avoid harassment while others chose to transfer to other colleges or community college rather than continue at Occidental. Jewish and Israeli students have been impeded in their ability to walk freely through the campus as any other student would, and their studies have been impaired. They have been denied multiple benefits of campus life, including college-affiliated employment. No student should be compelled to hide in her dorm room, skipping meals and classes, to avoid protests motivated by ancestry-based anti-Semitism.

The school was fully on notice of these circumstances and did nothing that was either meaningful or effective.

### **C. Occidental has discriminated against its Jewish and Israeli students.**

Occidental has violated Title VI by failing to enforce its policies uniformly and treating Jewish and Israeli students differently than others.

As discussed above, Occidental has refused to enforce policies when the perpetrators are anti-Israel or anti-Semitic, or when the students harmed by the violations are Jewish, including when SJP led a mass occupation of the central administration building that caused serious safety and security concerns, damaged school property, and precluded Jewish students from accessing administrative services. Despite issuing several warnings, Occidental succumbed to SJP's demands instead of enforcing the school's generally-enforced conduct code.

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<sup>38</sup> *Id.*

<sup>39</sup> *See* 2023 Dear Colleague Letter, *supra* note 32, at 2 (emphasis added); *see also* 2010 Dear Colleague Letter, *supra* note 32 at 2-3 (stating that 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").

Similarly, Occidental enforced its policies when students hung up posters and wrote in chalk unrelated to Israel and Jews, but not when SJP hung up anti-Semitic posters and drew anti-Semitic “chalks.”

Occidental also chose not to enforce the school’s anti-harassment policies, which prohibit students from coercing or pressuring other students to accept written materials, despite knowing that the students violating this policy were in fact coercing Jewish students on campus.

By turning a blind eye to the conduct of anti-Israel protestors who obstructed, intimidated, and harassed Jewish and Israeli students, Occidental prevents Jewish and Israel students from obtaining the benefits of student life at Occidental.

#### **IV. Suggested Remedies**

For the foregoing reasons, the Brandeis Center and ADL urge OCR to require Occidental to take the following steps to protect its Jewish and Israeli students and to ensure that members of the Occidental community are held accountable for engaging in and/or permitting harassment:

1. Issue a statement denouncing anti-Semitism in all its forms and recognizing that Zionism is a key component of Jewish identity for many students at Occidental. We recommend that Occidental use or model its statement on the following language:

We condemn anti-Semitism in all its forms. We recognize that Zionism is a key component of the shared ancestral and ethnic identity of many Jewish Americans. Efforts to exclude Zionists and make Occidental students feel unwelcome and unsafe expressing this part of their Jewish ancestral and ethnic identity is contrary to Occidental’s basic values of mutual respect and inclusion. Our staff are key leaders in our schools who are charged with fostering and facilitating community development and inclusion for all students, including Jewish students who define their Jewish identity as including Zionism. Anti-Semitic harassment, bullying, and targeting are unacceptable. Our schools must be a place characterized by inclusivity and the free and open exchange of ideas.

Occidental is committed to taking all necessary actions, including discipline where appropriate, to address and ameliorate discrimination and harassment based on actual or perceived shared ancestry or ethnic characteristics, including anti-Semitism that manifests as anti-Zionism. To that end, Occidental will utilize the IHRA Working

Definition of anti-Semitism as required by law when investigating and responding to incidents of harassment and discrimination to determine whether they are motivated by anti-Semitic animus or bias. Occidental encourages the campus community to educate itself about the many manifestations of anti-Semitism by reading and studying the IHRA Definition and its contemporary examples.

2. Ensure the Occidental community understands and recognizes anti-Semitic discrimination by incorporating the IHRA Definition, including its guiding examples, in Occidental's policy manuals related to discrimination, consistent with EO 13899 and the values of free speech and academic freedom; and providing training on anti-Semitism to Occidental administrators, faculty, students and staff. The training should familiarize all 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 Occidental community will be able to better identify and respond to anti-Semitic incidents in the future, particularly those that involve Jewish shared ancestry connected to Israel.
3. Enforce its code of conduct indiscriminately to all students, employees, faculty members and contractors and announce that any who engage in discriminatory conduct or otherwise violate Title VI and Occidental's code of conduct will be held accountable, including by suspension and expulsion (students) or suspension and termination (employees and contractors), including violations occurring prior to the filing of this Complaint.
4. Appoint an independent investigator to examine the campus climate for its students, faculty, staff, with specific attention to the climate for Jewish members of the Occidental community; charge the investigator with conducting a school climate survey to address the climate for students, and especially for Jewish and Israeli students; and carry out such recommendations as are made by the investigator based on the survey and additional analysis.
5. Create a task force comprised of Jewish student leaders and Jewish faculty members, including Jewish students and faculty for whom connection to the State of Israel is integral to their identity, that will provide input to the Occidental administration about how best to address and improve Jewish life at Occidental, including how to address and ameliorate anti-Semitic harassment and discrimination based on shared ancestry and/or ethnicity.

6. Remove all anti-Semitic posters, banners, flags, images, and writings on school property and enforce the prohibition against the display of such items.

## V. Request for Section 201(a) Mediation

The Complainants request mediation at the time of filing pursuant to Section 201(a) of OCR's Case Processing Manual.

## VI. Conclusion

For the foregoing reasons, the Brandeis Center and ADL urge OCR to (1) initiate an investigation of Occidental, a recipient of federal funding, for violations of Title VI and the statute's implementing regulations, and (2) include this case in OCR's Section 201(a) mediation program.

Respectfully submitted,



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