



April 8, 2022

VIA Portal -- EDFOIAManager@ed.gov

U.S. Department of Education
Office of the Executive Secretariat
FOIA Service Center
400 Maryland Avenue, SW, LBJ 7W106A
Washington, DC 20202-4536
ATTN: FOIA Public Liaison

Freedom of Information Act Request: Antisemitism on College and University Campuses

Dear FOIA Officer:

America First Legal Foundation (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and promote knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States. The AFL mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and/or other media, including social media platforms, to educate the public.

I. Background

President Donald J. Trump and his Administration took decisive action to combat the scourge of antisemitism in the United States and overseas. Among other things, President Trump signed Executive Order 13899 (“Exec. Order No. 13,899”) on December 19, 2019. Exec. Order No. 13,899 provides that the executive branch will enforce Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) “against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”¹ The Department of Education (“Department” or “ED”), under the leadership of Secretary Betsy DeVos, was vocal and aggressive in fighting antisemitism. Secretary DeVos denounced, in the strongest terms possible, the hateful “Boycott, Divestment, and Sanctions”

¹ Exec. Order 13,899 of Dec 11, 2019.

movement,² and authorized the Department to investigate and act against antisemitism at Duke University, among others.³ In follow up to Exec. Order No. 13,899, ED announced it was opening a new center housed within its Office for Civil Rights, the Outreach, Prevention, Education, and Nondiscrimination (OPEN) Center, the purpose of which center is to increase awareness of civil rights laws by schools, educators, families and students and take proactive measures to advance the same. As Kenneth Marcus, former Department of Education Assistant Secretary for Civil Rights, stated, “the OPEN Center is all about strengthening civil rights compliance through voluntary, proactive activities.”⁴

Unfortunately, the Biden Administration has chosen another path. Internationally, Biden political appointees promote antisemitism: The Biden Administration funds the virulent antisemitism of the Palestinian Authority; it is working tirelessly to empower the Islamic Republic of Iran and facilitate the flow of billions of dollars to terror groups including Hamas and Hezbollah; and it underwrites and legitimizes the farcical United Nations Human Rights Council. Domestically, the Biden Administration has, at best, been missing in action. It has stood by silently in the face of an unprecedented wave of physical attacks against Jews in the streets of New York, Los Angeles, and other American cities. In January 2022, FBI Director Christopher Wray acknowledged “that the Jewish community in particular has suffered violence and faces very real threats from really across the hate spectrum.”⁵ Yet, the Biden Administration is nowhere to be found.

The data shows that the Biden Administration has closed its eyes to a massive increase in antisemitism on American college and university campuses. Anti-Israel groups on campuses spew their hostility and racism through anti-Israel rhetoric, causing Jewish students to feel threatened for their safety. Indeed, the evidence that antisemitism is deeply embedded in U.S. campuses and faculty rooms is undeniable:

² Collin Binkley, *DeVos: Efforts to Boycott Israel Are a ‘Pernicious Threat*, ABC News (July 15, 2019), <https://abcnews.go.com/Lifestyle/wireStory/devos-efforts-boycott-israel-pernicious-threat-64343986>.

³ See *San Francisco University is Investigated and Could Have its Funding Pulled for Inviting Palestinian Airplane Hijacker to Speak in Webinar*, DAILY MAIL (Nov. 5, 2020), <https://www.dailymail.co.uk/news/article-8919351/San-Francisco-university-funding-pulled-inviting-Palestinian-militant-webinar.html>; 84 Fed. Reg. 48919 (Sept. 17, 2019), <https://www.govinfo.gov/content/pkg/FR-2019-09-17/pdf/2019-20067.pdf>; see also *Duke University Resolves Anti-Semitic Complaint Following Conference on Campus*, JNS (Feb. 4, 2020), <https://www.jns.org/duke-university-resolves-anti-semitic-complaint-following-conference-on-campus/>; *UNC to Update Policies Following Complaint of Anti-Semitism*, ASSOCIATED PRESS (Nov. 26, 2019), https://www.waow.com/archive/unc-to-update-policies-following-complaint-of-anti-semitism/article_9d5f84b1-4692-59b2-95c4-7fc2b7e73a5c.html.

⁴ Kery Murakami, *Ed Department Opens New Civil Rights Center*, INSIDE HIGHER ED (Jan. 22, 2020), <https://www.insidehighered.com/quicktakes/2020/01/22/ed-department-opens-new-civil-rights-center>.

⁵ Christopher Wray, *Remarks by Director Christopher Wray to Anti-Defamation League on Hostage Incident in Colleyville, Texas*, FBI (Jan. 20, 2022), <https://www.fbi.gov/news/speeches/remarks-by-director-christopher-wray-to-anti-defamation-league-on-hostage-incident-in-colleyville-texas-012022>.

- In 2021, the Louis D. Brandeis Center, Inc., an independent, nonprofit organization, conducted a survey with college students who openly identified as Jewish. These students reported they had been personally targeted by an anti-Semitic remark in the past 120 days, with more than 60 percent of respondents sharing that they have felt unsafe as Jews on campus, and 50 percent have actively hidden their identity.⁶ One in six students stated they feared actual physical attacks.⁷ Of those students who believed they needed to hide their Jewish identity, three in 10 were concerned about being marginalized or penalized by their professors.
- Another survey was conducted by College Pulse in the summer 2021. The respondents were Jewish students enrolled in 220 different college and universities.⁸ The findings were similarly alarming. The survey showed that one-third of Jewish college students experienced antisemitism on college campuses in 2021, and 15% of Jewish students felt the need to hide their Jewish identity on campus.⁹ Unfortunately, rather than take an active leadership role in combatting growing antisemitism on campuses of higher learning, campus diversity officers are helping to foment it.¹⁰
- Two recent studies suggest faculty and administrators are key drivers for increased campus antisemitism. One study demonstrates that the number of faculty who publicly support academic boycotts of Israel correlates strongly with a significant increase in physical attacks against Jewish students.¹¹ The other demonstrates that university administrators employed to promote “diversity, equity, and inclusion” (DEI) actually contribute to hostile, anti-Jewish conditions on campus. Specifically, the evidence demonstrates that “DEI staff are particularly unwelcoming toward Jewish students who, like the vast majority of Jews worldwide, feel a strong connection to the state of Israel” and that this “may help explain the rising frequency of antisemitic incidents on college campuses as well as the association between college and graduate

⁶ Cohen Research Group, *Anti-Semitism @ College*, LOUIS D. BRANDEIS CENTER (Spring 2021), <https://brandeiscenter.com/wp-content/uploads/2021/09/Brandeis-Survey-Findings.pdf>; see also Diane Kunz, *Fighting Anti-Semitism Where it Starts (The Hill)*, LOUIS D. BRANDEIS CENTER (Feb. 25, 2022), <https://brandeiscenter.com/fighting-anti-semitism-where-it-starts-the-hill/>.

⁷ Cohen Research Group, *Anti-Semitism @ College*, LOUIS D. BRANDEIS CENTER (Spring 2021), <https://brandeiscenter.com/wp-content/uploads/2021/09/Brandeis-Survey-Findings.pdf>.

⁸ *The ADL-Hillel Campus Anti-Semitism Survey: 2021*, <https://www.adl.org/media/16967/download>.

⁹ ADL, *One-Third of Jewish Students Experienced Antisemitism on College Campuses in Last School Year, New Survey Finds*, (Oct. 26, 2021), <https://www.adl.org/news/press-releases/one-third-of-jewish-students-experienced-antisemitism-on-college-campuses-in>.

¹⁰ Greene & Paul, *Antisemitism Is a Growing Problem Among College Diversity Administrators*, HERITAGE FOUNDATION (Dec. 24, 2021), <https://www.heritage.org/religious-liberty/commentary/antisemitism-growing-problem-among-college-diversity-administrators>.

¹¹ Leila Beckwith and Tammi Rossman-Benjamin, *Faculty Academic Boycotters, Ground Zero for Campus Antisemitism* at 15-18 (Mar. 2022), <https://amchainitiative.org/wp-content/uploads/2022/03/Faculty-Academic-Boycotters-Antisemitism-Report.pdf>

education and higher levels of antisemitic attitudes.”¹² Indeed, the study found that political activism exercised by DEI staff “clearly crosses the line from legitimate concern for human rights into outright antisemitism, providing encouragement and assistance to others on campus to do the same.”¹³

The Middle East Studies Association (MESA) claims it opposes antisemitism.¹⁴ However, on March 23, 2022 MESA issued a press release proudly stating that its members overwhelmingly voted to endorse the BDS movement against Israel, the one and only Jewish state in the world.¹⁵ Since then, while some institutional members, such as Brandeis University, have disassociated themselves from MESA,¹⁶ many institutional members remain MESA members. ED is undoubtedly aware of MESA’s antisemitic stance, that this stance necessarily violates Title VI, and that Exec. Order No. 13,899 requires ED to take investigative and enforcement action to ensure institutions are not engaging in unlawful conduct. Yet, it remains silent.

Thus, despite the growing storm of antisemitism on our college and university campuses, the federal government continues to distribute federal funds to these universities, while failing to enforce federal law. Just months ago, on February 4, 2022, a bipartisan group of Representatives sent a letter to the Assistant Secretary of Education seeking information from the Department regarding its actions concerning Exec. Order No. 13,899, the OPEN Center, and related matters with respect to the Department of Education’s actions – or lack thereof - in combatting antisemitism.¹⁷ ED is uniquely tasked with combatting antisemitism at educational institutions receiving federal funds. ED carried out this important duty under Secretary DeVos. Now, to shed light on Secretary Cardona’s views, America First Legal requests the records under 5 U.S.C. § 552 set forth below.

¹² Jay P. Greene and James D. Paul, *Inclusion Delusion: The Antisemitism of Diversity, Equity, and Inclusion Staff at Universities*, at 5-7, 9, HERITAGE BACKGROUNDER (Dec. 8, 2021), <https://www.heritage.org/sites/default/files/2021-12/BG3676.pdf>.

¹³ Jay P. Greene and James D. Paul, *Antisemitism Is a Growing Problem Among College Diversity Officers*, <https://www.heritage.org/religious-liberty/commentary/antisemitism-growing-problem-among-college-diversity-administrators>.

¹⁴ MESA, *About*, <https://mesana.org/about>.

¹⁵ MESA, *Middle East Scholars Vote to Endorse BDS*, (Mar. 23, 2022) <https://mesana.org/news/2022/03/23/middle-east-scholars-vote-to-endorse-bds>.

¹⁶ Brandeis University, *Brandeis Dissociates From Middle Eastern Studies Association, Brandeis NOW* (Mar. 24, 2022), <https://www.brandeis.edu/now/2022/march/mesa-statement.html> (MESA has since removed its list of institutional members from its website) (<https://mesana.org/not-found-404>).

¹⁷ Letter from Rep. Ted Lieu et al., U.S. House of Rep., to Catherine Lhamon, U.S. Dept. of Ed., Office of Civil Rights, Letter to DOE regarding Title VI Complaint Processing (Feb. 4, 2022), <https://lieu.house.gov/sites/lieu.house.gov/files/%5BFINAL%5D%20Lieu%20Letter%20to%20DOE%20regarding%20Title%20VI%20Complaint%20Processing%20%5B2.4.2022%5D.pdf>.

II. Requested Records

The date range for the requested records is December 11, 2019 until the date that the request is processed and records are released.

Pursuant to the FOIA (5 U.S.C. § 552) and 44 U.S.C. § 3301(a)(1), “records” includes but is not limited to all (1) emails; (2) texts; and (3) memoranda, phone records, read-outs, transcripts, and/or recordings of or sufficient to show the date, duration, subject, and content of any telephone, Microsoft Teams, Zoom, or other similar communications. Such records shall be regardless of format, including, but not limited to, handwritten, typed, readouts, call summaries, illustrations, or otherwise.

A. All records of all communications regarding, referring or relating to antisemitism, Exec. Order No. 13,899, anti-Israel, and anti-Zionism from, directed to, or in the possession of any of the following custodians:

1. Miguel Cardona, Secretary of Education
2. Catherine E. Lhamon, Assistant Secretary for Civil Rights
3. Ramin Taheri, Chief of Staff
4. Hannah Zack ,Confidential Assistant
5. Addie Zinsner, Confidential Assistant
6. Suzanne Goldberg, Deputy Assistant Secretary for Strategic Operations and Outreach
7. Monique Dixon, Deputy Assistant Secretary for Policy
8. Laurie Monk, Deputy Assistant Secretary for Management and Planning
9. Randolph Wills, Deputy Assistant Secretary for Enforcement
10. Meena Morey Chandra, Enforcement Director
11. Lisa Chang, Enforcement Director
12. Mia Karvonides, Enforcement Director
13. Emily McCarthy, Enforcement Director
14. Elizabeth Morrow (*acting*), OPEN Center Director
15. Any successors holding positions to the above list.

B. All records of all communications regarding, referring or relating to antisemitism, Exec. Order No. 13,899, anti-Israel, and anti-Zionism from, directed to, or in the possession of each of the following Department of Education components:

1. Office of the Secretary and Deputy Secretary
2. Office of Finance and Operations
3. Office of the Chief Information Officer
4. Office of Civil Rights
5. Office of Planning, Evaluation, and Policy Development

6. Office of the General Counsel
 7. Office of Legislative and Congressional Affairs
 8. Office of Communications and Outreach
 9. Office of Inspector General
 10. Office of the Under Secretary
 11. Office of Postsecondary Education
- C. All records, including calendar entries, emails, notes, and other documents regarding meetings, meeting agendas and communications the Department has had with the following groups/individuals: Palestine Legal, Students for Justice in Palestine, the Center for Constitutional Rights, Kenneth Stern (with respect to anti-Semitism), the Leadership Conference, FIRE, J Street, Jewish Voices for Peace, CAIR and any other individuals and entities whose mission, interest, and/or activities relate to anti-Israel, anti-Zionist, antisemitism, pro-Palestine/Palestinian issues, or postsecondary education.
- D. All records regarding, referring, or related to Exec. Order No. 13,899.
- E. All records of the Department regarding the issuance, status, or delay of the notice of proposed rulemaking (the “NPRM”) to amend the Department’s regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, in response to Exec. Order No. 13,899.
- F. All records that include the names of individuals and/or groups who have participated in any phone conferences and/or meetings, virtual or in-person, regarding Exec. Order No. 13,899, the NPRM, and/or antisemitism and/or anti-Israel activities on college or university campuses.
- G. All records that include the words “Jewish,” “Jew,” “antisemitism,” “anti-semitism,” “Executive Order 13899,” “EO 13899,” “E.O. 13899,” “Zionist,” “Zionism,” “anti-Zionist,” “anti-Zionism,” “anti-Israel,” and/or “Israel.”
- H. All correspondence between any email address ending in “@who.eop.gov” and any person in the Department of Education regarding, referring, or relating to “Jewish,” “Jew,” “antisemitism,” “anti-semitism,” “Executive Order 13899,” “Zionist,” “Zionism,” “anti-Zionist,” “anti-Zionism,” “anti-Israel,” and/or “Israel.”
- I. All records of and regarding any complaints, inquiries, dismissals, or resolution agreements (whether filed, pending, and/or resolved) that relate in any way to alleged or actual antisemitism, anti-Israel, or anti-Zionist activities, actions, or perceptions on college and/or university campuses.

III. Custodians

All political appointees and all career employees with a grade equivalent of GS-14 or higher in the offices set forth in II. B. above.

IV. Processing/Redactions

Redactions are disfavored as the FOIA's exemptions are exclusive and must be narrowly construed. *Am. Immigration Lawyers Ass 'n v. Exec. Office for Immigration Review (AILA)*, 830 F.3d 667, 676-79 (D.C. Cir. 2016). If a record contains information responsive to a FOIA request, then the Department must disclose the entire record; a single record cannot be split into responsive and non-responsive bits. *Id.*; see also *Parker v. United States DOJ*, 278 F. Supp. 3d 446, 451 (D.D.C. 2017). Consequently, the Department should produce email attachments.

The Department of Homeland Security must comply with the processing guidance in the Attorney General's Memorandum of March 15, 2022, <https://www.justice.gov/ag/page/file/1483516/download>. This means, among other things, the following:

- You may withhold responsive records only if: (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the nine exemptions that FOIA enumerates; or (2) disclosure is prohibited by law.
- Information that might technically fall within an exemption should not be withheld unless you can identify a foreseeable harm or legal bar to disclosure. In case of doubt, openness should prevail.
- If you cannot make full disclosure of a requested record, then the FOIA requires that you consider whether partial disclosure of information is possible and take reasonable steps necessary to segregate and release nonexempt information.
- You must properly apply the foreseeable harm standard by confirming for and demonstrating to AFL that you have considered the foreseeable harm standard

Moreover, in connection with this request, and to comply with your legal obligations:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- In conducting your search, please construe the term "record" in the broadest possible sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek all records, including electronic records, audiotapes, videotapes, and photographs, as well as texts, letters, emails,

facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.

- Our request includes any attachments to those records or other materials enclosed with a record when transmitted. If an email is responsive to our request, then our request includes all prior messages sent or received in that email chain, as well as any attachments.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages. Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; AFL has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, by intent or through negligence, failed to meet their obligations.
- Please use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. Agencies are subject to governmentwide requirements to manage agency information electronically, and many agencies have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies. These systems provide options for searching emails and other electronic records in a manner that is reasonably likely to be more complete than just searching individual custodian files. For example, a custodian may have deleted a responsive email from his or her email program, but your agency's archiving tools may capture that email under Capstone. At the same time, custodian searches are still necessary; you may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.
- If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

V. Fee Waiver Request

Per 5 U.S.C. § 552(a)(4)(A)(iii) and 34 C.F.R. § 5.33, AFL requests a waiver of all search and duplication fees associated with this request.¹⁸

First, AFL is a qualified non-commercial public education and news media requester. AFL is a new organization, but it has already demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website. For example, its officials routinely appear on national television and use social media platforms to disseminate the information it has obtained about federal government activities. In this case, AFL will make your records and your responses publicly available for the benefit of citizens, scholars, and others. The public's understanding of your policies and practices will be enhanced through AFL's analysis and publication of the requested records. As a nonprofit organization, AFL does not have a commercial purpose and the release of the information requested is not in AFL's financial interest.

Second, waiver is proper because disclosure of the requested information is “in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the government.”¹⁹ Here, the request seeks information surrounding the implementation of federal antidiscrimination laws. Federal taxpayer dollars fund campus diversity initiatives across the nation, and it seems that these very programs are stoking antisemitism, or at least failing to constrain it. The Department of Education has finally opened an investigation, though one that took far too long, and is moving far too slowly. Further, the Department has repeatedly delayed the issuance of an NPRM that would begin the process of codifying Executive Order 13899, without adequate explanation. The public interest would be well served by the disclosure of this information.

VI. Production

To accelerate release of responsive records, AFL welcomes production on an agreed rolling basis.

If possible, please provide responsive records in an electronic format by email. Alternatively, please provide responsive records in native format or in PDF format on a USB drive. Please send any responsive records being transmitted by mail to America First Legal Foundation, 611 Pennsylvania Avenue, SE, #231, Washington, D.C. 20003.

¹⁸ 5 U.S.C. § 552(a)(4)(A)(iii). *See also Cause of Action v. Fed. Trade Comm'n*, 799 F.3d 1108, 1115-19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

¹⁹ 34 C.F.R. § 5.33.

VII. Conclusion

If you have any questions about how to construe this request for records or believe further discussions regarding search and processing would facilitate a more efficient production of records of interest to AFL, please do not hesitate to contact me at info@aflegal.org. Finally, if AFL's request for a fee waiver is not granted in full, please contact us immediately upon making that determination.

Thank you,

/s/ Julie Alexa Strauss

Julie Alexa Strauss
America First Legal Foundation