



September 15, 2021

Kevin M. Guskiewicz  
Chancellor, The University of North Carolina  
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Chapel Hill, NC 27599  
chancellor@unc.edu

Dear Chancellor Guskiewicz,

We are lawyers at the Louis D. Brandeis Center for Human Rights Under Law (the Brandeis Center), a national public interest organization that works to protect the rights of Jewish and Israeli college students to the extent required by law and informed by recognized principles of higher education.

We are aware that you have received many letters from Jewish groups expressing concern about the course entitled, “The Conflict over Israel/Palestine,” which is being taught this semester by teaching assistant (TA) Kylie Broderick, a Ph.D. student known for her hostile views of students who support the State of Israel, to whom she refers as “Zionist dirtbags.”

By asserting that “there is only 1 legitimate side – the oppressed [Palestinians] – versus imperialist propaganda,” Ms. Broderick has demonstrated her opposition to the presentation and consideration of divergent views. Ms. Broderick has further demonstrated her lack of objectivity by making statements such as, “Palestinians are being murdered for just being alive & bc they’re inconvenient to Israel & its patron, the US imperialist death cult.”

Given these deplorable statements, we share the concerns voiced in many of the letters objecting to Ms. Broderick’s teaching a course on the Israeli-Palestine conflict. We write to offer our legal expertise and knowledge of the rules that must guide the University’s response to the hostile atmosphere likely to be generated by this class.

We remind the University that it must, at a minimum, monitor the class, as it has already suggested it may do. It must also be prepared to take prompt and appropriate action if, in the course of teaching the class, Ms. Broderick prevents students from expressing views at odds with her own, treats such views as unacceptable, or creates an environment that is hostile to students for whom the State of Israel is integral to their Jewish identity.

In light of UNC's 2019 Resolution Agreement with the Office for Civil Rights (OCR), the University must be particularly vigilant about protecting Jewish students from such harassment and discrimination. Steps the University could take to ensure Jewish students are not unlawfully marginalized include: disavowing anti-Semitic rhetoric, disciplining any teacher who creates a hostile environment and/or silences one or more of her students, and ensuring that professors do not condition students to believe that certain forms of discrimination and hatred (of any community based on ancestral, national, ethnic or religious heritage) is acceptable on campus.

A hostile environment results not only when a teacher creates one in her classroom, but when administrators fail to curb her excesses, and, by their silence, create the impression that certain forms of harassment—*e.g.*, harassment against Jewish students whose faith is tied to Israel—are permissible on campus.

Both Title VI of the Civil Rights Act and Title VI of the Higher Education Act must inform the University's response to Ms. Broderick's teaching.

#### **Title VI of the Civil Rights Act of 1964**

This University has already committed itself to maintaining “an environment free from prohibited harassment, including . . . anti-Semitic harassment” under the Resolution Agreement it reached with OCR in August 2019. The University has thus assured the government and its own academic community that it will respond promptly and appropriately to incidents that constitute harassment or that generate an environment hostile to Jewish and Israeli students.

Harassment occurs when conduct is “sufficiently severe, pervasive or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities or privileges provided by a recipient.”

Ms. Broderick has already expressed herself in ways hostile to Jewish and Israeli students, and the Jewish community is understandably concerned that she may conduct herself in a way that nourishes the hostile atmosphere yet to be eliminated from UNC's campus.

As the University is likely aware, conduct that accompanies speech vilifying the State of Israel may constitute unlawful harassment. Under Executive Order (EO) 13889, issued in 2019 and in effect [today](#), agencies enforcing Title VI of the Civil Rights Act are directed to consider the International Holocaust Remembrance Alliance (IHRA) [definition](#) of anti-Semitism, and the examples it provides, in determining whether an incident constitutes unlawful harassment.

The IHRA definition recognizes that while “criticism of Israel similar to that leveled against any other country: is not anti-Semitic, it may well be anti-Semitic to “target[] . . . the state of Israel, conceived as a Jewish collectivity.” Denying the Jewish people their right to self-determination, *e.g.*, by claiming that the State of Israel has no right to exist, is anti-Semitic. Unfortunately, this appears to be the message Ms. Broderick seeks to promote, in contravention of the University’s Resolution Agreement.

### **Title VI of the Higher Education Act of 1965**

As this University is also aware, given the Department of Education’s 2019 [investigation](#) into Duke-UNC CMES activities supported with Title VI funds, Middle Eastern studies programs that receive federal funding must “reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs” (Higher Education Act (HEA) §§ 602, 604, 613) and “provide *full understanding* of areas, regions, or countries” in the region (*id.*, § 602, *emphasis added*). And students at institutions receiving federal funding must have “equal access to, and derive benefits from, the program” in question. (*Id.*, § 604.)

One of the things the Department of Education stressed in finding that most Duke-UNC CMES activities likely violated the Higher Education Act (HEA) was their “troubling” “lack of balance of perspectives,” which “strongly suggest[ed] that Duke-UNC CMES [was] not meeting legal requirement that National Resource Centers “provide a *full understanding* of the areas, regions, or countries” at issue. (Citing 20 U.S.C. 1122(a)(1)(B)(ii), *emphasis added*; 34 CFR 656.3(b)(1).)

Ms. Broderick’s statements reflect that her teaching, too, is likely to conflict with the HEA. Most critically, Ms. Broderick has publicly stated that there is “only 1 side” to the conflict between Israel and Palestine—the Palestinian side—making it virtually a foregone conclusion that debate or efforts to reach a “full understanding” of regional issues will not be encouraged, if even allowed in her classroom.

Ms. Broderick has also publicly stated that she views the United States as an “imperialist death cult,” a view that is unquestionably at odds with the purpose of funding international studies programs that educate students to represent the United States and develop economic ties to other countries.

Should Ms. Broderick’s teaching run afoul of the HEA, as her remarks suggest it will, the University must take action.

### **Academic freedom**

According to an ABC11 news [article](#), Terry Rhodes, the Dean of the College of Arts and Sciences, confirmed that UNC is “deeply committed to academic freedom, and academic freedom requires academic responsibility,” and that it “emphasize[s] and value[s] open and inclusive classroom discussions and strive[s] to teach different perspectives on a variety of topics.”

We commend Dean Rhodes for recognizing that academic freedom comes with responsibilities. While instructors must be allowed to express their views, they must not violate their *students'* rights to academic freedom by silencing them or preventing them from raising opposing viewpoints. Nor should instructors mistake their opinions for truth or indoctrinate the students they are entrusted to teach.

As the American Association of University Professors (AAUP) recognized over a hundred years ago, a [university teacher](#) “is under no obligation to hide his [or her] own opinion under a mountain of equivocal verbiage,” but “should, if he is fit for his position, . . . set forth justly, without suppression or innuendo, the divergent opinions of other investigators; . . . and he should, above all, remember that his business is *not to provide his students with ready-made conclusions, but to train them to think for themselves*, and to provide them access to those materials which they need if they are to think intelligently.” (Emphasis added.)

Further, “[t]he teacher ought . . . to be especially on his guard against taking unfair advantage of the student’s immaturity by indoctrinating him with the teacher’s own opinions before the student has had an opportunity fairly to examine other opinions upon the matters in question, and before he has sufficient knowledge and ripeness of judgment to be entitled to form any definitive opinion of his own.”

These principles require that Ms. Broderick be admonished not to impose her anti-Israel opinions on students in a way that either silences them or indoctrinates them. Silencing or intimidating students into silence may constitute unlawful harassment under Title VI of the Civil Rights Act. Indoctrination of students is no less dangerous, because it fosters a climate conducive to the harassment of students whose identity is tied to Israel. As we have repeatedly seen, allowing such harassment to take root and fester leads to further harassment and even to violence against students that universities fail to protect.

### **Interim measures**

The University need not – and should not – wait until it is required to take steps in conjunction with Title VI of the Civil Rights Act or Title VI of the HEA.

According to the ABC11 article, Dean Rhodes has stated that some or all of the following steps are under consideration with respect to Ms. Broderick’s class:

“Recording of class sessions;

“‘blind’ grading for the course-i.e., the instructor grades assignments without knowing the identity of the student;

“periodic check-ins or surveys that provide students in the course the opportunity to give anonymous feedback and to express any concerns;

“EOC (Equal Opportunity and Compliance) resources for students that are provided on the course syllabus.”

We appreciate Dean Rhodes’ efforts, and urge the University to take all of the steps listed above. The University should also consider the following:

First, with respect to grading and periodic check-ins, above, evaluations and written work should be reviewed by an instructor who does not share Ms. Broderick’s biases. “Blind” grading and periodic reviews are not enough if Ms. Broderick is unable to fairly and objectively review material that conflicts with her own deeply held and unabashedly one-sided views.

Second, the University should make a public statement similar to the [one](#) made recently by the University of Illinois at Urbana Champaign, advising its community that, “[f]or many Jewish students, Zionism is an integral part of their identity and their ethnic and ancestral heritage. These students have the right to openly express identification with Israel.” Accordingly, “[t]he university will safeguard the abilities of these students, as well as all students, to participate in university-sponsored activities free from discrimination and harassment. . . . We deplore anti-Semitic incidents on campus, including those that demonize or delegitimize Jewish and pro-Israel students or compare them to Nazis. This subjects them to double standards that are not applied to others.”

Third, the University should make clear that faculty and TAs have an obligation to conduct themselves in a manner that supports the academic growth of students at

UNC. Conduct that violates this obligation by demeaning, marginalizing, ostracizing, or treating any student in a discriminatory fashion (or encourages others to do so) on the basis of that student's identity interferes with students' opportunities, trammels their academic freedom, and betrays the University's educational mission, in addition to violating the law.

Finally, the University should consider adopting the IHRA definition of anti-Semitism, as other schools have recently done. This step would assist the University in carrying out its Resolution Agreement promise to ensure that students of Jewish descent are protected from discrimination.

We hope these steps may prevent violations of the laws we outline in this letter. At the time of this writing, we are informed that Ms. Broderick has scheduled a quiz for September 16, the date on which the Jewish High Holiday of Yom Kippur falls. This does not bode well for the semester.

Please do not hesitate to call on us if we can be of assistance in formulating appropriate responses as the need arises.

Sincerely yours,



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