



September 24, 2014

Tim Love, Associate Dean of Students
Director, Office of Student Conduct & Conflict Resolution
Damen Student Center
Suite 300, 6511 North Sheridan Road
Chicago, IL 60626
Tlove@luc.edu

Dear Associate Dean Love,

We are writing on behalf of Loyola University – Chicago’s (Loyola) Student for Justice in Palestine (SJP) organization to object to the temporary suspension of SJP and the ongoing investigation of individual students after several students attempted to register for a trip to Israel at a Birthright Israel table on September 9, 2014. This suspension and investigation raise serious concerns about due process, proportionality, restriction of speech rights, and discrimination on the basis of ethnicity and religion.

As attorneys and legal organizations who advocate for and protect civil rights and civil liberties, we are deeply concerned with Loyola’s treatment of the SJP chapter and individual students, and with the general intimidation that SJP students are facing at Loyola for expressing their views.

To begin, the registration attempt itself was free expression at its best about an important public issue. As we understand the facts, students found out on September 8 about a tabling event scheduled for September 9, hosted by Hillel and publicizing a non-Loyola corporation called Taglit-Birthright Israel (“Birthright”). Birthright offers free trips to young Jewish adults only (claiming they have a “birthright” to the state of Israel), thereby encouraging Jewish support and immigration to Israel to further the Zionist aim of colonizing historic Palestine. The SJP Executive Board discussed the tabling event at their meeting the evening of September 8, but decided that the group would not sponsor or organize any demonstration against it. SJP had previously reserved a table in the same location as the Birthright table to raise awareness about the situation in Gaza before they knew about the Birthright table, but decided at their meeting not to do any tabling the next day.

Individual students later that night suggested that Palestinian students try to register at the Birthright table to highlight the discriminatory nature of the Birthright Israel trips. The next day, several students met briefly to tape papers to their chests saying “My family is from the ethnically cleansed village of [name of the student’s village] but I do not have the right to return.” They then lined up at the Birthright table to attempt to register. A couple of them at the front of the line asked if they could register, and then engaged in a discussion with individuals at the table about why they were not allowed to register. Some of the students hosting the table said they had meetings and had to leave the table. As is evident from partial video footage of the incident, the students were standing in line quietly, and there appeared to be a calm discussion about 10 feet away from the table between students at the front of the line and those tabling.

There is no indication that the students were obstructing the table or anyone's passage to or from the table.

When the individuals at the Birthright table left, the students lined up for a picture. The whole incident lasted no more than 10 minutes. Following this event, students affiliated with Hillel, the student organization hosting the Birthright table, were quoted in an article accusing SJP students of threatening their safety, harassing them, blocking their way, and violating other university policies. Several complaints were also filed with the university against SJP.¹

To our knowledge, the administration is investigating SJP and individual students for allegedly violating a technical and, frankly, draconian provision of the Loyola Community Standards handbook because they did not register a "demonstration" in advance with the university; and for allegedly engaging in threatening or harassing behavior.

First, the attempted registration was not organized, endorsed or led by SJP as a group. It was initiated by individual students on an impromptu basis; the students only learned of the Birthright table the night before, and decided to line up and attempt to register only hours before. Their purpose was to ask to register and engage in a conversation with the Birthright tablers. The students who initiated the idea and those who lined up to ask questions never thought of it as a demonstration; it was not intended for passersby, but rather to engaging the tablers about how Birthright is discriminatory against them as Palestinians. While they were indeed displaying their "feelings toward a person or a cause" as described in Loyola's Community Standards policy, any conversation between two or more people is presumably expressing feelings, and thus can be defined as a demonstration under Loyola's broad and vague policy. The students did not remain in the area wearing their signs, as they would have were their purpose to engage in what most would perceive to be a demonstration, but dispersed right away after taking a group photo. They clearly did not consider that it was the type of event that needed to be registered, nor would they have had an opportunity to register given that they only heard about it the night before.

Under the terms of the Community Standards policy itself, Loyola claims to grant students the right to engage in peaceful demonstrations, which it defines as including "impromptu" gatherings. It is difficult to understand how a gathering could be both impromptu and pre-registered at the same time when the registration process requires advanced meetings with administrators for approval. It was not unreasonable for the students to interpret the guidelines to allow for impromptu expressions of political opinion provided they followed the requirements that gatherings remain orderly and peaceful. At worst, the students' actions were an unintentional violation of confusing, contradictory and unreasonable provisions in the university's handbook.

Although the suspension letter that the SJP President received stated that it was related to a "pending investigation," it is our understanding that you are now informing the students that the suspension was in response to an unrelated SJP event on September 17 for which they allegedly did not properly reserve rooms. SJP believes these allegations result from a misunderstanding that the administration could have easily resolved without suspending the organization, and they intend to discuss this with the appropriate Loyola administrators. Given that the only

¹ See Matt Lamb, *SJP Students Hurl Insults at Jewish Peers, Protest Their Israel Display*, The College Fix, Sept. 16, 2014, available at <http://www.thecollegefix.com/post/19303/>

investigation that the students are aware of is that relating to the Birthright tabling event, and the only communication they received about the September 17 event appeared to be an informal warning from the Director of Student Centers, it is unclear on what grounds the university issued a temporary suspension.

In either case, temporary suspension is an extreme sanction that stigmatizes and punishes the organization, and prevents it from meeting on campus or holding any events, even if pre-planned, before the student disciplinary process has even begun. According to the Community Standards policy, a temporary suspension such as this appears to only be authorized if “it is reasonably believed that failure to take such measures would seriously disrupt the University community or pose a danger to the health, safety, or welfare of the University community, University property, the student in question, or others.”² You did not claim in your letter that the existence of SJP triggered any of those concerns. Rather, your letter seemed to claim a general right to suspend any organization being investigated. You wrote, “Loyola . . . is a private university that allows students access to certain services and property while reserving the right to restrict that access or prohibit access altogether when an individual's behavior or actions are undesirable.” Such a broad power does not appear to be authorized by the Community Standards policy. Absent extreme circumstances, suspension can only be imposed as a disciplinary sanction after students receive due process, and even then is “seldom assigned, except for repeated violations.” Sanctions may only be imposed “[i]n cases of serious or repeated misconduct by a student organization.” SJP is a successful, active and popular student organization with a long history of working with the administration to register its planned demonstrations and events, and has not previously been found to have violated university policies, including in the case of the September 17 event, for which there has been no investigation or finding of responsibility. Given this confusion as to the university’s justification for the suspension, we ask that you promptly provide an explanation of the grounds for suspension.

Second, we are concerned that Loyola is also investigating SJP and individual students for allegedly threatening conduct. As noted above, and as is evident from the videos you have been provided, no threatening or harassing behavior occurred during the tabling. On the contrary, the students acted in the highest tradition of open inquiry on an issue about which they feel deeply. If Loyola strives to be a “‘marketplace of ideas’ where freedom of inquiry and open exchange of conflicting viewpoints is generally supported and encouraged,”³ how can it allow subjective feelings of discomfort with conflicting opinions to justify punishing speech activities? As the US Supreme Court has reminded us, “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.”⁴

The accusations that the students were engaging in threatening conduct, however, compel us to raise some important context to this incident. There have been, at universities around the country, similar accusations that those engaging in speech activities advocating for Palestinian

² See Section 408, Community Standards, *available at* <http://www.luc.edu/media/lucedu/osccr/pdfs/LUC%20COMMUNITY%20STANDARDS%202014-2015.pdf>.

³ Section 506, Community Standards.

⁴ *Keyishian v. Board of Regents*, 385 U.S. 589, 684 (1967), quoting *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 (1957).

rights or critical of Israel are creating a “hostile environment” for Jewish students that support Israeli policies, who claim that they feel threatened and unsafe on campus. These claims, which rely heavily on a false conflation of political views critical of Israel with anti-Semitism, have been made in a number of complaints against universities under Title VI of the Civil Rights Act. We attach here a Legal Advisory to provide you with information about the nature of these complaints, their targeting of speech activities critical of Israel, and the dismissal of three such complaints by the Department of Education (DOE) in August of 2013. See Attachment A. These dismissals provide a resounding affirmation of the need to protect political speech that criticizes a country’s policies from often unfounded, inaccurate or highly exaggerated allegations of harassment and discrimination. The DOE only this past July dismissed a fourth complaint against Rutgers University on the same grounds, stating again that “exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience.”⁵ We urge you to consider carefully the implications of punishing SJP and/or individual students for what can only be characterized as a benign, even if challenging, conversation about a political issue they care deeply about.

Finally, we would like to raise our concerns about the general atmosphere in which students who are or are perceived to be of Arab or Muslim descent are operating at Loyola. These current accusations are themselves deeply troubling for their portrayal of the Palestinian students that lined up as a threat to the safety of other students. As the videos show, this was far from the case. But these accusations must be viewed within a larger context, not only of attempts by politicized organizations that promote Israel to silence criticism of that country’s policies, but also of a deep-seated anti-Palestinian and Islamophobic rhetoric prevalent in public discourse today, and perpetuated by these kinds of accusations. Attempts by individuals of these religious and ethnic groups in particular to engage in political speech on these matters is portrayed as aggressive and threatening, feeding into entrenched stereotypes of Muslims and Arabs as violent and barbarous. In contrast, others engaging in similar activities are portrayed as passionate and committed advocates for a cause – which is exactly what these students are. A school like Loyola should encourage, rather than punish these students’ commitment to peaceful engagement on one of the most important human rights and social justice issues of our time.

This is, of course, not the first time the Loyola administration has attempted to discourage Palestinian students and SJP members from lawful free expression and association. During the last academic year, SJP proposed and twice won votes in favor of a measure by the Student Government asking the administration to divest from specific companies that profit from Israel’s military occupation. The administration responded to after-the-fact political pressure, mostly from organizations outside of the Loyola community that support Israel. Their portrayal of the measure as divisive and anti-Semitic prompted the university to make a public statement criticizing the democratically approved student measure, and resolving not to follow its recommendations. This history, together with the perception students have shared with us that they are being targeted in Student Government based on their ethnic and religious backgrounds and their views, and the stated intentions of students who support Israeli policies to destroy SJP, give us great concern that Muslim and Arab students, and SJP as a whole, are being unfairly

⁵ Department of Education Dismisses 3 Year Old Complaint Targeting Palestine Advocacy at Rutgers, *available at* <http://palestinelegalsupport.org/2014/09/16/1708/>

targeted with inflammatory complaints by other students, and unfairly punished by the administration for their perfectly legitimate speech activities and associations. We bring to your attention in Exhibits B and C social media posts by other Loyola students who have publicly stated that their goal is to get SJP banned at Loyola, deploying baseless comparisons and stereotypes about SJP.⁶ It appears that, were it not for significant pressure on the administration from individuals and groups that seek to silence SJP, the university would have likely simply clarified its policies on demonstrations with SJP. We urge you to resolve this matter in a way that does not further encourage these kinds of attempts to silence rather than simply engage students with conflicting views.

We therefore ask that you provide an explanation for SJP's temporary suspension, reverse the suspension, and take our concerns into consideration as you complete your investigation of the group and individual students. Please also consider the attached advisory as you determine how to address the complaints you receive about these students' activities, now and at any future time complaints may arise.

We would like the opportunity to discuss these matters with you further, and offer our help in ensuring that the civil rights and liberties of these students are fully protected.

Please contact one of us to to schedule a time to discuss this further.

Sincerely,

Dima Khalidi
Director, Palestine Legal Support
Cooperating Counsel, Center for
Constitutional Rights
[REDACTED]

Rabya Khan
Staff Attorney
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Encls.: Attachment A – Legal Advisory
Attachment B
Attachment C
Attachment D

⁶ For example, one student from the Loyola Hillel Israel Committee wrote, "I wish Loyola would shut down SJP already, enough already!," to which another replied, "If enough people complaint, they will." See Attachment B. That same student wrote that it was "disgusting" the university allows SJP to exist, likening them to an organization that wanted to "kill" all "illegal Mexicans" in order to liberate America, deploying false notions of SJP members as anti-Semitic, stereotypes about SJP students as violent, and claiming SJP espouses a platform that bears no resemblance to what any SJP member has ever advocated. See Attachment C. Another user with the name "LUC4ISRAEL" bragged, "Going to look into how to get @SJPLoyola1 banned from campus." See Attachment D.

LEGAL ADVISORY⁷

Date: October 25, 2013

From: Asian Americans Advancing Justice – Asian Law Caucus • Center for Constitutional Rights • Council on American-Islamic Relations, San Francisco Bay Area • National Lawyers Guild

In August 2013, the United States Department of Education’s (DOE) Office of Civil Rights (OCR) closed three investigations into the University of California Berkeley, Irvine, and Santa Cruz opened under Title VI of the Civil Rights Act of 1964.⁸ The investigations were prompted by complaints that Jewish students who identify with the State of Israel were deprived of an equal educational opportunity because campus events created a “hostile environment” by featuring criticism of United States foreign policy towards Israel/Palestine and criticism of Israel’s policies towards the Palestinians.

DOE *rejected* these complaints, finding that such events “constitute[] expression on matters of public concern directed to the University community. **In the university environment, exposure to such robust and discordant expressions, even when personally offensive and hurtful, is a circumstance that a reasonable student in higher education may experience.** In this context, the events that the complainants described do not constitute actionable harassment.”⁹

Examples of Protected Speech

The Supreme Court has repeatedly recognized that speech on matters of public concern is entitled to the highest protection under the First Amendment.¹⁰ Public universities may violate the Constitution if they interfere with students and faculty engaging in such activities.¹¹ In closing these three investigations, DOE determined that the following activities are examples of speech on matters of public concern that do not constitute actionable harassment under Title VI:

- Mock military checkpoints, whereby students don military costume to enact scenes from the Occupied Palestinian Territories, sometimes during a week of events called "Israeli Apartheid Week."¹²
- A professor in a World History course makes comments critical of Israeli military activities without discussing other political issues.¹³

⁷ This advisory is intended for informational purposes only as a public service, and is not legal advice or a substitute for legal advice.

⁸ DOE’s determination letters in these three cases, explaining its legal findings, can be downloaded at the following URLs: UC Berkeley (<http://bit.ly/doeucb>); UC Santa Cruz (<http://bit.ly/doeucsc>); UC Irvine (<http://bit.ly/doeucirvine>).

⁹ See UC Santa Cruz and UC Berkeley determination letters. (Emphasis added.)

¹⁰ “[S]peech on matters of public concern...is at the heart of the First Amendment’s protection.” *Snyder v. Phelps*, 131 S.Ct. 1207, 1215 (2011) (quotations and citations omitted). “[I]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Id.* at 1219 (quotations and citations omitted).

¹¹ For additional legal background, please see an October 2011 letter from the National Lawyers Guild concerning universities’ obligations to protect students’ free speech rights at <http://bit.ly/nlgspeech>.

¹² See UC Berkeley letter at 1, 3.

¹³ *Id.*

- Debates concerning university divestment from companies that support Israel’s military in the Palestinian territories.¹⁴
- A film screening and panel discussion about Palestine featuring guest speakers and moderated by a University professor, with a University department’s sponsorship.¹⁵
- A student-organized and University-sponsored “teach-in” called “Understanding Gaza” which featured only speakers perceived to be sympathetic to the Palestinian cause.¹⁶
- A University-sponsored program entitled “Costs of War on Israeli Society: Two Unheard Perspectives” and another one entitled “Truth and Consequences of Israel’s Gaza Invasion.”¹⁷

Distinguishing Between Political Disputes and Racial/Ethnic Disputes

DOE determined that in many cases, student-on-student conduct in this context (like “unwelcoming looks,” the use of curse words in heated arguments, the use of cameras at protests to record adversaries, and calling someone a “neo-con” or “Zionist”) “was based on the student’s political views,” not “national origin,”¹⁸ and thus, did not implicate Title VI.

DOE also considered a small number of allegations pertaining to specific acts of vandalism by unknown perpetrators expressing hatred of an identifiable group, like racially-charged graffiti in bathroom stalls and a swastika on a student’s dorm room door. Although DOE OCR did not find Title VI violations in the particular circumstances of these cases, its treatment of the allegations suggests that, if a University is notified of such incidents, it should take prompt action to remedy it, including removing the graffiti and offering support services to affected students.

Important Takeaway Points

1. Criticism of a government’s policies is not the same as harassment of students who identify with that government. It is not anti-Semitic or anti-Jewish to criticize Israel.
2. University departments have the right to sponsor panels, discussions, and other events featuring viewpoints critical of a government, including the Israeli government.
3. Universities must honor students’ right to engage in expressive conduct on a subject of public concern, including theatrical events and demonstrations concerning the Israeli-Palestinian conflict.

¹⁴ *Id.*

¹⁵ *See* UC Santa Cruz letter at 1, 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See* UC Irvine letter at 3-6.

Attachment B



K

✕

[Redacted] family members attending neu- we were hesitant to send one this past fall after reading about some bad incidents over the past couple years. Glad to read about this turn-around. Very positive step in the right direction.
Like · Reply · 10 · March 20 at 9:34am · Edited

1 Reply

[Redacted] I go to Loyola and im really upset- I wish Loyola would shut down SJP already, enough already!
Like · Reply · 3 · March 20 at 8:44am

Gail Szusz If enough people complain, they will. Are you talking about the Loyola in Chicago?
Like · March 20 at 9:53am

Write a reply...

[Redacted] I think israel should just bulldoze. ..no eviction notice...just suprise...bulldozers
Like · Reply · 3 · March 21 at 5:44am

[Redacted] Good for northeastern
Like · Reply · 2 · March 20 at 9:14am

View 13 more comments

Write a comment...

Attachment C



██████████ · 9 months ago

disgusting that the university still funds organizations like this. If anyone started a club like this about illegal mexicans, and how someone wanted to kill all of them in order to liberate america, the school would expel him and I think we all know that. At least bay area is being consistent with their anti-semitic views, after all they are the first city to try and ban Judaism

3 ^ | v · Reply · Share ›

Attachment D



[Redacted Name]

14s

Going to look into how to get @SJPLoyola1 banned from campus. They spread nothing but HATE, LIES and intimidate those who don't

