



Via Email

Jacob Testa
30 Campus Rd.
Annandale-on-Hudson, NY 12504
Gahagan House, Room 202

January 10, 2020

Re: Investigation of Ben [REDACTED] and Akiva [REDACTED]

Dear Mr. Testa,

I write on behalf of Bard students Ben [REDACTED] and Akiva [REDACTED] who are currently under investigation for alleged violations of Bard College's Free Speech Policy and policies prohibiting discrimination and harassment for actions relating to October 10, 2019 event "Who Needs Anti-Semitism?" ("the event") held at The Hannah Arendt Center.

This letter provides evidence to assist the administrative committee in their determination. The evidence shows that Ben and Akiva protested the event based on their principled view that Palestinians deserve equal rights and that Bard's Free Speech Policy protects the students' brief, seconds-long vocalizations.

Accordingly, the administrative committee must recommend a finding of no violation for both of these allegations, and no sanctions.

I. Summary of Facts

On October 10, 2019, Bard Students for Justice in Palestine (SJP), a club that advocates for the rights of Palestinians, protested an event featuring Ruth Wisse for what they believed to be racist and dehumanizing remarks towards Palestinians. Bard junior Akiva [REDACTED] and sophomore Ben [REDACTED], who is also the president of SJP, took part in this protest, which, for the most part, consisted of several students silently holding signs with quotes from Wisse such as, "Palestinian Arabs are people who breed and bleed and advertise their misery." The event was moderated by Batya Ungar-Sargon, an editor at *The Forward*, and former Israeli official Shany Mor.

Shortly after the panel began, Ben began reading a short statement explaining that students were protesting the event because of the speakers' anti-Palestinian views. Ben spoke for approximately **39 seconds**, at which point he was directed to leave. He complied and was escorted out. Shortly thereafter, he returned and continued with his statement for less than **18 seconds** before being asked to leave again. He left and did not return.

The panelists finished their remarks, which included opinions on the tactic of boycotts, divestment and sanctions for Palestinian rights (BDS), when it is permissible to criticize Israel, and anti-Palestinian remarks, such as: “[Palestinians] couldn’t have become like the Jews, they couldn’t have built orchestras?” and “You know that the Palestinians are the second most literate people in the Arab World. How much do you see it coming out of the Palestinian world? It’s only because they blame. And they blame and they blame.”

The entire event took about 57 minutes. During Q&A, the remaining students, including Akiva, began chanting, and were asked to leave the room. They complied.

On October 12, 2019, Ungar-Sargon published an article titled, “I was protested at Bard College for Being a Jew,” where she claimed the event was protested because she and the other panelists are Jewish. This article was later disputed by several other event attendees, including director of The Hannah Arendt Center Roger Berkowitz, director of Bard’s Center for the Study of Hate Kenneth Stern, educator and presenter at The Hannah Arendt Center Shahanna McKinney-Baldon, staff writer with the *London Review of Books* Adam Shatz, and *Jewish Currents* journalist Mariav Zonszein.

On November 13, 2019, Ben and Akiva were notified that they were under investigation for a reported incident relating to the event. The notice accused Ben and Akiva of violating two Bard policies: 1) The Free Speech Policy and 2) The Harassment, Discrimination, and Stalking Policy.

II. Ben and Akiva Did Not Violate Bard’s Free Speech Or Discrimination Policy

a. The Standard

In order to recommend a sanction of any kind – even a warning – the administrative committee must find that a “preponderance of the evidence” shows that Ben and Akiva violated Bard’s Free Speech and Discrimination policies.

The evidence shows that Bard cannot meet that standard.

b. Ben and Akiva Did Not Violate Bard's Free Speech Policy

Ben and Akiva's brief, seconds-long vocalizations were minor and in no manner rise to the level of "egregious interference" prescribed by Bard's Free Speech Policy. Indeed, such vocalizations are ***explicitly protected*** by Bard's Free Speech policy which "encourages open discussion and the expression of individual opinion" and "defends the rights of free speech and expression, dissent and protest." It recognizes that "there can be no intellectual debate without honesty and integrity" and that "[h]onest debate is often uncomfortable."¹ Speech that is "rude, lacking in respect, disruptive or hateful" is expressly ***not prohibited*** but "discouraged."

What the policy does prohibit is "deliberate conduct that ***egregiously*** interferes with another's speech."² The policy also prohibits threats and harassment, including threats of physical harm, which Ben and Akiva are not accused of doing here.

Ben's two separate vocalizations can in no manner be described as an egregious interference. The first vocalization, beginning at 1:08:14 on the video transcript of the event, **lasted a total of 39 seconds**, and the second, occurring at 1:10:04, lasted **less than 18 seconds**.³ Ben was directed to leave the room after the first vocalization and he did. At no point was he told to stop talking. At second 18, when asked to leave the room, he did. At no point during that 18 second vocalization was he asked to stop talking. Wisse, who was speaking at the time, continued with her remarks and finished her talk. While the panelists and others may have found Ben's speech rude, lacking in respect, or even uncomfortable, such expression of individual opinion and dissent is explicitly protected by Bard's policy.

Nor did Akiva interfere with the event to a level that could be reasonably considered "egregious." From the video transcript, the chants which Akiva participated in lasted approximately **44 seconds**. Akiva fully complied with Bard's request to leave the event and did not resist. The event continued for 24 minutes after Akiva left the room.

Evidence from other witnesses show that any interruptions were minor and do not rise to the level of "egregious" as proscribed by Bard's policy:

- Roger Berkowitz, Director of The Hannah Arendt Center, stated that, "[a]t no point was anyone prevented from speaking" and "[t]he total disruption was about one

¹ *Student Handbook*, BARD COLLEGE, <https://www.bard.edu/dosa/handbook/index.php?aid=10765&sid=718> (last visited Jan. 9, 2020) (emphasis added).

² *Id.*

³ THE HANNAH ARENDT CENTER FOR POLITICS AND HUMANITIES, <https://totalwebcasting.com/view/?func=VOFF&id=bard&date=2019-10-10&seq=1> (last visited Jan. 9, 2020).

- minute.” He refutes the claim that the panelists were not allowed to speak, calling this “patently untrue”. Berkowitz concludes that “[t]he moderate discussion, including audience questions, took place without incident.” [Roger Berkowitz, Letter to the Editor: I Organized the Bard Conference and Batya Urgan-Sargon Misrepresented What Happened, THE FORWARD, \(Oct. 14, 2019\).](#)
- In a phone interview, Berkowitz further explained that, “not one interruption was more than one minute long” and “to suggest that someone was not allowed to talk is just a fabrication.” Berkowitz further recounts that “[s]everal people who were in the audience [told him] the protest was largely silent and respectful; the protesters mostly stood near the stage and held signs...” [Mariav Zonszein, What Really Happened at Bard College?, JEWISH CURRENTS, \(Oct. 14, 2019\).](#)
 - Kenneth Stern, Director of Bard’s Center for Study of Hate and witness of the event, wrote that no panelist’s speech was obstructed or prevented from proceeding because of the protest, stating that is “not what I experienced, or what I see on the video.” [Kenneth Stern, Letter to the Editor: I Was at the Bard Anti-Semitism Panel, and Saw Deep Disagreement, Not Singling Out of Jews, THE FORWARD \(Oct. 13, 2019\).](#)
 - Maria Zonszein, a journalist from *Jewish Currents* covering the event, in reviewing the footage of the event, determined that “the disruptors were swiftly removed and the panel was completed as planned”. [Mariav Zonszein, What Really Happened at Bard College?, JEWISH CURRENTS, \(Oct. 14, 2019\).](#)

The facts show that Ben and Akiva did not interfere, and certainly did not egregiously interfere with the event. To the contrary, they participated in the event by voicing their individual opinions of dissent and honest, if uncomfortable, debate. Bard’s policy clearly protects such expression.

c. Ben and Akiva did not Violate Bard’s Harassment, Discrimination and Stalking Policy

The evidence overwhelmingly shows that Ben and Akiva protested the October 10 event because they disagreed with the speakers’ viewpoint that Palestinians are undeserving of equal human rights – and not because of any protected status of the panelists.

Bard prohibits harassment as unwelcome, hostile, or inappropriate conduct directed towards an individual based on their protected status. The conduct rises to a violation if it either: 1) has the purpose or effect of creating an intimidating, hostile, or offensive working, living, or

learning environment for the affected individual, or (2) substantially interferes with that individual's working, living, or learning environment.⁴

Discrimination is “the unlawful *and intentional act* of unfair treatment of a person” based on sex, gender, race, color, national origin, religion, age, disability, gender identity, sexual orientation etc.”⁵

As explained above, and in their interviews, Ben and Akiva protested the panel based on what they believed are repugnant, racist views of the speakers. The purpose of the protest was to express support for Palestinian equality. It was not based on the speakers' identity. Both Ben and Akiva also stated that students also protested the Hannah Arendt Center for bringing, what the students believed to be speakers with openly-bigoted, racist views. Additionally, in his interview, Akiva stated that he protested the October 10 event because, as a Jew, he felt the need to inform the audience that right-wing racists do not speak for him.

Bard cannot find that a preponderance of the evidence shows that these two students violated Bard's discrimination policy. There is no evidence that Ben and Akiva intentionally treated Wisse, Mor, Ungar-Sargon or any other individual relating to the event differently because of any protected status.

Likewise, in order to find a violation of Bard's harassment policy, the school must find that it is more likely than not that Akiva and Ben both tried (or had the effect of) creating a hostile environment for some individual and that either student “substantially interfered” with that individual's working or learning environment. As described above, the students' seconds-long interruption of an event where all speakers were able to finish their remarks does not rise to the level of a substantial interference.

Additional evidence shows that Ben and Akiva's decision to protest on October 10 was based on the viewpoint – not the identity – of the speakers:

- Akiva wrote on social media that he protested the panel because of the reasons set forth above, including Ruth Wisse's racist remark that “[a]ll Palestinian-Arabs do is breed, bleed, and advertise their misery”. [Yung Perchik \(@akiva_hirsch\), TWITTER \(Oct. 12, 2019\)](#); see also [Mariav Zonszein, *What Really Happened at Bard College?*, Jewish Currents, \(Oct. 14, 2019\)](#).
- SJP explained that it protested the event due the viewpoints and actions of the speakers – not their identities. This included “horror at the vicious anti-Palestinian

⁴ *Student Handbook*, BARD COLLEGE, <https://www.bard.edu/dosa/handbook/index.php?aid=1254&sid=718> (Jan. 9, 2020) (emphasis added).

⁵ *Id.* (emphasis added).

- rhetoric which speaker Ruth Wisse has espoused over the course of her career;” Batya Ungar-Sargon’s history of mistreating Black Jews and her statements relating to Rep. Ilhan Omar; and disagreement with the anti-Palestinian policies Shany Mor supported as an Israeli state official. [Bard Students for Justice in Palestine, FACEBOOK \(Oct. 13, 2019\)](#).
- Roger Berkowitz, director of The Hannah Arendt Center and attendee of the event, stated that the students “were protesting not because Wisse and the other two speakers on stage were Jewish, as Ungar-Sargon suggests (the many other Jewish speakers on other panels at the conference were not protested), but because Wisse, Ungar-Sargon and the third panelist espouse political opinions with which the students disagree.” [Roger Berkowitz, Letter to the Editor: I Organized the Bard Conference and Batya Urgan-Sargon Misrepresented What Happened, THE FORWARD, \(Oct. 14, 2019\)](#).
 - Kenneth Stern, who has worked on combatting antisemitism for over 25 years, wrote that, “[i]t was exceptionally clear to me as an audience member that these students protested because they strongly disagreed with Wisse’s views, not because of her Jewishness” and that “there was no chant shouted or banner quoted that struck me as anti-Semitic.” [Kenneth Stern, Letter to the Editor: I Was at the Bard Anti-Semitism Panel, and Saw Deep Disagreement, Not Singling Out of Jews, THE FORWARD, \(Oct. 13, 2019\)](#).
 - Stern further stated that, “I believe the protest was about ideas, not the ethnicity of the speakers”, and “...it does little good to make that charge [of antisemitism], as here, where there is no evidence of it.”
 - *London Review of Books* Editor Adam Shatz, who spoke at the conference of which the event in question was a part of and attended the event stated: “[i]t wasn’t a matter of Wisse’s identity as a Jew, or for that matter as an opponent of antisemitism that was being challenged so much as her record of racism and her unconditional support of Israel.” [Mariav Zonszein, What Really Happened at Bard College?, JEWISH CURRENTS \(Oct. 14, 2019\)](#).
 - Adam Shatz further reiterated on his personal twitter account that the notion that the protest was motivated because a panelist is Jewish is “preposterous”, and “what provoked the protest wasn’t the fact that the discussion was about anti-Semitism, but that the speaker was Ruth Wisse, a notorious anti-Arab racist and unconditional defender of Israel and its occupation.” [Adam Shatz \(@adamshatz\), TWITTER \(Oct. 13, 2019\)](#).
 - Mariav Zonszein, journalist on Israel and Palestine and reporter covering the October 10, 2019 panel, rejects accusations of anti-Semitism at Bard and holds that such a claim “appears quite spurious.” [Mairav Zonszein \(@MairavZ\), TWITTER \(Oct. 12, 2019\)](#).

- Shahanna McKinney-Baldon, a Jewish African-American educator and presenter at The Hannah Arendt Center, said that she spoke with students prior to the protest and that they said they were protesting Wisse’s “well-documented prior bigoted statements about Palestinians.” McKinney-Baldon rejected accusations of anti-Semitism against the students, saying that she “disagree[s] that a student should not protest a controversial speaker, in accordance with the rules of their school, simply because the speaker is a Holocaust survivor.” [McKinney-Baldon, Shahanna, *Letter to the Editor: I Was Misrepresented in Column About Protest at Bard College*, THE FORWARD \(Oct. 14, 2019\).](#)

The evidence overwhelmingly shows that Ben and Akiva protested the event to express political disagreement with the viewpoint of the speakers. Indeed, there is no evidence – much less a preponderance of the evidence – to show otherwise. Ungar-Sargon’s unsupported feeling that she was protested because she is Jewish, or because the two other speakers were Jewish, does not and cannot support a finding of discrimination. To do so would mean that feminist students could not protest an all-male panel of #MeToo deniers, an LGBTQ+ club could not protest a panel of all-straight individuals against marriage equality, an immigrants’ rights group could not protest an all-white panel who support Trump’s Wall – and so forth.

III. Bard May Not Retaliate Against Akiva and Ben for Speaking Out Against National Origin Discrimination

On October 10, Ben and Akiva exercised their free speech rights (in accordance with Bard’s Free Speech Policy) to express a viewpoint that Palestinians deserve freedom and equality. They also expressed a viewpoint that Wisse’s statements, including that “Palestinian Arabs are people who breed and bleed and advertise their misery,” was racist and discriminatory. The protest also expressed criticism of the Hannah Arendt Center for giving a platform to bigoted views.

Akiva and Ben, as noted above, made several comments to the media complaining about Wisse’s discriminatory views towards Palestinians and expressing the viewpoint that Palestinians deserve equality.

Though several other students also engaged in vocalizations during the event, Bard is subjecting only the two students who publicly complained about national origin discrimination in the media to a disciplinary process.

As a reminder, Bard policy prohibits adverse action against an individual because of something that individual did to further Bard’s policy prohibiting discrimination – which includes national origin. Title VI of the Civil Rights Act of 1964 also prohibits retaliation on the

basis of national origin. We raise this concern to prevent any further adverse or retaliatory action against students for their vocal opposition to discrimination.

IV. Conclusion

The evidence shows that Ben and Akiva protested the October 10 event based on their principled views that Palestinians deserve equal rights and that the event was not egregiously disrupted.

Accordingly, the administrative committee must recommend a finding of no violation for both of these allegations, and no sanctions, including a warning.

Sincerely,

Radhika Sainath