



Via e-mail

May 23, 2016

Fred P. Pestello
President, St. Louis University
1 North Grand Blvd.
St. Louis, MO 63108

Dear President Pestello:

I write on behalf of St. Louis University (SLU) student Christopher Winston to express my serious concerns with SLU's determinations that Mr. Winston's statements during an April 4th event on campus titled "Israel: First Responders to World Crisis" violated school policy prohibiting "disruptive behavior" and constituted a "bias related incident." The decision to discipline Mr. Winston, who is black, for asking critical questions and critiquing political viewpoints during an educational event raises questions about SLU's ability to implement school policy in a manner that respects student speech and does not discriminate on the basis of race.

Diverse voices that challenge viewpoints and offer critical perspectives on important political and social issues of the day – including critiques of Zionism and Israeli government policies – should be celebrated and encouraged, particularly in the university context where free speech and open, vigorous debate are a crucial element to any learning environment. Instead, by punishing Mr. Winston for expressing his viewpoints in a manner entirely consistent with the forum, SLU has sent a message that certain political viewpoints are not welcome on campus and that free speech principles do not apply equally to all students.

Based on SLU's stated commitment to upholding and protecting student speech and debate on campus, as well as SLU's legal obligations under Title VI of the Civil Rights Act of 1964, which prohibits racial discrimination, I call on you to reverse SLU's determinations and reiterate your commitment to fostering a campus environment that welcomes diverse opinions and that does not discriminate on the basis of race.

I. Summary of Facts

On April 4, 2016, Mr. Winston attended an event hosted by two members of the Jewish Students' Association, titled "Israel: First Responders to World Crisis." Following the presentation, during the question-and-answer portion of the event, Mr. Winston asked a question about whether Israeli ambulances treat Palestinians – a question relevant to the discussion about

Israeli humanitarian aid.¹ In response to the question, one host threatened to bring campus security to remove Mr. Winston from the room. Mr. Winston stayed for the remainder of the event. At the end of the event, as he exited the room, Mr. Winston said to the event organizers, “Thank you, your Zionist fascism is on full display here,” a critique of the political viewpoints of the event organizers.

Importantly, Mr. Winston was not the only individual who asked questions perceived as being critical of Israel during the event. At least one other student, Joe Milburn, reported to me that he asked a question about Israeli aid to Gaza. The event organizers did not threaten to call campus security on Mr. Milburn, who is white. No charges were subsequently brought against Mr. Milburn.

On April 13, Mr. Winston received an email from the Office of Student Responsibility and Community Standards (SRCS) notifying him that a complaint had been made against him stemming from his conduct at the April 4 event. The email summoned Mr. Winston for a meeting with the SRCS to discuss the incident.

On April 15, Mr. Winston met with administrators in SRCS. During this meeting, Mr. Winston discovered that a “no contact order” had been requested by the two hosts of the April 4th event, and granted by SLU, despite the fact Mr. Winston had not been notified or given an opportunity to respond to the allegations made against him. The order prohibits Mr. Winston from contacting or communicating with the two organizers of the April 4 event, and characterizes Mr. Winston as a threat to their “health, safety, and well-being.”

On April 29, Mr. Winston was notified by SRCS that he had been charged with violating section 15-16 2.7.20 (“Inappropriate conduct”) of SLU’s Community Standards. A hearing was scheduled for May 2. Mr. Winston was not given the opportunity to review any evidence or case file containing information being used against him.

On May 2, Mr. Winston attended the scheduled hearing, accompanied by his mother. Staff members Katherine Weathers and Tyler De Shon presided over the hearing. Mr. Winston was informed that the bias incident charge was removed and he was only being charged with violating section 15-16 2.7.20 of the Community Standards.

On May 3, Mr. Winston was notified by SRCS that the charge of violating section 15-16 2.7.20 of the Community Standards was “not fitting.” That charge was replaced with a charge of violating section 15-16 2.7.13 (“Disruptive behavior”) of the Community Standards.

On May 11, Mr. Winston and his mother attended a second meeting with Ms. Weathers. Mr. Winston was informed that Ms. Weathers had misspoken at the May 2nd hearing regarding the bias incident charges being dropped, and that Mr. Winston had in fact been found responsible by the Bias Incident Response Team (BIRT) for engaging in a bias related incident and by SRCS for engaging in disruptive behavior. Mr. Winston was told that the finding of disruptive behavior was based on the manner in which he presented himself, and not the content of his speech.

¹ Video of Mr. Winston’s question can be found here:
<https://www.youtube.com/watch?v=xoOmX5eExHE&feature=youtu.be>.

On May 11, Mr. Winston was notified by SRCS via letter that he had been found responsible for violating section 15-16 2.7.20 of the Community Standards. The letter enumerated Mr. Winston's sanctions, including a 1-year disciplinary warning and a reflection paper assignment. The sanctions were apparently designed to assist Mr. Winston in "developing as a whole person," including an "increase in self-awareness."

On May 16, Mr. Winston requested an appeal through the Student Appeals Board. The sanctions are in abeyance until the conclusion of the appeals process.

I. SLU's determination that Mr. Winston's actions constituted a bias incident is baseless and lacked due process

On May 11, Mr. Winston was informed by Ms. Weathers that despite being previously informed that bias incident charges against him had been dropped, he was, in fact, found by BIRT to have engaged in a bias incident due to the "Zionist fascism" comment he made at the April 4 event. It is alarming that Mr. Winston was found to have engaged in a bias incident due to his statement criticizing political viewpoints. It is equally troubling that this determination was made without any guise of reasonable due process afforded to Mr. Winston.

A. Criticizing Zionism is not Antisemitism

As noted above, Mr. Winston asked questions critical of Israeli government policies during the question-and-answer portion of the April 4 event. The question was met with hostility by the event hosts, one of whom threatened to call campus security on Mr. Winston, who was the only black person in the room. In response, Mr. Winston said, "thank you, your Zionist facism is on full display here." The event hosts may have been offended that Mr. Winston referred to them as "Zionist" or to their actions as resembling "facism." But this statement is a critique of the hosts' political viewpoints and was said in the context of their threat to call campus security due to Mr. Winston's questions. The comments were not disparaging of an ethnicity, religion, or other protected identity.²

Unfortunately, there are increasing efforts to label criticism of Israel or of Zionist political ideologies as anti-Semitism – or the equivalent of hatred, violence, intimidation or discrimination targeting Jews because of their ethnic and religious identity.³ Like other forms of

² St. Louis University's bias-related incident protocol enumerates the following protected classes: "[B]ias-related incidents refer to any act or failure to act that is based upon real or perceived consideration of sex, gender, race, color, religion, national origin, ancestry, disability, age, sexual orientation, marital status, military status, veteran's status, pregnancy, or any other protected classification." St. Louis University Division of Student Development, Bias Related Incident Protocol, Sept. 2015, [http://www.slu.edu/Documents/general-counsel/Bias%20Incident%20Protocol%20\(rev%20Sept%202015\).pdf](http://www.slu.edu/Documents/general-counsel/Bias%20Incident%20Protocol%20(rev%20Sept%202015).pdf)

³ For example, the University of California recently adopted a Statement of Principles Against Intolerance, which sparked debate after early drafts of the proposal explicitly named anti-Zionism, together with anti-Semitism, as a form of discrimination. The Statement was amended as a result. For more information, see <http://palestinelegal.org/news/2016/4/29/media-spotlight-university-of-california-regents-debate-airs-difference-between-anti-semitism-and-anti-zionism?rq=zionism>.

racism and oppression, anti-Semitism is deeply harmful to its victims, and together with racism in all forms, must be confronted.

In the context of activism for Palestinian rights, however, my organization has documented a surge of accusations of anti-Semitism against individuals that criticize the Israeli state or who criticize the political ideology of Zionism.⁴ Some groups are even pushing to redefine anti-Semitism by including criticism of Israel or Zionism in such a definition.⁵

For SLU to punish critiques of Zionism as anti-Semitism would effectively mean that criticism of Israeli government policy, including its human rights abuses against Palestinians, is not welcome on campus. Such a move would be a dangerous and unprecedented attack on student speech and academic freedom, particularly at a university that is committed to fighting injustice.⁶

B. Due Process Concerns

It is my understanding that the BIRT made a determination that Mr. Winston had engaged in a bias related incident without affording Mr. Winston any due process rights. The BIRT never contacted Mr. Winston, never offered him an opportunity to state his response to that allegation, and made its determination without any notice or oversight. In fact, Mr. Winston was notified by SRCS that the bias related incident charges had been dismissed, only to later find out that this was not true and that an official determination had been made that he had engaged in a bias related incident.

A determination that a student engaged in a bias related incident is a serious finding. Given the gravity of this decision, it is remarkable that Mr. Winston was not afforded any due process protections. The lack of clear and transparent process raises questions about the University's ability to apply its rules and policies fairly and in a race-neutral manner.

II. SLU's determination that Mr. Winston engaged in disruptive behavior is meritless

SLU's determination that Mr. Winston engaged in disruptive behavior is antithetical to SLU's own commitment to student speech and free inquiry on campus. Mr. Winston attended the April 4th event to learn and to participate as a student. He respectfully waited until the question-and-answer portion of the event to ask important, informed, and critical questions that were relevant to the event topic and that contributed to the educational experience of others.

SLU's mission statement notes that the University "creates an academic environment that values and promotes free, active and original intellectual inquiry among its faculty and

⁴ See Palestine Legal, 2015 Year-in-Review: Suppression of Palestine Advocacy Continues, Jan 26, 2016, <http://palestinelegal.org/news/2016/1/26/suppression-of-palestine-advocacy-in-2015>.

⁵ See Palestine Legal, FAQ: What to Know About Efforts to Re-define Anti-Semitism to Silence Criticism of Israel, <http://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/56e6ff0cf85082699ae245b1/1457979151629/FAQ+on+Definition+of+Anti-Semitism-3-9-15+newlogo.pdf>.

⁶ St. Louis University, Mission Statement, <http://www.slu.edu/mission-statement>

students.”⁷ Indeed, SLU’s mission statement further emphasizes a commitment to fostering programs aimed at alleviating “ignorance, poverty, injustice and hunger,” and that “extend compassionate care to the ill and needy.”⁸ In order to foster an environment that encourages learning, SLU’s Community Standards prohibit “disruptive behavior.” Behavior is defined as disruptive if it “disrupts, interferes with, obstructs, sabotages, or prevents . . . University learning or scholarly activities and functions or undermines the academic success of others.”⁹

During Mr. Winston’s May 11th meeting with Ms. Winters, Ms. Winters emphasized that SLU’s determination was based not on the content of Mr. Winston’s statements, but on the manner in which he presented them. In particular, according to Mr. Winston, Ms. Winters stated that Mr. Winston was at times talking over others and laughing at what others were saying. Video footage of the event reveals that both the “talking over” and the “laughter” were minimal over the course of less than a minute, and were in the context of follow-up clarification and questions to his initial question.¹⁰

In the First Amendment context, “talking over” others and “laughing” over a period of seconds during a question-answer period would not constitute a substantial disruption that would justify punishment by a public university. Indeed, courts have held that such conduct is protected by the First Amendment as long as it does not “materially disrupt classwork or involve substantial disorder or invasion of the rights of others.”¹¹ Even as a private institution, SLU maintains a commitment to its students to uphold principles of “free, active and original intellectual inquiry.” Punishing students for laughing and talking over others during a conversation violates SLU’s stated commitment.

III. SLU’s treatment of Mr. Winston insinuates discrimination based on race

Singling out Mr. Winston for punishment raises serious questions about SLU’s ability to enforce its policies in a manner that does not discriminate against black students. Mr. Winston was not the only student who asked critical questions at the April 4th event, but he was the only black student present. Mr. Winston was the only student who was threatened to have campus security remove him from the event, and he was the only student who was punished due to the “manner in which” he asked questions. Mr. Winston was the only student who was found to have committed a bias related incident due to a statement critical of the political viewpoints of others. And he was the only student who was given a “no contact order” that characterized him as a threat to the safety, health, and well-being of others.

This letter serves as a reminder that SLU is prohibited from engaging in discrimination on the basis of race under Title VI of the Civil Rights Act of 1964. I expect that you will take

⁷ Id.

⁸ Id.

⁹ St. Louis University, 2015-2016 Student Handbook, http://www.slu.edu/Documents/student_development/student_conduct/15-16StudentHandbookOnlineVersion.pdf.

¹⁰ <https://www.youtube.com/watch?v=xoOmX5eExHE&feature=youtu.be>

¹¹ See [Shamloo v. Mississippi State Bd. of Trustees, 620 F.2d 516 \(5th Cir. Miss. 1980\)](#).

appropriate steps to ensure that Mr. Winston is not treated differently than other students due to the color of his skin.

IV. Conclusion

I am very troubled by SLU's decision to punish Mr. Winston for his participation in the April 4th event, as described above. SLU's decisions reflect an abrogation of your commitment as an educational institution to protect student speech and your legal obligations under Title VI of the Civil Rights Act of 1964 to not engage in discrimination on the basis of race. To avoid such legal issues, I ask that you reverse your determinations that Mr. Winston engaged in a bias related incident and that he engaged in "disruptive behavior." I further ask that you apologize to Mr. Winston and make it clear to him and the rest of the student body that you are committed to fostering an environment that welcomes diverse viewpoints and that does not engage in racial discrimination.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rahul Saksena', with a long horizontal flourish extending to the right.

Rahul Saksena
Staff Attorney, Palestine Legal

Cc William Kauffman, Vice President and General Counsel
Emily M. Imperiale, Chair, Student Appeal Board