



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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July 26, 2024

Sharon Ofek
Superintendent
Carmel Unified School District
4380 Carmel Valley Road
Carmel, CA 93923

By email only to sofek@carmelunified.org

Re: Carmel Unified School District – OCR Case Number 09-22-1158

Dear Superintendent Ofek:

The U.S. Department of Education (the Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Carmel Unified School District (the District). The Complainant (whose identity was previously provided to the District) alleged that the District discriminated against students on the basis of shared ancestry (Jewish ancestry) and retaliated against her. Specifically, OCR investigated the following issues:

1. Whether the District failed to respond promptly and effectively to notice of harassment on the basis of shared ancestry that created a hostile environment when drawings of swastikas were found at a District [redacted content] school (the School); and
2. Whether the District retaliated against the Complainant by threatening arrest if she attended the District [redacted content] event in [redacted content] 2021 after she alleged discrimination on the basis of shared ancestry.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulations, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, and national origin under any program or activity receiving federal financial assistance. As a recipient of federal financial assistance from the Department, the District is subject to Title VI.

To investigate this complaint, OCR reviewed documentation provided by the Complainant and the District, including its nondiscrimination policies and procedures, statements provided in its data response, email correspondence, court filings, and publicly available information. OCR also interviewed current and former District employees. After careful review of the information gathered in the investigation, OCR concluded that the District violated Title VI and its implementing regulation with regard to Issue 1. With respect to Issue 2, OCR found insufficient evidence that the District violated Title VI. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

I. Legal Standards

A. Harassment Under Title VI

The regulation implementing Title VI, at 34 C.F.R. § 100.3, provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program to which Title VI applies.

Title VI's protection from national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived shared ancestry or ethnic characteristics, such as students of Jewish, Palestinian, Muslim, Arab, and/or South Asian descent, or citizenship or residency in a country with a dominant religion or distinct religious identity, or their association with this national origin/ancestry. The existence of a hostile environment based on national origin that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of national origin in violation of Title VI.

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of the hostile environment; and (3) the recipient failed to take prompt and effective action to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

OCR interprets Title VI to mean that the following type of harassment based on national origin creates a hostile environment: unwelcome conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from a recipient's education program or activity. Harassing acts need not be targeted at the complainant to create a hostile environment. The acts may be directed at anyone, and the harassment may also be based on association with others of a different national origin (*e.g.*, the harassment might be referencing the shared ancestry of a sibling or parent, for example, that is different from the national origin of the person being harassed whose access to the school's program is limited or denied).

The harassment must in most cases consist of more than casual or isolated incidents based on national origin to establish a Title VI violation. Whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. OCR will examine the context, nature, scope, frequency, duration, and location of the harassment, as well as the identity, number, and relationships of the persons involved. If OCR determines that the harassment was sufficiently severe or pervasive that it would have limited the ability of a reasonable person, of the same age and national origin as the victim, under the same circumstances, from participating in or benefiting from some aspect of the recipient's education program or activity, OCR will find that a hostile environment existed.

A recipient may be found to have violated Title VI if it has effectively caused, encouraged, accepted, tolerated, or failed to correct a hostile environment based on national origin harassment of which it has actual or constructive notice. A recipient is charged with constructive notice of a hostile environment if, upon reasonably diligent inquiry in the exercise of reasonable care, it should have known of the discrimination. In other words, if the recipient could have found out

about the harassment had it made a proper inquiry, and if the recipient should have made such an inquiry, knowledge of the harassment will be imputed to the recipient.

Once a recipient has actual or constructive notice of a hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. OCR evaluates the appropriateness of the responsive action by assessing whether it was reasonable, timely, and effective. The appropriate response to a hostile environment based on national origin must be tailored to redress fully the specific problems experienced as a result of the harassment.

B. Retaliation Under Title VI

The regulation implementing Title VI, at 34 C.F.R. § 106.71, provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The following three elements must be satisfied to establish a prima facie case of retaliation by the recipient: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

II. Facts

A. 2021-2022 School Year

The District uses its Uniform Complaint Procedures (UCP) to investigate and resolve complaints regarding, amongst other things, discrimination and harassment based on race, national origin, ethnicity, and shared ancestry. The District told OCR that it did not receive any UCP complaints regarding harassment at the School on the basis of race, color, or national origin (including shared Jewish ancestry) during the 2021-2022 school year. According to the School's Principal (Principal 1), informal reports (*i.e.*, reports that were not filed on the UCP form) were handled at the school site level and passed on to the District as needed. The School handled reports of alleged harassment or discrimination by investigating the issues and determining whether disciplinary action was necessary. According to an administrator, if an administrator witnessed something that may be perceived as discriminatory on the basis of national origin, the administrator would report it to the Principal, who would then report it to the District office.

OCR learned about nine incidents involving the discovery of the n-word and/or swastikas during the [redacted content]-month period between [redacted content] 2021 and [redacted content] 2022 (of which eight were reported to OCR by the District). According to the District, "no School student ever notified the District that they felt harassed or that a hostile environment had been created" and any comments from students about the incidents "were of the nature of reporting the graffiti, not that it made them feel unsafe or harassed."

The District reported to OCR that "hate graffiti" in the form of "the n-word or swastikas" was discovered by the custodian or campus supervisor in a campus bathroom(s) on [redacted

content], 2021 (Incident 1), [redacted content], 2021 (Incident 2), [redacted content], 2021 (Incident 3), and [redacted content], 2021 (Incident 4). OCR interviewed the School's administrators in the spring of 2024. One administrator recalled two or three incidents of swastikas discovered in one boys' bathroom, and another administrator recalled two incidents of swastikas discovered at the School, including one in the boys' bathroom. They both also confirmed discovery of the n-word on one occasion.

According to Principal 1, assistant principals typically handled investigations of graffiti or hate speech. Following these incidents, the School removed the graffiti and the campus supervisor and/or school administrators reviewed campus surveillance footage to try to determine who had been responsible for the graffiti, but they were unsuccessful. One administrator said that 40 to 50 students entered and left the bathroom and they could not pinpoint when the graffiti occurred. He also told OCR that he spoke with some students to find out whether they saw the graffiti but none of them reported seeing it.

On [redacted content], 2021, campus supervisors and administrators began visiting bathrooms at the beginning and end of every period to monitor for additional graffiti, and on [redacted content], 2021, administrators discussed the incidents with staff, some of whom notified their students. Principal 1 told OCR that he emailed teachers about the incidents. He did not recall whether he had also communicated with parents.

On [redacted content], 2021, School administrators sent a follow-up email to staff with information regarding what to communicate to students regarding the incidents, and informed staff that there was an evidence binder with photos of the graffiti which they could review to try to identify the person(s) responsible based on their handwriting. School administrators did not recall staff being able to identify the person(s) responsible for the graffiti based on the evidence binder.

According to the District, in the first two weeks of [redacted content] 2021, administrators visited all the [redacted content] classrooms to discuss the graffiti, remind students how to report anything they saw, and discuss the consequences for students who were responsible. One administrator recalled visiting the classrooms to discuss hate speech generally but does not recall discussing swastikas.

The District informed OCR that on [redacted content], 2021 (Incident 5), the School suspended a student for [redacted content] a swastika [redacted content] onto [redacted content] skin. One administrator recalled an incident when students reported to her that another student had [redacted content] image onto the skin of [redacted content]. She said that it occurred in the [redacted content] during [redacted content] and that multiple students witnessed it. However, she recalled that while they identified the student responsible, they were not able to determine that the student had [redacted content] swastikas.

On [redacted content], 2021 (Incident 6), when a teacher passed out rulers for students to use, a student reported receiving a ruler with a swastika and the n-word written on it. According to Principal 1, the ruler was passed around the class and other students saw it. The District told OCR that an administrator spoke with the student who received the ruler as well as their parents, and also visited the class the following two days to discuss the incident with the students, reiterate that the graffiti was unacceptable, and encourage students to report anything they knew

about it. According to the District and an administrator, no student came forward and the District could not determine who was responsible for the graffiti. The administrator also did not recall any students receiving discipline and whether any students, including the one who received the ruler, were offered or received supports such as counseling. Principal 1 said that it was standard procedure to offer students involved in these types of incidents with counseling, and he recalled involving the School's Wellness Center to check in with students. The District did not provide OCR with any documentation to confirm the offer of any supportive services to students.

Principal 1 told OCR that with respect to the discovery of swastikas at the School in the [redacted content] of 2021, he notified the District but discussion with the Superintendent was limited to how to manage public concern, as the Superintendent wanted communication to parents to come from the District rather than from the School. Principal 1 recalled a communication from the District regarding the incidents but could not recall the specifics.

Following the incidents in the [redacted content] of 2021, the School formed an Anti-Hate Speech Task Force (the Task Force) composed of students, staff, and administrators. From Principal 1's perspective, the School established the Task Force because the administrators recognized the need for a systemic response to the hate speech. The Task Force held at least ten meetings between [redacted content] 2021 and [redacted content] 2022, and according to the District, it "addressed such issues as policies and procedures (including accountability, transparency, reporting and data collection and restorative justice), education and presentations, and surveys of students to capture students' feelings and improve the campus atmosphere." Task Force meeting notes included the following priorities and goals: survey development and data collection (incident collection, tracking, and follow-up), teacher training on how to identify and respond to hate speech in the environment, and partnerships with outside agencies to facilitate discussions about hate speech involving the n-word and swastikas. The notes also indicate that students were very interested in collecting data and determining the best way to implement changes to the school culture. According to an administrator, the climate survey went out to students at the end of the 2021-2022 school year, or at the beginning of the following school year in August. The Task Force analyzed the results through the fall of 2022, and the administrator told OCR that the students in the Task Force were adamant about educating students about hate speech. She also recalled that the group shared results from the survey with Principal 1 but does not recall what the data showed.

OCR reviewed email correspondences which indicated that a swastika was also discovered in a classroom in [redacted content] (Incident 7). The District did not initially report this incident to OCR.

The District reported to OCR that in [redacted content] 2022, swastikas were discovered drawn or etched onto desks in two classrooms (Incident 8 and Incident 9). A teacher reported that with respect to one of the [redacted content] incidents, a "giant swastika" had been drawn on a desk. The teacher also reported that "SS" had been drawn on a desk. In response, the teachers spoke with students who sat in or near the desks, each of whom denied having seen the swastikas, and spoke with other students in nearby classes. One administrator also recalled speaking with parents. The administrators were unable to determine who had drawn the swastikas on the desks.

On [redacted content], 2022, a student at the School spoke at a Board of Education meeting. She raised concerns about "the District's allowance of swastikas and other hate speech" for years.

[Redacted content] described the limited response from the District: “all we received was an unhelpful five-minute spiel in [redacted content] class. The five-minute spiel just said that hate speech was happening and that the consequences would be suspension and possibly expulsion.” [Redacted content] also stated that there had been no school-wide discussion of the issue and no statement reprimanding the hate speech or stating that hate speech is not tolerated. [Redacted content] requested education on antisemitism and other anti-hate education. Other speakers at the Board meeting also raised concerns about the presence of swastikas at the School.

The District did not provide OCR with any supporting documentation related to Incidents 1 to 9, such as meeting notes and internal memoranda, investigative reports, interview notes, student statements, final determinations, or information about remedies provided for individual students or on a schoolwide basis.

B. 2022-2023 and 2023-2024 School Years

The District told OCR that due to staff turnover during the 2022-2023 school year, the District could not find records for incidents of alleged harassment or discrimination on the basis of shared Jewish ancestry at the School.

OCR reviewed the results of the School’s Spring 2023 Race Relations Survey. In response to a question about whether the surveyee has been the subject of a “racially motivated act or statement” at the School, 10.90% of respondents replied “yes.” When asked whether the surveyee has “personally observed a racially motivated action,” 20.53% of respondents replied “yes, by a student, teacher, or administrator to a fellow student on campus or during a school-sponsored event such as sports/arts/other.” The survey also asked surveyees to indicate their emotional response to the discovery of “racially motivated hate graffiti in bathrooms, on backpacks, and elsewhere.” 9.04% of respondents indicated that they “saw the graffiti and [were] uncomfortable” and 40.49% of respondents indicated that they “didn’t see it...but heard about it which made [them] upset.” In response to a question asking, “how often do you hear racial slurs on campus,” 14.10% of respondents reported hearing racial slurs on campus daily, while 23.31% reported hearing racial slurs on campus weekly. The survey did not include any questions about discrimination or harassment on the basis of shared ancestry specifically, such as about the reported incidents of swastikas or other antisemitic imagery discovered on campus.

For the 2023-2024 school year, the District informed OCR of six incidents involving alleged harassment based on shared Jewish ancestry and the discovery of swastikas at the School.

On [redacted content], 2023 (Incident 10), according to the District’s response to OCR’s request for information, a “student’s parent emailed that a student told her daughter that he wanted to kill all Jews and burn them in their homes. At the time, the parent did not want any response from the District, because the other student was her daughter’s friend. There was no investigation or report.”

On [redacted content], 2024 (Incident 11), a student reported that another student had ripped down a poster of the [redacted content] Movie Night. Surveillance footage showed that a student folded the poster and put it in his pocket after finding it on the ground. According to the District, that student explained to an assistant principal “that he is of Jewish heritage” and that he took the poster home to put it on his bedroom wall.

On [redacted content], 2024 (Incident 12), a student drew swastikas on his [redacted content] in [redacted content] class. The District told OCR that when questioned about why he did it, the student responded that he did not know what the symbol meant. The District said that the assistant principal discussed with the student the history behind the symbol and gave the student a warning that any further behavior of that nature may result in suspension. On [redacted content], 2024, the assistant principal offered a UCP form to the parent who reported the incident. The parent did not file a UCP complaint about the incident.

On [redacted content], 2024 (Incident 13), according to the District's response to OCR's request for information, "a student reported that another student had drawn a swastika and had a [redacted content] game that stated, '[redacted content] Hitler' on his [redacted content] paper." According to the District, there were no swastikas on the paper and the [redacted content] game said, "[redacted content] Hitler." The District also told OCR that the assistant principal discussed with the student that the topic was not appropriate for games, discussed its history, and explained that any further use of the topic in such manner would result in disciplinary consequences.

During the 2023-2024 school year, a campus supervisor discovered a swastika on a bathroom stall partition (Incident 14) and on a bench (Incident 15) at the School. According to the District, the School promptly removed the swastikas and an assistant principal investigated both incidents but could not identify the responsible person(s).

The District told OCR that it is not aware of any investigative reports, interview notes, student statements, or final determinations regarding Incidents 10 through 15 during the 2023-2024 school year.

C. [Redacted content] Incident in 2021

The [redacted content] at a District [redacted content] school ([redacted content] School) hosted a "[redacted content]" on [redacted content], 2021. The flyer for the event invited students and families to [redacted content]. Due to capacity limitations, the flyer asked families to limit [redacted content].

According to the Complainant, in multiple communications between [redacted content] and [redacted content], 2021, she requested the inclusion of a [redacted content] at the event. On [redacted content], 2021, the [redacted content] School principal (Principal 2) emailed the Complainant stating, "I have been fully supportive of including a [redacted content]." The Complainant interpreted this to mean that a [redacted content] would not be subject to the [redacted content] restrictions for [redacted content].

On [redacted content], 2021, the [redacted content] emailed the Complainant acknowledging her request to [redacted content] and restating the [redacted content] set forth in the event flyer.

On [redacted content], 2021, the Complainant emailed other families to inform them that a [redacted content] would also be welcome at the [redacted content]. She created a [redacted content]. The Complainant's [redacted content] to the event.

On [redacted content], 2021, the Complainant received correspondences that reiterated the [redacted content] restrictions [redacted content]. In one email, the Superintendent explained

that neither the [redacted content] decision to [redacted content], nor the decision [redacted content], violated District policy or law. Furthermore, he said that it was his expectation that the Complainant follow the [redacted content] parameters and failing to follow a principal's direction "could be a violation of district policy and law." The Complainant said that she interpreted the Superintendent's email to be a threat to discipline her, bar her from the [redacted content] School, or have her arrested if she [redacted content]. In a message to all parents, Principal 2 informed families that [redacted content]." The Complainant [redacted content] and interpreted Principal 2's message to be a [redacted content].

On [redacted content], 2021, the Complainant emailed the Superintendent and explained that "[redacted content]."

In subsequent emails to the Superintendent and others on [redacted content], 2021, the Complainant stated that [redacted content]." She also discussed [redacted content] the "discrimination" taking place.

The Complainant said that while she did not attend the [redacted content] event, [redacted content] who attended the event told her that a sheriff was there. She provided OCR with a text message exchange between her and someone she identified as a commander from the Sheriff's office. In the exchange, she relayed that she heard the Superintendent had arranged law enforcement presence at the event in anticipation of conflict and she sought confirmation of this information. The commander replied that the Superintendent "did ask for the SRO [School Resource Officer] to attend ... to deal with [redacted content] disrupting activities, nothing happened so there is no report." According to the District, it never indicated to the Complainant that she would be arrested for attending the event and it denied requesting that law enforcement attend the event.

The District offered two reasons for denying the Complainant's request to [redacted content]. First, the District explained to the Complainant's counsel on [redacted content], 2021, that the [redacted content] event was taking place on school grounds pursuant to a [redacted content] request. The District also provided the Complainant with information on how she could similarly request use of District facilities to plan an event to [redacted content] at the school. Second, the District informed OCR that the [redacted content] refusal to allow the Complainant to [redacted content]. The District also stated that it informed the Complainant that she could [redacted content] that complied with [redacted content] or seek a permit to hold her own event on school grounds.

III. Analysis

A. Issue 1

OCR found that during the 2021-2022 and 2023-2024 school years, the School had notice of multiple instances of swastikas or other antisemitic vandalism, an incident in which a student made a reference to Hitler, and one in which another student commented on killing and harming Jews, that created a hostile environment based on shared Jewish ancestry for students, and that the District failed to take prompt and effective steps to address it, in violation of Title VI. Specifically, as described further below, the evidence shows that the District failed to take prompt and effective steps reasonably calculated to end a known hostile environment for

students of shared Jewish ancestry, to mitigate its effects on students, and to prevent its recurrence. In addition, in some cases of reported or otherwise known antisemitic conduct, the District failed to adequately determine whether a hostile environment existed for those students and if they needed remedies to address the effects of that environment.

OCR found that during the 2021-2022 school year, School administrators had actual notice of nine incidents involving the use of the n-word and/or swastikas, including graffiti in the bathroom, swastikas written or etched on two classroom desks (one of which was described by a teacher as a “giant swastika”), the “SS” symbol drawn on a classroom desk, a swastika on a ruler handed out to students in class, and the [redacted content] of a swastika onto the skin of [redacted content]. During the 2023-2024 school year, School administrators had reports of swastikas, of a student expressing wanting to “kill all Jews and burn them in their homes,” vandalism of an [redacted content] movie night poster, and a student referencing Hitler. The location of the swastikas in a bathroom, on a [redacted content] in class, and etched onto a bench potentially exposed hundreds of students to antisemitic imagery. The frequency with which the swastikas and other antisemitic expressions or incidents occurred establishes that the incidents of antisemitic graffiti and conduct were pervasive and not isolated. OCR also notes that the District’s nonexistent recordkeeping raises the likelihood that additional incidents occurred at the School during the school years that OCR investigated, including the 2022-2023 school year for which the District had no records regarding harassment.

The District asserted that it did not receive any formal complaints and that no students reported feeling harassed or subjected to a hostile environment. However, the evidence shows that students and administrators alike expressed a desire to implement changes to the school culture, to improve the atmosphere, and to engage outside agencies to facilitate discussions about hate speech involving swastikas. Principal 1 recognized that a systemic response was necessary to address the incidents in the fall of 2021, and notes from the Task Force meetings that took place in 2021 and 2022 indicate that students were very interested in finding the best way to implement changes to the school culture. Also, in 2022, a student and others raised concerns about swastikas at the School at a Board of Education meeting, and a student expressed a belief that other than discipline, the District provided a limited response to antisemitic incidents at the School. Additionally, the School was aware of incidents in which students made references to Hitler or killing and harming Jews, which can be threatening to students of Jewish ancestry.

OCR finds that the repeated discovery of swastikas, a hate symbol and expression of antisemitism, as well as other antisemitic incidents at the School created a subjectively and objectively hostile environment for Jewish students who were exposed to the antisemitic harassment and those who may not have witnessed the graffiti or other antisemitic conduct but were aware of its recurrence at their school. Although the District investigated several incidents and took some steps to stop them (including disciplining students), the evidence shows that the District failed to take effective steps reasonably calculated to eliminate this known hostile environment and prevent its recurrence because the antisemitic incidents continued throughout the 2021-2022 school year (Incidents 1-9) and the 2023-2024 school year (Incidents 10-15).

In addition, in some cases, the District failed to adequately determine whether the reported antisemitic harassment created a hostile environment for affected students, and if so, whether remedies or other actions were needed to redress the hostile environment for those students. OCR acknowledges that for the swastika graffiti that occurred in the 2021-2022 school year, the

School not only attempted to identify who was drawing the swastika graffiti for discipline purposes, it also increased staff visits to the student bathrooms to prevent a recurrence, communicated with teachers and parents about the incidents, visited [redacted content] classrooms to discuss the incidents and consequences for students responsible for the graffiti, and formed a Task Force comprised of students, parents, and faculty. However, OCR found that in responding to incidents in the 2021-2022 school year, the School's primary focus was on identifying who engaged in the harassing conduct to determine discipline. School administrators stated to OCR that they investigated reports of discrimination to determine whether discipline would be appropriate. For example, in response to learning that a student had [redacted content] a swastika onto the skin of [redacted content], the School suspended the student but did not determine whether the multiple students who witnessed the incident were subjected to a hostile environment based on shared Jewish ancestry. Similarly, in response to the discovery of swastikas on a ruler and on desks, the School staff spoke with some students and their parents. However, again, the School did not examine whether Jewish students were experiencing a hostile environment based on shared Jewish ancestry.

The District produced no evidence, with respect to any of Incidents 1 through 9, that demonstrate the District assessed whether a hostile environment existed for students (including those who may not have witnessed the swastikas but were notified of their discovery by their peers, teachers, or administrators); offered supports or remedies to students who experienced, reported, or observed the harassment (including Incidents 5 and 6); or took tangible steps to implement the strategies considered by the Task Force (*e.g.*, engaging focus groups; initiating professional development for staff, or social and emotional learning for students; or initiating restorative practices). Although the School conducted a "Race Relations Survey" during the 2022-2023 school year, none of the questions pertained to discrimination or harassment on the basis of shared ancestry, or solicited student knowledge of, or emotional response to, the reported incidents of swastikas or other antisemitic imagery discovered on campus. The inclusion of these types of questions would have been appropriate in response to the incidents during the prior 2021-2022 school year and may have informed School-site strategies to prevent the incidents that occurred the following 2023-2024 school year. OCR finds it notable and concerning that when asked to indicate their emotional response to the discovery of "racially motivated hate graffiti in bathrooms, on backpacks, and elsewhere," 40.49% of respondents indicated they were "upset" when they learned about it.

The District also failed to adequately respond to the reports of antisemitic graffiti or statements during the 2023-2024 school year. With respect to Incident 10, a student told another student that he wanted to "kill all Jews" and the District acknowledged that it did not conduct an investigation. The District provided no evidence that it assessed what effects, if any, the antisemitic harassment had on the student; whether other students heard the statement and what effect, if any, the antisemitic harassment had on them; what supports and remedies, if any, were appropriate to offer these students; and what action was necessary to prevent the recurrence of antisemitic threats. With respect to Incidents 11 (ripping down [redacted content] movie night poster) and 13 ([redacted content] and Hitler comment), the District produced no evidence that it inquired about what the reporting students' perceptions indicated about the larger school climate for students of shared Jewish ancestry. With respect to Incident 12, although the assistant principal spoke with the student who had drawn swastikas on his [redacted content], again there is no evidence that the District determined whether that incident created a hostile environment for students in the classroom or school-wide (including those who may not have seen the

swastikas but were made aware of the incident by their peers, teachers, or administrators) or offered supports or remedies to students who were subjected to a hostile environment. Lastly, with respect to Incidents 14 and 15 (swastika graffiti), the District's actions did not go beyond removing the graffiti and attempting to determine the responsible persons(s)—the same limited actions the District took upon the discovery of swastikas on campus property two years prior.

Based on the foregoing, OCR finds, by a preponderance of the evidence, that the District failed to take prompt and effective steps reasonably calculated to eliminate a known hostile environment for students of shared Jewish ancestry, prevent its recurrence, and remedy its effects and that the District failed to respond to notice of certain harassing conduct based on shared Jewish ancestry to determine if it created a hostile environment for affected students and required remedies for those students, in violation of Title VI and its implementing regulations.

OCR also has a compliance concern that the District is not meeting its obligation to maintain the records OCR needs to assess if the District's responses to notice of antisemitic harassment (including complaints and reports of student-to-student harassment) complied with Title VI. The regulation implementing Title VI, at 34 C.F.R. § 100.6(b), requires recipients to collect, maintain, and provide to OCR such records that will enable OCR to ascertain whether the District is in compliance with the nondiscrimination requirements of Title VI. With respect to the 15 incidents described above, the District did not produce any records. In addition, the District reported that due to staff turnover it could not find any responsive records regarding the 2022-2023 school year. OCR's investigation was impeded by the District's nonexistent recordkeeping, particularly with respect to investigation records, discipline records, records of responsive measures, and records of communications with students and their parents concerning harassment. While these gaps in the data did not prevent OCR from making a determination about the District's compliance with Title VI, OCR has a compliance concern that the District's records regarding notice of harassment and its investigations fell short of its recordkeeping obligations under Title VI (and its own District policies and procedures, as set forth in Board Policy 5145.3).

B. Issue 2

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the District, under circumstances that suggest a connection between the protected activity and the adverse action. In this case, the Complainant engaged in a protected activity when she expressed her belief that the District's denial of her request to [redacted content] constituted discrimination against Jewish people.

OCR then analyzed whether the Complainant experienced an adverse action caused by the District. The Complainant alleges that the Superintendent threatened to arrest her if she attended the [redacted content] event and also denied her request to [redacted content]. The District denied having said or done anything to suggest arrest in connection with the event. OCR reviewed email correspondences between the Complainant and the District and did not find evidence that the District threatened arrest or suggested arrest if the Complainant attended the event. While an SRO may have attended the event, OCR does not find that an SRO attending a District event which the Complainant did not attend constituted an adverse action against the

Complainant. However, the District does not deny that it denied the Complainant's request to [redacted content], which could be considered an adverse action.

The District provided two legitimate, nondiscriminatory reasons for denying the Complainant's request to [redacted content]. First, OCR reviewed correspondence in which the District explained to the Complainant's counsel that the [redacted content] event was taking place on school grounds pursuant to a [redacted content] request to use District facilities for a specific purpose—a [redacted content] event, and that the Complainant could also use that process to rent District facilities for a different purpose—to [redacted content] and invite others to join her. Second, OCR reviewed correspondence in which the District explained to the Complainant that the [redacted content] refused to allow her to [redacted content]. OCR found no evidence of pretext regarding the District's actions. Accordingly, OCR finds insufficient evidence that the District violated Title VI with respect to Issue 2.

IV. Overall Conclusion

This concludes the investigation of this complaint.

To address the Title VI violation OCR identified in the investigation of Issue 1, the District, without admitting to any violation of law, entered into the enclosed Resolution Agreement (the Agreement). Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Complainant concurrently.

When fully implemented, the Agreement is intended to address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

The Complainant has a right to appeal OCR's determination in Issue 2 within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the District. The District has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the District.

OCR's determination in this matter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by the law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of privacy if released.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorneys Sewali Patel at Sewali.Patel@ed.gov and Ellen Moy at Ellen.Moy@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

Enclosure

cc: Loren Carjulia, Counsel (by email only)