



**CAIR**  
CALIFORNIA

**ADC**  
TRULY ARAB, FULLY AMERICAN.

Assistant Secretary Catherine E. Lhamon  
U.S. Department of Education Office for Civil Rights  
[OCR@ed.gov](mailto:OCR@ed.gov)

May 8, 2024

Re: Severe and Pervasive Anti-Palestinian Racism in Berkeley Schools

Dear Assistant Secretary Lhamon,

We write on behalf of Berkeley Unified School District (BUSD) educators, staff, and caregivers to express concern about severe and pervasive anti-Palestinian racism in Berkeley schools. The BUSD community members we represent love their teachers and students and share in the district's commitment to equity, inclusion, and anti-racism. They celebrate BUSD's long, rich history of student activism, progressive values, solidarity with social justice movements, and solidarity with marginalized people.

However, Berkeley community members are deeply disturbed to see BUSD exclude our Palestinian, Arab, and Muslim students from its commitment to justice and equality. Unchecked Anti-Palestinian racism – and adjacent anti-Arab, anti-Muslim racism – in Berkeley schools does serious harm to our already vulnerable students. We urge you to take special measures to ensure that Palestinian, Arab, and Muslim students, or students perceived as such, are protected from discrimination and harassment, and provided equal access to Berkeley's rich educational opportunities.

With grave concern, we share the following incidents of racism targeting Palestinian, Arab, and Muslim students in Berkeley schools that caregivers, students, and teachers have reported since October 7, 2023.<sup>1</sup> These incidents stand against the frightening backdrop of severe racism targeting the same community nationwide.<sup>2</sup>

---

<sup>1</sup> Notes detailing these incidents are on file with the authors.

<sup>2</sup> The Council on American-Islamic Relations (CAIR) and Palestine Legal both reported record numbers of surging anti-Palestinian, anti-Muslim and anti-Arab hate and repression incidents in 2023. See Council on American-Islamic Relations, 2024 Civil Rights Report: Fatal: The Resurgence of Anti-Muslim Hate (Apr., 2024), <https://islamophobia.org/civil-rights-reports/2024-civil-rights-report-fatal-the-resurgence-of-anti-muslim-hate/>. See also, Palestine Legal, [Media Roundup: Palestine Legal on unprecedented surge in anti-Palestinian repression since October 7th](https://palestinelegal.org/news/media-roundup-since-oct-7) February 13, 2024, <https://palestinelegal.org/news/media-roundup-since-oct-7>. The Anti-Palestinian Racism Research Group recently released a study with the major finding that 64.6% of survey respondents experienced anti-Palestinian racism either directly or online. See, Anti-Palestinian Racism Research Group, Anti-Palestinian Racism Survey Preliminary Report, (Apr., 2024), <https://medium.com/@aprrresearchgroup/anti-palestinian-racism-survey-preliminary-report-april-2024-11cfed327d85>. See also, Letter from Civil Rights Organizations to Catherine E. Lhamon, Re: OCR must act to address rise of anti-Palestinian and Islamophobic racism (Oct. 31, 2023), <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/65416bd823a85315b4d85402/1698786265201/>

Most of these incidents have been reported to BUSD leaders, or BUSD leaders are already aware they occurred. BUSD leaders have either acted with indifference, taken no meaningful action, or were themselves the perpetrators of the incidents listed.

### **I. Slurs and Hate Target BUSD Palestinian, Arab, and Muslim Students.**

Palestinian, Arab, and Muslim students in BUSD have endured severe and persistent hate and harassment from fellow students and community members. As examples:

- An outside facilitator of a Berkeley High student club told the students that, “Palestinians don’t really exist and we can’t talk about Palestinians because they aren’t really a people.”
- Arab and Muslim students report being taunted as “terrorists” after teachers in class taught lessons referencing “terrorism.”
- Arab and Muslim students report being targeted with taunts of “9-11” by other students.
- A Muslim student reported that her teacher mispronounced Islam and Muslim, and dismissed the student’s attempt to correct her pronunciation, emboldening other classmates to mispronounce these words in jest.
- A student’s hijab was ripped off in class by another student.
- A street mural designed and painted by Berkeley High School students expressing a desire for Palestinians to live in peace and freedom was defaced within two days of its creation. Paint was poured over the words “Free Palestine.” The mural depicted a white dove (a symbol of peace), a student of color wearing a kaffiyeh reading a book, a flower, and the words “Ceasefire” and “Free Palestine.”
- A parent berated a high school student member of the BUSD board of directors publicly during a board meeting, making the student cry, after the student had expressed support for her peers participating in the walkout to oppose violence against Palestinians.
- Palestinian, Arab, and Muslim students and their allies were falsely accused of using hateful slogans during student walkouts when they were in fact protesting against war and for Palestinian life.
- Students have watched as their teachers and families (including children) who speak in favor of teaching Palestine at school board meetings are filmed and jeered at, creating significant discomfort, stress, and fear of doxxing. For example, in one instance a community member approached a group of 10- and 11-year-old (predominantly Arab and Muslim) children and filmed their faces while yelling angry profanities at speakers.
- Middle school and high school students who participated in peaceful walkouts to express support for Palestine and against war have been continuously filmed without their

parents' consent in a hostile and harassing manner by community members. One community member boasted she had gotten "up close and personal" in filming students.

- Middle school students participating in a peaceful walkout for Palestinian life were harassed by parents: one came to observe with a large dog, another called the participating students the "KKK," and yet another called the police.
- A second-grade classroom was subjected to drone surveillance on the schoolyard after their teacher took her class to visit the school's interactive No Hate Wall (that lives in a community space) during 'No Hate Week,' which asks kids to read the messages of love and come up with ways to say 'no' to hate by writing ideas on sticky notes and adding them to the wall. Some students wrote "stop bombing babies" in support of Palestinian children's right to live.
- A Palestinian high school student was nearly assaulted by a community member who opposed her message. The near assault occurred while the student was speaking on a megaphone about Palestinian human rights at a Berkeley High rally.

Taunting students who are (or are perceived to be) Arab, Muslim, or Palestinian with "terrorist" name calling, or references to 9-11, apply a derogatory and violent stereotype by blaming individuals for acts of political violence they have nothing to do with and do not support. We note, anti-Palestinian animus is the root of the political definition of the term "terrorist."<sup>3</sup> There is also a long history in the United States of intolerance of even the word, "Palestinian," and intolerance of the Palestinian identity.<sup>4</sup>

Slurs such as "terrorist" and "9-11" call into the room the violence and state repression, war, entrapment, and discrimination against Arab, Muslim, and Palestinian people which the so-called "war on terror" has brought upon their communities. The slur also wrongly assumes that calls for freedom and justice for Arab, Muslim, and Palestinian people are dangerous and threatening, or unjustified. Students who hear these taunts and false accusations are being told that they are a threat to others. When they hear these slurs as a result of their expressions of support for Palestinian life, they are being told they do not deserve to call for justice and freedom for their communities, and that their communities deserve to be the target of war and state violence.

**II. BUSD Repeatedly Censored Students of Palestinian, Arab and Muslim Heritage,** and students who support Palestinian human rights or are merely curious about Palestine. As examples:

- The Palestinian president of Berkeley High's Muslim Student Association (MSA) was not permitted to speak during public comment at the Board meeting. Board members later apologized and explained it was inadvertent, but the injury was done.

---

<sup>3</sup> Palestine Legal and the Center for Constitutional Rights, Anti-Palestine at the Core: the Origins and Growing Dangers of U.S. Antiterrorism Law, (Feb., 2024) <https://palestinelegal.org/news/anti-palestinian-animus-root-us-anti-terrorism-laws-new-report>

<sup>4</sup> Peter Beinart, It's Time to Name Anti-Palestinian Bigotry, Jewish Currents (Jul. 16, 2021) [jewishcurrents.org/its-time-to-name-anti-palestinian-bigotry](https://www.jewishcurrents.org/its-time-to-name-anti-palestinian-bigotry)

- A Muslim fourth-grade student asked her teacher if she could do a presentation to humanize Palestinians for her class, and was told no, it was an issue for the principal to approve. The parent had a call with the principal and teacher, but months later the student has still not been permitted to share her knowledge about Palestinians with her classmates. Recently during a class trip to Mosaic – a program that celebrates racial diversity and multiple perspectives – the program director’s comment about peace between Israelis and Palestinians, caused the student to cry because she had no space to discuss the context of genocide with her class. The family has friends in Jerusalem who had their nine-, eleven-, and fifteen-year-old sons taken from their home and imprisoned by Israelis. They are still in prison, and this Berkeley fourth grader knows; she can’t pretend not to know. BUSD has denied this child’s repeated requests for space to bring voice to a voiceless people who she is watching being massacred.
- A Muslim sixth-grade student raised her hand during a discussion of current events in Gaza and said she had something to share but was told by the teacher “not now” although other students were given the opportunity to share.
- Middle school students who formed a Watermelon Club (for Palestine) faced complaints about the club before it had even had its first meeting. The school hosts many clubs including Melanin Club, La Raza, Black Student Union, and Asian Pacific Islander Club.
- During Arab/SSWANA Heritage Month in April 2024, a middle school twice excluded the heritage month from the principal’s written communications to caregivers about April celebrations - although he emphasized School Library Month and Mathematics Month. The second incident was after Arab and Muslim parents had already complained about the omission in the first communication.
- Requests for children’s books about Palestine to be added to a middle school site’s library were met with reluctance, suspicion, and scrutiny.
- Students in a high school history class were denied the ability to hear from a guest speaker who is a professor of Palestinian history, when administrators told the teacher not to bring the speaker because it would not be “safe.”
- Students in a middle school American history class were denied the ability to learn accurately about American history, and about current events in Palestine when their teacher was informed by an administrator that two words were no longer allowed in her classroom – colonization and genocide.
- Middle school students were denied the ability to celebrate the civil rights struggles of the Arab/SSWANA community in April 2024, when a middle school principal prohibited showing images of student protest to protect Palestinian life as part of the Heritage Month assembly. Honoring Arab/SSWANA student activism in this way would be consistent with school assemblies across the district that celebrate Black, Asian, Latinx and other heritage months, and typically include celebrating the civil rights activism of these communities. However, the middle school principal ordered the removal of photos

highlighting student activism for Palestine and threatened to postpone the assembly less than 24 hours beforehand if such images were not removed.

- Middle school students have watched as signs that say “Teach Palestine” are taken down daily. School site administration repeatedly told staff and teachers to take them down.
- An elementary school post-it note, “Stop bombing babies” in reference to bombings of Palestinian babies was taken down from a hallway bulletin board that had been an ongoing space for anti-hate messages in the school for the past six years.
- A Jewish middle school student suggested that one way to support Palestinian lives would be to boycott McDonald’s, and her teacher called her antisemitic.<sup>5</sup>
- High school students were denied the ability to express their hopes and dreams for peace between Palestine and Israel when administrators removed their artwork from a public display.
- A middle school principal told SSWANA club members the video they had made for a family evening event in May about their club, which had student-written “Free Palestine” and “Free Gaza” notes on a board behind them, along with other shared notes on identity, was “too political” to be shown at the event. This resulted in the students losing class time in order to re-record their video.
- A middle school prohibited families from coming to listen to the director of the Middle East Children’s Alliance when he was invited as a guest speaker. It is common practice for schools to invite families to attend campus events and participate in school life. The students who were seeking to learn from the speaker were made to feel that their curiosity was somehow illicit.

When our students witness and experience such systematic censorship to shut down teaching and learning about Palestine, BUSD deprives them of access to an education that reflects all who live in their community.

This deprivation targets our students when they are at their most vulnerable: Palestinian, Arab, and Muslim students are experiencing silence, indifference, and erasure in the classroom while they experience the trauma and distress of an ongoing genocide in Gaza live-streamed on their phones. As our students witness the relentless attempts to silence those who talk about Palestine it further contributes to their sense of erasure and exclusion.

---

<sup>5</sup> McDonald’s has been subject to boycotts to protect Palestinian lives since a major franchisee announced it would donate free meals to the Israeli military amid Gaza war. See, Aljazeera (Apr., 5, 2024) <https://www.aljazeera.com/news/2024/4/5/mcdonalds-buys-all-225-of-israeli-franchise-restaurants-after-boycotts#:~:text=McDonald's%20has%20been%20subject%20to,Israeli%20military%20amid%20Gaza%20war.&text=McDonald's%20has%20said%20it%20will,employ%20more%20than%205%2C000%20people>.

**III. BUSD has Provided an Unequal Use of District Resources to Address Concerns of Palestinian, Arab, and Muslim Students.** As examples:

- Important documents about Individual Education Plans (IEP) for students are not translated into Arabic, and there is a lack of Arabic-speaking counselors, despite Arabic being the third most spoken language in the district (after English and Spanish) and a lack of culturally informed mental health care.
- The Berkeley High MSA advisor requested help for the club, but the request was minimized, ignored, and brushed aside by the school's Dean of Wellness, and was not met with similar attention and support as similar requests of other identity-based student groups.
- District leadership has not met with the MSA at Berkeley High, despite the unimaginable violence and suffering live-streamed from Gaza for the past six months, and despite meeting with the Jewish Student Union shortly after October 7.
- BUSD libraries have a lack of books about Palestine. At one school site, the number of books about Palestine totaled three in contrast to twenty-five books about Israel. One of those three Palestine books was about terrorism.
- A middle school principal ignored a Muslim parent's heartfelt emails expressing: her experience parenting Muslim or Arab American children during this scary time; her daughter's need to hide from a parent filming her during a school walkout; her hopes for how school admin could bring care to the community to help with the situation; and an offer of her own time and resources which were relevant given her background and expertise. There was no response. Other non-Arab, non-Muslim, caregivers who wanted to talk about similar topics in the same timeframe, were provided responses including an in-person meeting.

**IV. As Students Look-on, BUSD Stands by While Community Members Harass Teachers Who Speak About Palestinian Freedom.** As examples:

- The spouse and child of BUSD Educator A – who had taught a district approved lesson on Palestine/Israel, including Palestinian perspectives – were targeted with harassment while A.'s spouse was dropping off their child at school. Educator A's spouse was approached by an unknown adult and told that she and Educator A. were "all that is wrong in the world" and they should "feel the blood of all Israelis on their hands." The individual then asked A.'s spouse to point out their child, at which point A.'s spouse began walking to her car and the aggressor followed her, until A.'s spouse asked them to stop following her or she would call the police. This has a serious effect on educator A's child, also a BUSD student.
- Educator B – who spoke about Palestinians in a humanizing way in his classroom – was targeted in a public social media account with hundreds of followers, leading people to search for his information including photographs of him, and then post comments calling

him “sick” and that he “looks like a terrorist.” Followers of this Instagram account called for BUSD educators’ pay to be docked and their teaching licenses revoked.

- Educator B is publicly vilified in a federal complaint with false accusations misrepresenting classroom discussion of Palestine. BUSD put Educator B on administrative leave for two months, as of this writing, with no information provided to the community or his students about the alleged wrongdoing. At least one student boasted in school that he is getting Educator B fired for teaching about Palestine. The result is a wide belief by Educator’s B’s students and the broader community that he is being fired for speaking about the humanity of Palestinians.
- Educator C – who participated in her school’s “no-hate wall” tradition, inviting her second-grade students to generate notes of love, some of which included the message “stop bombing babies” – was then made the subject of a national disinformation campaign. A community member posted false accusations about her on a national listserv which generated hundreds of complaints to her school site from non-Berkeley residents. The false accusations caused her school’s human resources to pull her out of her classroom in the middle of a lesson. This educator and her students were subjected to drone surveillance outside their classroom window; that drone then followed her students from the classroom to garden class and terrified them. Hundreds of demands were called into the school, including the threat, “you have one hour,” which became known to this teacher and a great many others. The community member who posted this educator’s name and school site to a national listserv has no child at her school and has never met her. Community members found C’s personal social media accounts and posted that information to the listserv as well. C’s inboxes were flooded with personalized hostile attacks and threats. She also discovered a screw in her tire that her mechanic explained was intentionally placed, and which deflated her tire while she was driving her car with her young child, also a BUSD student.
- Educator C engaged in a conversation with another Educator, D, and a parent at a city council meeting, in which Educator C told the parent she was not interested in talking with him any further and he followed her down the sidewalk. Later Educator C received an email from this parent accusing her of telling the parent, “We know where you live.” She had not said this, and it scared her that he would fabricate such an accusation. Educator C then received four more emails from this parent, despite her lack of response, including a statement that he would interpret her lack of response as an admission that she had threatened him.
- Educator D is a Palestinian-American teacher who received the same series of emails from the same parent with nearly identical text. When she did not respond after some delay, he emailed her again. Educator D was also contacted on her personal cell phone by a community member she has never met and was asked to come to their home to talk with a group of parents. The group included the parent who had aggressively surveilled the middle school student walkout for Palestine with an intimidating dog, and nearly assaulted a high school Palestinian student while she was speaking on a megaphone. This invitation, and the repeated threatening emails caused Educator D to have severe anxiety

symptoms requiring her to take an eight-day medical leave. This was the second medical leave resulting from the hostile anti-Palestinian environment in BUSD.

- Educator D, a Palestinian-American, was penalized and vilified for starting a petition in which she shared about her experience witnessing a genocide, her family's experience in the Palestinian Nakba of 1948 and her requests for better support and protection of Berkeley students and teachers during this traumatic time. The petition itself was ignored, while teachers and staff who signed the petition were pulled into one-on-one meetings by the school site's administration and were warned against signing. Although these meetings were not technically disciplinary, they chilled all teacher speech related to Palestine. BUSD administrators also restricted Educator D from using her work email to circulate the petition. This restriction was unknown to her and her colleagues because to their knowledge, it had not been previously enforced in relation to other political issues, despite BUSD's long and celebrated history of supporting social justice activity. Community members who did not like the content of the petition complained to BUSD leaders that signatories of the petition are not fit to teach.
- Educator E has been publicly vilified in the federal complaint with the false accusation that a pin she wore, which says in Arabic letters, "Free Palestine," is antisemitic. Parents have frequently complained in public settings that teachers wearing "Free Palestine" buttons are targeting Jewish children.
- A student was observed in the bushes outside the classrooms of Educators B and E prior to the start of school looking through the classroom windows and taking photographs of the classroom - presumably to capture images of artwork supportive of Palestinian equality.

The children of these educators who are also BUSD students, not to mention the children in their classrooms, are aware, affected by, and frightened by these instances of harassment targeting their teachers. They are aware these instances are a result of their teachers' speaking in defense of Palestinian humanity. They see that their parents and teachers are suffering extreme anxiety, mental and physical health effects, are absent from the classroom, and publicly vilified. They do not see BUSD making any statements that Palestinians should be protected, or that students and teachers who support Palestinians should be protected.

The lesson our children learn as they watch this unchecked harassment of their teachers is that it is somehow wrong or dangerous to support Palestinian life. They learn that Palestinians do not deserve the same resources, classroom time, art-wall space, civil rights to protest, or even the same human rights to education, equality, and life as other communities. This is the anti-Palestinian racism that BUSD is teaching.

#### **V. Anti-Palestinian Racism in Berkeley Schools Deprives Our Children of an Equal Education.**

Generally "[Anti-Palestinian racism](#) is a form of anti-Arab racism that silences, excludes, erases, stereotypes, defames, or dehumanizes Palestinians or their narratives. Anti-Palestinian racism takes various forms including: denying the Nakba and justifying violence against Palestinians;

failing to acknowledge Palestinians as an Indigenous people with a collective identity, belonging and rights in relation to occupied and historic Palestine; erasing the human rights and equal dignity and worth of Palestinians; excluding or pressuring others to exclude Palestinian perspectives, Palestinians and their allies; defaming Palestinians and their allies with slander such as being inherently antisemitic, a terrorist threat/sympathizer or opposed to democratic values.”<sup>6</sup>

It is not just Palestinians who experience it. “Anti-Palestinian racism is experienced by: Palestinians; those perceived to be Palestinians or inherently pro-Palestinian; and non-Palestinians who express support for Palestinian rights. [Anti-Palestinian racism] usually targets those who publicly speak in support of Palestinian rights or share Palestinian narratives or openly criticize the state of Israel for their treatment of Palestinians.”

In an April 2024 report by researchers, physicians, and psychologists, the prevalence of anti-Palestinian racism was recognized as a “widespread,” and “pervasive phenomenon” which negatively impacted the people experiencing it.<sup>7</sup> According to the research group’s empirical data from March 2024, anti-Palestinian racism is “highly prevalent in many sectors of society,” “affects Americans of diverse racial, ethnic, and religious backgrounds,” and has a “deleterious impact on people’s health and wellness, and is resulting in increased levels of isolation, fear, and intimidation.” The authors urge that these “novel and profound findings” be addressed immediately, by a wide range of actors – including schools.

*Penalizing individuals for advocating for Palestinian equality constitutes a form of bigotry.* It is important to name the deep-seated anti-Palestinian racism that goes beyond mere censorship or infringements of free speech.<sup>8</sup> And, because this kind of racism is under-recognized and under-studied, this itself leads to increased feelings of isolation and further harm.

BUSD’s students are experiencing these impacts. The environment described above causes pain and feelings of invisibility, insignificance, and lack of safety, for our Palestinian, Arab, Muslim, and SSWANA students – and for *all* our marginalized communities. In this kind of environment, our teachers and students have expressed significant fear, anxiety, stress, humiliation, and emotional pain. Their sleep, appetite, and ability to focus have been negatively affected.

Berkeley caregivers have told their children not to play at the park for fear of anti-Arab sentiment, and children have covered their faces in fear after showing up to a protest for Palestinian lives. SSWANA club members have shared with the school board that their club is the only place where they feel comfortable to talk about their identities. Students have reported feeling they are a target, and don’t have the same rights as everyone else, and they feel afraid for their family members who wear a hijab. They have missed school and lost valuable educational time. Students feel their voices are not being heard and are struggling to make sense of their teachers’ silence in the midst of a war their country - the US - is directly involved in that is

---

<sup>6</sup> Dania Majid, Anti-Palestinian Racism: Naming, Framing and Manifestations, Arab Canadian Lawyers Association, 2022 CanLIIDocs 4618, <https://canlii.ca/t/7n8cn>.

<sup>7</sup> Anti-Palestinian Racism Research Group, Anti-Palestinian Racism Survey Preliminary Report (Apr., 2024).

<sup>8</sup> Yasmeen Abu-Laban and Abigail B. Bakan, Anti-Palestinian Racism: Analyzing the Unnamed and Suppressed Reality, <https://pomeps.org/anti-palestinian-racism-analyzing-the-unnamed-and-suppressed-reality>.

slaughtering their family members. The whole world is talking about this war, but Berkeley classrooms cannot address it.

BUSD students as young as eleven – and twelve-year-old students – who are just taking hold of their own agency and practicing how to speak their minds are learning from BUSD’s acts of censorship and failure to protect against hate and harassment of Palestinian, Arab and Muslim students that they are not deserving as other students to learn about the world they have inherited.

**VI. BUSD Must Not Adopt, Enforce, or Rely on the International Holocaust Remembrance Alliance Working Definition (IHRA) or Its Contemporary Examples to Identify or Combat Antisemitism or Similar Definitions that Conflate Support for Palestinian Rights and Identity with Anti-Jewish Bigotry.**

As evident by the complaint submitted to the Department of Education Office for Civil Rights by the Brandeis Center and the ADL against BUSD, pro-Israel lobby groups are pressuring Berkeley to adopt the IHRA definition. Endorsing or applying the IHRA definition would further facilitate anti-Palestinian discrimination and harassment of the sort this complaint describes. It would also lead to the infringement of bedrock student free speech protections and the violation of Berkeley’s contract with the Berkeley Federation of Teachers.

The vast opposition to IHRA and its application in educational settings in particular shows its use as a tool of censorship and harassment of Palestinians and their allies.<sup>9</sup> The guiding “contemporary examples of antisemitism” attached to the IHRA definition falsely conflate political criticism of Israel/support for Palestinian rights with antisemitism, placing anyone charged with implementing the definition in the position of engaging in anti-Palestinian bias.<sup>10</sup>

In this current political moment, it is critical to understand the common threats that racism, xenophobia, and bigotry pose to all minorities and communities of color, and to reject efforts that purport to address one form of bigotry while bolstering another. The use of the IHRA definition and the conflation of antisemitism and anti-Zionism that it emboldens creates just that: a zero-sum game wherein to be pro-Palestinian you must be anti-Jewish, and to be pro-Jewish necessarily means being anti-Palestinian. This false dichotomy has enabled the term antisemitism to be weaponized against Palestinians and their allies for expressing their desire for Palestinian freedom, opposition to the genocide of their people, and views on Israel and Zionism. Application of the IHRA definition would drive Berkeley administrators into a morass of national origin-based distinctions in violation of Title VI.

---

<sup>9</sup> See Letter from Civil Rights Organizations to Catherine E. Lhamon, Assistant Secretary for Civil Rights, Re: The IHRA definition censors free speech and disrupts the education of Palestinian students and their allies, (Aug. 31, 2022) <https://static1.squarespace.com/static/548748b1e4b083fc03ebf70e/t/63b6de30db689e6788acce6/1672928817287/Civil+Rights+Orgs+Letter+to+OCR+8-31-22.pdf>.

<sup>10</sup> These contemporary examples include: “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor” and “Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.”

## **VII. BUSD Must Take Immediate Measures to Address the Hostile-Climate of Anti-Palestinian Racism.**

For the above-mentioned reasons, we urge the federal Department of Education Office for Civil Rights to investigate BUSD's compliance with applicable law including Title VI of the Civil Rights Act of 1964.

Berkeley leaders must act on their legal obligation to protect the learning environment for all students, including Palestinian, Arab, and Muslim students. To ameliorate the harms, we call on BUSD to take the following steps:

- Partner with Berkeley's Palestinian, Arab, and Muslim communities and expert educators to co-create and implement a classroom curriculum that includes Arab American Studies and Palestinian perspectives on history and current events.
- Partner with Berkeley's Palestinian, Arab, and Muslim communities and expert educators to train BUSD staff on anti-Palestinian, anti-Arab and anti-Muslim racism.
- Cease district censorship of students asking to learn and speak about Palestine, and the punishment of teachers trying to teach from multiple perspectives.
- Consistently distinguish between speech critical of the Israeli nation state's treatment of Palestinians and speech that is hateful towards Jews.
- Make clear to Berkeley's diverse community that speech supportive of Palestinians' right to live in freedom is a welcomed perspective in Berkeley schools that encourage learning about all peoples' right to justice, including Palestinians. BUSD must treat Palestinian students and their allies –including teachers– equal to all other student protests in support of social justice issues.

Sincerely,

Zahra Billoo, Esq., Executive Director  
CAIR San Francisco Bay Area (CAIR-SFBA)

Chris Godshall-Bennett, Esq., Staff Attorney,  
American-Arab Anti-Discrimination Committee (ADC)



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAILBOX 1200, ROOM 1545  
SAN FRANCISCO, CA 942012

June 21, 2024

Sent by email only to [superintendent@berkeley.net](mailto:superintendent@berkeley.net)

Superintendent Enikia Ford Morthel  
Berkeley Unified School District  
2020 Bonar Street  
Berkeley, California 94702

Re: Berkeley Unified School District - OCR Case Number 09-24-1543

Dear Superintendent Enikia Ford Morthel:

On May 8, 2024, the U.S. Department of Education (the Department), Office for Civil Rights (OCR) received a complaint against the Berkeley Unified School District (the District). The complaint alleged that the District has failed to respond effectively to reported harassment of students by other students, employees, and third parties based on their national origin/ethnicity (including actual or perceived Palestinian, Arab, and/or Muslim shared ancestry) or their association with individuals of one or more of these national origins/ethnicities since October 2023. The alleged incidents of harassment of students include: subjecting them to slurs such as “terrorists” and taunts of “9-11;” ripping off a student’s hijab; the nonconsensual filming of students participating in pro-Palestine walkouts; the targeting, nonconsensual filming, and possible doxxing of students and their families who express support for Palestine at school board meetings; and creating a hostile environment of fear and lack of safety caused by the District’s failure to protect such students and teachers who show support for Palestine from harassment by community members.

The complaint also alleged that the District has engaged in disparate treatment of these students and their parents based on their national origin/ethnicity (including actual or perceived Palestinian, Arab, and/or Muslim shared ancestry) or their association with one or more of these national origins/ethnicities. The alleged incidents of disparate treatment of these students and parents include: censoring or providing fewer opportunities for them to express themselves in classrooms and at school board meetings than are provided to Jewish students, Jewish parents, and those associated with Jewish shared ancestry; shutting down opportunities to teach and learn about Palestine in schools while not shutting down such opportunities about Israel; removing signs such as “Teach Palestine” from schools while not removing signs or other displays supporting topics related to Israel and/or Jewish individuals; offering fewer books about Palestine compared to books about Israel in school libraries; and providing unequal access to District resources to address concerns of Palestinian, Arab, and Muslim students as compared to the access provided to Jewish and other students. The complaint also alleges the understaffing of

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

Arabic-speaking counselors to provide mental health care to Arabic-speaking English Learner students and of bilingual staff who can translate for Arabic-speaking parents with limited English proficiency (LEP) essential school documents into Arabic, like Individual Education Plans.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulations at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, and national origin (including shared ancestry) in programs and activities receiving federal financial assistance from the Department. The District is a recipient of federal financial assistance from the Department and must comply with Title VI and the Department's implementing regulations.

OCR will investigate the following issues: (1) whether the District responded in a manner consistent with the requirements of Title VI to alleged harassment of students by other students, employees, and members of the public based on actual or perceived national origin/ethnicity (including Palestinian, Arab, and/or Muslim shared ancestry) or their association with one or more of these national origins/ethnicities; and (2) whether the District violated Title VI by engaging in disparate treatment of students based on their actual or perceived national origin (including Palestinian, Arab, and/or Muslim shared ancestry) or their association with one or more of these national origins/ethnicities; and (3) whether the District violated Title VI by denying Arabic-speaking students comparable access to mental health care provided to English-proficient students and by denying parents with LEP comparable access to school documents and other information brought to the attention of English-proficient parents.

Please understand that opening these issues for investigation under Title VI does not mean that OCR has made a decision about the merits. During the investigation, OCR is neutral; OCR will collect and analyze the relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient as required by OCR's Case Processing Manual (CPM) (July 18, 2022). You may find additional information in OCR's Complaint Processing Procedures. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR may close this case prior to making formal findings of compliance or non-compliance, provided that the circumstances or information gathered establishes an administrative or other basis for resolution in accordance with the CPM. For example, under Section 201(b) of OCR's CPM, if both parties are interested and OCR determines that the individual allegations are appropriate for mediation, the parties may voluntarily resolve these complaint allegations through mediation that OCR will facilitate. Note that in such a case, OCR does not monitor or enforce the agreement reached between the parties.

When appropriate, a complaint may be resolved before the conclusion of an investigation after the recipient expresses an interest to OCR to resolve the complaint. In such cases, OCR obtains a resolution agreement signed by the recipient and OCR determines that it is appropriate to resolve the complaint because OCR's investigation has identified concerns that can be addressed through a resolution agreement. This agreement must be aligned with the complaint allegations or the

information obtained during the investigation, and it must be consistent with applicable regulations.

To reach an efficient and timely resolution of this matter, OCR is providing an opportunity for the District to present its response to the complaint allegations and to submit supporting documentation. **Within 15 days of the date of this letter**, please provide to OCR the information listed in the attached data request. The regulation implementing Title VI, at 34 C.F.R. §§ 100.6(b) and (c), requires that a recipient of federal financial assistance make available to OCR information that may be necessary for it to determine whether a recipient is in compliance with the regulations it enforces. Pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii), of the regulation implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality. OCR will take all proper precautions to protect the identity of any individuals named in the documents.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an 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 retaliation complaint against the District 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 law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

If you have any questions, please contact OCR attorney Jenny Moon at [Jenny.Moon@ed.gov](mailto:Jenny.Moon@ed.gov).

Sincerely,

(b)(6); (b)(7)(A); (b)(7)(C)

Naghmeh Ordikhani  
Team Leader

Attachment

**Initial Data Request**  
OCR Case Number 09-24-1543  
Berkeley Unified School District

OCR requests that this information reach our office within **15 days from the date of the attached letter, which is July 6, 2024**. If any of the required items are available to the public on the Internet, you may provide the website address. While OCR prefers electronic submissions, you may send documents by any of the following means:

SharePoint: OCR may create an external sharing site through a browser-based portal in which the requested documents and information may be uploaded. Please contact Jenny Moon to receive online portal information to upload data.

Email: [jenny.moon@ed.gov](mailto:jenny.moon@ed.gov)

Fax: (415) 486-5570

Mail: U.S. Department of Education  
Office for Civil Rights  
San Francisco Office  
50 UN Plaza, Mail Box 1200, Room 1545  
San Francisco, CA 94102

Please do **not** provide the information via an electronic cloud format such as Google Docs. Because email is not reliably secure, please do not email any document that contains personally identifiable or private information without first encrypting this information. You may upload this information using the SharePoint option described above.

Please do not include Social Security numbers in your responses. If any responsive documents or data contain Social Security numbers, please redact them before sending OCR the information.

**Preservation of requested and relevant data and documents:** OCR may request supplemental data and documents that are relevant to the allegation under investigation. To ensure that OCR can assess the District's compliance with the statutory and regulatory obligations at issue in this investigation, please ensure that District employees preserve the data and documents requested below for the time frame specified in these requests and going forward until OCR closes this case. Please also ensure that District employees preserve other data and documents that are relevant to the allegation(s) under investigation until OCR closes this case. The regulation implementing Title VI, at 34 C.F.R. §§ 100.6(b) and (c), requires that a recipient of federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination.

**RESPONSE DUE: July 6, 2024**

Please provide the following information for academic year 2023-2024 to the present, unless otherwise indicated, or indicate in writing if any of the requested items do not exist. If the District has already provided any of the information requested below, please state this and refer to the date of the District's submission to OCR and the case number.

1. Provide a narrative response to the issues OCR is investigating and a copy of any documents or data relied upon in the narrative or supporting the facts stated in the narrative.
2. Indicate if the issues raised in this OCR complaint are pending elsewhere. If so, please provide a copy of the complaint filed and indicate its status. If it is not possible to provide a copy of the complaint, please state the allegations raised in the other complaint and the forum in which the complaint was filed (e.g., another federal, state, or local civil rights enforcement agency, through the District's internal grievance procedures, or in state or federal court).
3. A copy of the District's policies and procedures, and/or a description of the District's practices and protocols, governing the investigation of complaints, reports, or incidents of harassment of, and other discrimination against, students on the basis of national origin, including shared ancestry. Provide a detailed description of the complaint process, including each level of the process, the length of the process, and the types of records maintained. Also provide the name(s) and job title(s) of District staff responsible for handling complaints of discrimination, including harassment, on the basis of national origin, including shared ancestry, at each level of the process.
4. Explain how the District informs its students and employees of the policies and procedures set forth in Item 3 above. Submit copies of all materials disseminated or links to the District's website. Also provide the name(s) and job title(s) of the individuals responsible for implementing the policies and procedures.
5. A copy of the District's policies and procedures, and/or a description of the District's practices and protocols, governing:
  - a. disciplinary or corrective actions that may be taken to address harassment of and other discrimination against students on the basis of national origin, including shared ancestry; and
  - b. the provision of supports and remedies to students, employees, and other individuals found to have been discriminated against/harassed on the basis of national origin, including shared ancestry.
6. A copy and/or description of all formal and informal reports/complaints, including records of oral reports/complaints, concerning alleged harassment and other discrimination based on national origin, including shared ancestry (including Palestinian, Arab, Muslim, Jewish, and/or other shared ancestry), against students, parents, District employees, and/or

community members in District programs and activities, including but not limited to board meetings. For each report or complaint, please provide:

- a. the name(s) and job title(s) of the person(s) to whom the report/complaint was made, and the date of the report/complaint;
  - b. the name and relation to the District of the person making the report/complaint (e.g., student, teacher, parent/guardian, counsel, member of the public);
  - c. a detailed description of the report/complaint, including the name(s) of the alleged target(s) of discrimination/harassment and the alleged discriminators/harassers if not evident from the copy of the report/complaint;
  - d. a detailed description of the complaint processing procedures employed to resolve the report/complaint;
  - e. the length of the complaint resolution process;
  - f. the name, national origin, and/or ancestry of each student, employee, or other individual involved in the alleged incident(s) of discrimination/harassment;
  - g. the name(s) and relation to the District of any individual(s) who witnessed the alleged incident(s), including any District students, employees, or others;
  - h. the name(s) and relationship to the District of any witnesses interviewed by District;
  - i. the name(s) and job title(s) of the individual(s) involved in the handling of the complaint/report;
  - j. all actions the District took in response to the report/complaint/concerns raised, including corrective action taken, disciplinary sanctions imposed, supportive services and remedies offered and/or provided to individuals (e.g., counseling, safety measures); and/or District-wide remedies;
  - k. the final outcome of any investigation of the report/complaint, including copies of any incident/investigative reports, final determination, and any appeals;
  - l. if the District did not investigate any particular report/complaint, the reason(s) for not investigating, and the name(s) and job title(s) of the person(s) who made the decision;
  - m. any notice of the investigative findings provided to the complainant and/or other notice regarding the report/complaint, including notice of any outcomes on appeal; and
  - n. the complete case file for the report/complaint identified, including internal emails or other correspondence, internal and external memoranda, incident/investigative reports, video and audio recordings, witness statements, logs, forms, interview notes, notes regarding remedies provided, hearing transcripts, meeting minutes, and notes generated.
7. State whether the District conducts trainings and/or holds informational sessions with the student community and/or District staff regarding students' rights under Title VI, how to report possible violations of Title VI, and/or the District's obligation to respond to Title VI complaints. If so, provide the dates of such events, a description of the attendees, and any materials presented and/or distributed.
8. A detailed description of any training regarding discrimination, including harassment, based on national origin, including shared ancestry, provided to District staff. For each such training, provide the date(s) it was delivered, a description of the training, a list of the names and job titles of the individuals who attended the training, and copies of any materials distributed at the training.

9. A copy of the District's policies and practices governing student participation in protests and walkouts.
10. A copy of the District's policies and practices governing a teacher's expression or discussion of personal, political, or controversial viewpoints in the classroom and consequences for violating such policies and practices.
11. A copy of the District's policies and procedures regarding the posting of flyers or other information on school campus, the nonconsensual filming of students and "*doxxing*" or the act of publicly providing personally identifiable information about an individual or organization in the District community, including the consequences for violating such policies and practices. Please include a copy of all complaints received regarding flyers being torn down or removed, the "*doxxing*" of District students, unwanted/nonconsensual filming of students, including at protests or walkouts, and detail the District's response to each complaint with supporting documentation.
12. A copy of the District's policies and procedures governing students, parents, and community members' participation at school board meetings, including the amount of time allotted to each speaker, how speakers are chosen and in what order, who is responsible for the orderly administration of school board meetings, and what steps, if any, the District takes to ensure that everyone who wishes to participate in school board meetings are given an equal or fair opportunity to be presented at board meetings.
13. A copy of all school board meeting agendas and minutes from October 1, 2023, to the present.
14. A copy of any statement of support or any public acknowledgment of the conflict in Gaza by the school board from October 1, 2023 to the present.
15. To the extent not covered by the Data Requests above, provide a narrative response, including a description of the District's response, along with all supporting documentation, regarding each of the alleged incidents below:
  - a. In (b)(6); (b)(7)(A); (b)(7)(C) the school board president gave a statement honoring the suffering of the Jewish community but has not made a similar statement for the suffering of the Palestinian community;
  - b. At the (b)(6); (b)(7)(A); (b)(7)(C) school board meeting, a parent/community member verbally attacked a student board member for expressing support for students who participate in pro-Palestine walkouts;
  - c. At the (b)(6); (b)(7)(A); (b)(7)(C) school board meeting, two parent groups who were speaking in support of teaching about Palestine were not given extra time even though other groups with multiple speakers were given extra time.

- d. At the (b)(6); (b)(7)(A); (b)(7)(C) board meeting, a student leader of the Muslim Student Association at a District high school was not permitted to speak during the first part of the public comment section;
  - e. At the (b)(6); (b)(7)(A); board meeting, a parent/community member used antisemitic slurs in front of Jewish students who were at the meeting to support teaching about Palestine; and
  - f. The school board allows Jewish-Zionist communist members more time to speak during public comment compared to speakers on other topics, including speakers who voice pro-Palestine viewpoints.
16. A copy of the District's policies and procedures for providing mental health counseling to students. Provide a list of all District bilingual counselors, indicating the languages in which they provide counseling and the schools to which they are assigned or made available. Also include a copy of any complaints to any District employee and/or board member about the lack of or understaffing of Arabic-speaking counselors for students.
  17. A copy of the District's policies and procedures for communicating about school programs and activities with parents with LEP, including interpretation and translating documents (including Individualized Education Programs) into another language. Provide a list of all staff available to provide interpreter and translation services for school information and documents, indicating the languages in which the interpreters and translators are proficient to provide language assistance. Also include a copy of any complaints received regarding translating District and school documents into Arabic or interpreting parent-school communications in Arabic.
  18. The name, job title, address, telephone number, and email address of the District's designated contact person for this complaint.
  19. Any other information the District believes will assist OCR in this investigation, including the identification of relevant witnesses. For each individual identified, please provide the individual's name, title, and current contact information.