



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

May 16, 2024

By email only to [denisekp@brandeiscenter.com](mailto:denisekp@brandeiscenter.com)

Denise Katz-Prober  
Director of Legal Initiatives  
The Louis D. Brandeis Center, Inc.  
1717 Pennsylvania Avenue, NW, Suite 1025  
Washington, DC 20006

Re: Case No. 11-23-1694  
Community School of Davidson

Dear Ms. Katz-Prober:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of this complaint filed against the Community School of Davidson. You filed the complaint on behalf of a student at the School (the Student). You alleged that the School discriminated on the basis of national origin by failing to respond to reports that students subjected the Student to harassment based on national origin (perceived shared Jewish ancestry) between August 2021 and May 2023. For the remainder of this letter, we will refer to you as the Complainant.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin, including shared ancestry or ethnic characteristics, in any program or activity receiving federal financial assistance from the Department of Education. The School receives federal financial assistance from the Department of Education, so OCR has jurisdiction over it pursuant to Title VI.

During its investigation to date, OCR reviewed information provided by the Complainant and the School. OCR also interviewed School administrators. Before OCR completed its investigation, the School expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

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

[www.ed.gov](http://www.ed.gov)

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**Legal Standard**

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 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 race (the harassment might be referencing the race of a sibling or parent, for example, that is different from the race 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.

A recipient violates Title VI if one of its agents, acting within the scope of their official duties, has treated an individual differently on the basis of national origin in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to interfere with or limit the ability of the individual to participate in or benefit from the services, activities, or privileges provided by the recipient. If the alleged harasser is an agent or employee of a recipient, acting within the scope of their official duties, then the individual will be considered to be acting in an agency capacity and the recipient will be deemed to have constructive notice of the harassment.

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.

### **Analysis**

Based on the evidence obtained to date, OCR determined that there was evidence to substantiate that students subjected the Student to harassment that created a hostile environment based on his perceived national origin (shared Jewish ancestry) and that the School had actual notice of the harassment. OCR is concerned that the School failed to consistently take prompt and effective steps to redress the hostile environment for the Student and other students; and failed to effectively redress the hostile environment at the School more broadly.

The School also did not maintain adequate documentation of its investigations into the incidents of harassment at the School. OCR is concerned that the School's incomplete documentation of any investigations, including interviews, and the lack of documentation of steps the School stated it took in response to the harassment may have impeded the School from identifying whether a hostile environment existed for other students and from taking timely, reasonable, and effective steps to eliminate the hostile environment.

Specifically, the evidence shows that on March 20, 2023, the Parents and Student informed the School that other students were harassing the Student based on his perceived shared Jewish ancestry and had been doing so since the 2021-2022 school year. In response, the School asked the eighth-grade teachers to increase the supervision of the students involved and conducted interviews with the students identified by the Parents and the Student as engaging in the harassing conduct and some other students who witnessed the harassment. Evidence from the interviews indicated the harassment was severe, persistent, and pervasive and had been occurring since the 2021-2022 school year.

In response, the School disciplined Student A, reportedly disciplined Student B, and stated that it held parent conferences with several students' parents. OCR is concerned that the School did not take reasonable and effective steps to eliminate the hostile environment. For example, although the Student alleged, and Students A and B confirmed, that an additional student made antisemitic comments to the Student, there is no evidence that the School disciplined or provided any response regarding him.

Additionally, despite evidence from the interviews that a hostile environment may have begun during the 2021-2022 school year, the School did not provide documentation that it investigated incidents from the prior year or that it investigated whether any student bystanders witnessed and were impacted by the ongoing harassment. The School also did not conduct interviews or provide notes of conversations with teachers to determine if they witnessed the harassment from the prior year or continued to witness harassment. Further, there is no evidence that after substantiating that harassing conduct occurred in March 2023, the School took steps to address the harassment with the Student to mitigate its effects, such as offering supportive measures at this time or determining at this time whether there should be changes in class schedules for the students who admitted harassing him. Additionally, there is no evidence that the School put in effective supports for bystanders who may have witnessed the antisemitic comments and experienced the impact of a hostile environment.

The evidence shows that the Parents and a student witness reported to the School that Student A continued to harass the Student on March 31, 2023, and the Student reported that Student B also allegedly retaliated against him while playing soccer at the School. The School asserted that it interviewed the Student about an incident that occurred while playing basketball with Student B and informed the Parents it did not substantiate the allegations; however, the School did not provide information that it investigated the alleged soccer incident or documentation that it interviewed the student witness or Student A about the allegations.

Despite subsequent steps that the School said it took from April 4 through 24, 2023, including increasing supervision of Student A and B, the provision of additional education on the Holocaust and a workshop on discrimination, the Parents and Student reported to the School on April 25, 2023, that students continued to harass and retaliate against the Student. The School stated that it could not substantiate the Student's claims; however, it did not provide documentation substantiating that it investigated the ongoing harassing comments. The evidence shows that at this point the School moved Students A and B out of some of the Student's classes – almost a month after the initial allegations of harassment were substantiated; although, Students A and B remained in other of the Student's classes through the end of the school year.

The evidence shows that the Parent again raised allegations of harassment and retaliation in May 2023, including specific incidents that she stated occurred the prior school year. While the School stated that it found the allegations to be unsubstantiated, the School did not provide any information that it took any action to investigate the reports of harassment from the 2021-2022 school year except to forward a copy of the allegations to the Lower School administration or that it investigated the allegations of ongoing harassment and retaliation.

## **Conclusion**

On May 10, 2024, the School agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the identified violations. OCR will monitor the School's implementation of the agreement until the School is in compliance with the terms of the agreement and the statutes and regulations at issue.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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. OCR would like to make you aware that 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.

Please be advised that the School 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 School with OCR.

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

If you have any questions, please contact the OCR attorneys assigned to this complaint, Samantha Shofar, at [Samantha.Shofar@ed.gov](mailto:Samantha.Shofar@ed.gov), or Amy Fellenbaum, at [Amy.Fellenbaum@ed.gov](mailto:Amy.Fellenbaum@ed.gov).

Sincerely,

JENNIFER  
BARMON

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Jennifer Barmon  
Team Leader, Team III  
Office for Civil Rights  
District of Columbia Office