

February 28, 2024

Hon. Catherine Lhamon  
Assistant Secretary for Civil Rights  
US Department of Education  
Office for Civil Rights  
Email: [Catherine.Lhamon@eg.gov](mailto:Catherine.Lhamon@eg.gov)

Emily Frangos  
Regional Director  
Office for Civil Rights  
District of Columbia Office,  
US Department of Education  
Email: [OCR.DC@ed.gov](mailto:OCR.DC@ed.gov)

Re: Civil Rights Violations at Berkeley Unified School District (“BUSD”)

Dear Assistant Secretary Lhamon and Ms. Frangos:

## **Introduction**

The Louis D. Brandeis Center for Human Rights Under Law (the “Brandeis Center” or “LDB”) and the Anti-Defamation League (“ADL”) file this complaint on behalf of their organizations and the many parents at BUSD schools whose children have been subjected to severe and persistent harassment and discrimination on the basis of their Jewish ethnicity, shared ancestry, and national origin, and whose reports to administrators have gone ignored for months.

Over the past four months, BUSD has knowingly allowed its K-12 campuses to become viciously hostile environments for Jewish and Israeli students. While anti-Semitism has flared up at BUSD from time to time in the past, it positively surged after October 7, 2023, when Hamas carried out a terrorist attack in Israel, massacring, torturing, and kidnapping 1400 innocent civilians, including infants, children, and the elderly. Most people across the globe were horrified, but at BUSD, a virulent wave of anti-Semitism swept through its schools immediately following the massacre. Jewish and Israeli students have since been subjected to nonstop anti-Semitic bullying and harassment by their teachers and peers, in hallways, in classrooms, and in school yards.

Reported incidents of anti-Semitism include school “walkouts” praising Hamas with students shouting “f-- the Jews” and “KKK.” Teachers use class time to propagandize that the Hamas massacre was admirable “resistance.” Following their teachers’ lead, students bully their Jewish peers and deride their physical appearance.

Parents regularly report anti-Semitic incidents affecting their children to the administration, but BUSD has done nothing to address, much less curtail, the hostile environment that has plagued BUSD for over four months. At most, misguided administrators have attempted to “resolve” problems involving teachers by moving Jewish and Israeli students into new classes. As a result, anti-Semitism is normalized throughout BUSD. And teachers have responded with threats. One teacher approached a parent who had complained about her, saying, “I know who you are, I know who your f---ing wife is and I know where you live.”

Non-Jewish students are led by their teachers’ example to believe that they can freely denigrate their Jewish and Israeli classmates, telling them, e.g., that “it is excellent what Hamas did to Israel” and “you have a big nose because you are a stupid Jew.”

The environment is so bad that Jewish and Israeli students are often afraid to go to school. For the foregoing reasons, and as detailed more fully below, the Brandeis Center and ADL ask the Department of Education’s Office for Civil Rights (“OCR”) to initiate an investigation into BUSD, a recipient of federal financial assistance.<sup>1</sup> The Complainants also request mediation pursuant to Section 201(a) of OCR’s Case Processing Manual.

## **Statement of Facts**

### **1. Walkouts for Gaza and Hamas**

Since October 7, 2023, BUSD teachers and administrators have used their influence and power, as well as BUSD resources and facilities, to promote, support, and organize walkouts and teacher activities denigrating Israelis and calling for the elimination of Jews. BUSD teachers, staff, and administrators have participated in and encouraged students to join walkouts, depriving Jewish and Israeli students of a safe place to learn and all students of instruction.

The walkouts have taken place during school hours and have entailed students leaving their classrooms, missing lessons, exiting the school building, and walking down public streets to locations off campus. BUSD has not notified parents in

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<sup>1</sup> See 42 U.S.C. §2000d *et seq.*; see also 34 CFR §§100.3(b)(1)(i), (iv), (vi).

advance and did not provide permission slips for parents to sign, as they do for school-sanctioned field trips. Instead, BUSD has permitted students to leave school grounds, without parental permission to join rallies denigrating Israelis and Jews.

**a. BHS Walkout for Gaza (October 18, 2023)**

The Arab Resource and Organizing Center (“AROC”), which contracts with some BUSD schools to provide limited services for Arab students, called for all students in the Bay Area and across the country to stage a protest in support of Gaza during school hours on October 18, 2023, just 11 days after Hamas’ terrorist attack on Israeli civilians. AROC’s website explains that the Walkout for Gaza was part of a “National Day of Action” aimed to “to stop the genocide in Gaza and demand that local leaders protect Palestinian, Arab, Muslim and all students against racist attacks.”<sup>2</sup>



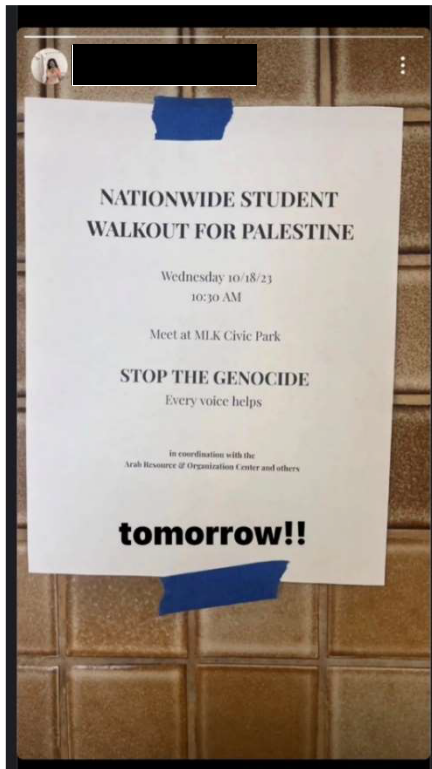
Students from Berkeley High School (“BHS”) left class on October 18, 2023 without parental permission and walked through the city of Berkeley chanting, “Stop bombing Gaza” and “From the river to the sea, Palestine will be free,” a phrase that calls for the elimination of all Jews from the State of Israel.<sup>3</sup>

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<sup>2</sup> <https://legalinsurrection.com/2023/10/hundreds-of-san-francisco-high-school-students-leave-class-to-protest-israel/>.

<sup>3</sup> “At Berkeley High walkout, lone pro-Israel protester makes dad proud,” The Jewish News of Northern California, October 18, 2023, <https://jweekly.com/2023/10/18/at-berkeley-high-walkout-lone-pro-israel-protester-makes-dad-proud/>; “BHS students

Teachers promoted the Walkout for Palestine to students in their classes, and teachers and administrators were present at the walkout, watching from the sidelines while students shouted vile anti-Semitic chants. On the day of the planned Walkout for Palestine, one high school teacher told his class that he would excuse absences for students who attended the walkout, leaving the one Jewish student in the class alone with the teacher who promoted the Walkout and isolated from his peers. No instruction was offered to students left behind in classes when teachers participated in the Walkout.



#### **b. Middle School Walkout for Palestine (October 18, 2023)**

Martin Luther King, Jr. Middle School (“MLK”) students also participated in the AROC-sponsored Walkout for Palestine on October 18, 2023, receiving teacher and administrative support, and using school resources. Teachers handed out fliers promoting the walkout and middle school teachers and administrators helped organize middle school pupils (typically 11-14 years old) on the day of the Walkout, instructing students to gather in school amphitheater and allowing students to leave

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walk out in support of Palestine,” Berkeley High Jacket, November 3, 2023, <https://berkeleyhighjacket.com/2023/news/bhs-students-walk-out-in-support-of-palestine/>.

through the school's back gate which typically remains locked during school hours. Pupils were heard at the October 18th walkout chanting, e.g., "Kill the Jews," "F--- the Jews," "F--- Israel," "KKK," "Kill Israel," "I hate those people," and "From the River to the Sea, Palestine will be free."

MLK middle school students who left school and attended the October 18th walkout had their absence marked excused, contrary to school policy which says, "every minute of a child's time at school is important. Children who are absent for even one day, or who arrive later than their classmates, miss valuable instruction time and can easily fall behind in school" and, "satisfactory school progress is dependent upon regular attendance."<sup>4</sup> The school's attendance policy requires absences to be verified by a parental note, phone call, or email; student absences may be excused only for "illness, medical appointments, funerals, religious holidays, and court appearances." Absences for any other reason are "considered unexcused absences."<sup>5</sup>

The conduct of teachers and administrators in the face of calls for the killing of Jews and the destruction of Israel sends a chilling message to Jewish and Israeli students—namely, that their BUSD teachers and administrators support anti-Semitic hatred and will therefore permit, and even support, anti-Semitic activity.

**c. BHS Ceasefire Demonstration (February 2, 2024)**

Teachers and staff at BHS organized, promoted, and participated in a demonstration calling for a ceasefire in the Israel-Gaza war. The event took place on the school's theater steps during school hours on February 2, 2024. The parents of Jewish and Israeli students at BHS asked BUSD to intervene.

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<sup>4</sup> BUSD Attendance Policy, <https://www.mlkmiddle school.org/attendance-policy>.

<sup>5</sup> *Id.*



These parents reminded BUSD of the District’s “Controversial Issues” policies which state, inter alia, that “teachers within BUSD are dedicated to creating safe spaces where students can explore differing viewpoints,” and that BUSD “steadfastly stands united against hatred in all its forms.”<sup>6</sup> BUSD Board Policy 6144 prohibits a teacher from using “his/her position to forward his/her own historical, religious, political, economic, or social bias.”<sup>7</sup>

Instead of ensuring the safety of Jewish and Israeli students at BHS, and instead of ensuring that BHS teachers complied with the district’s Controversial Issues and Hate-Motivated Behavior Policies,<sup>8</sup> BHS Principal [REDACTED], and BUSD

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<sup>6</sup> BUSD Teaching of Controversial Issues Policy,  
<https://www.berkeleyschools.net/teaching-of-controversial-issues/>.

<sup>7</sup> BUSD Board Policy 6144: Controversial Issues,  
<https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030527&revid=TzfgXblCCt8WnARk49rptA==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=ruE8yj8gaZHBkLjNHwMkZw==&PG=6&IRP=0&isPndg=false>.

<sup>8</sup> *Id.*; BUSD Board Policy Manual, Policy 5145.9: Hate-Motivated Behavior,

Superintendent [REDACTED] responded to the concerned Jewish parents in an email to the BUSD community, acknowledging their receipt of “concerns from community members about a potential ceasefire demonstration and art making at BHS at lunchtime this Friday, February 2.” *See Exhibit A, attached.* He failed, however, to take any action to protect the Jewish and Israeli students and failed to enforce the school’s policies, allowing the event to be sponsored, promoted, and attended by teachers without repercussion. BUSD’s silence and non-compliance with its own Policies has only encouraged the hostile environment for Jewish and Israeli students, who continue to be harassed and bullied by teachers and other students on the basis of their national origin and limiting their educational opportunities.

## **2. Anti-Semitic bullying by BUSD teachers**

Harassment by teachers is particularly harmful to students due to the power imbalance and resulting loss of trust in their teachers and in the school’s ability to keep them safe. Jewish and Israeli students and their parents experience fear of retaliation by teachers and schools for reporting incidents of anti-Semitism, given the school’s failure to support them and affirmative statements by teachers that they will retaliate.

Confronted with repeated complaints about anti-Semitic harassment by certain teachers, BUSD administrators moved Jewish and Israeli children out of these classes, ostensibly to protect them, but doing so actually encouraged the teachers to continue with their indoctrination and disrupted the educational experience of the students who were moved.

These are some of the teachers about whom parents and students have repeatedly complained since October 7:

### **a. BHS art teacher [REDACTED]**

[REDACTED] has spent significant class time imposing his anti-Semitic views on students by showing them violent pro-Hamas videos, projecting anti-Israel and anti-Semitic images during class, papering his classroom walls with these images, and promoting the October 18, 2023 Walkout for Palestine and organizing the February 2, 2024 demonstration.

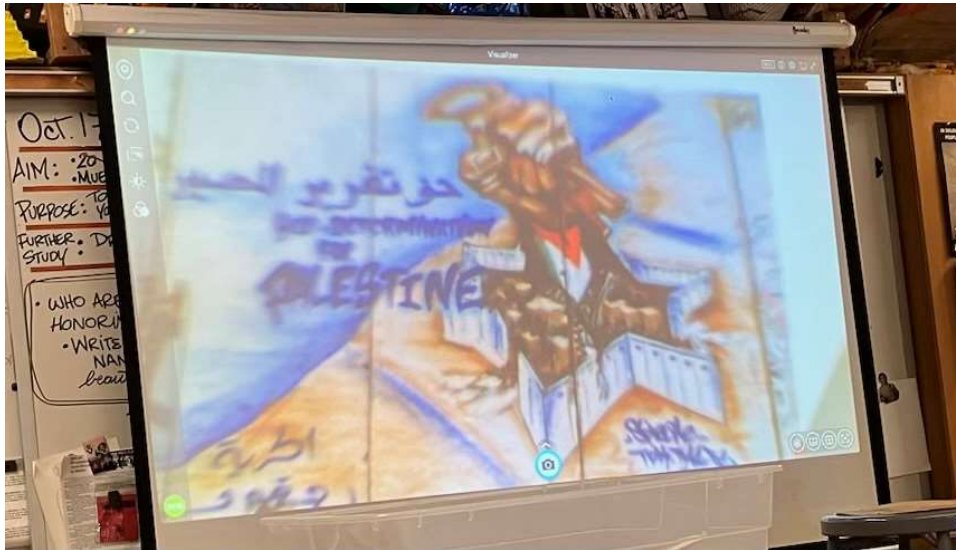
Following the October 7 massacre, [REDACTED] displayed violent and inflammatory materials in his classroom including a projection of an image of a fist holding a

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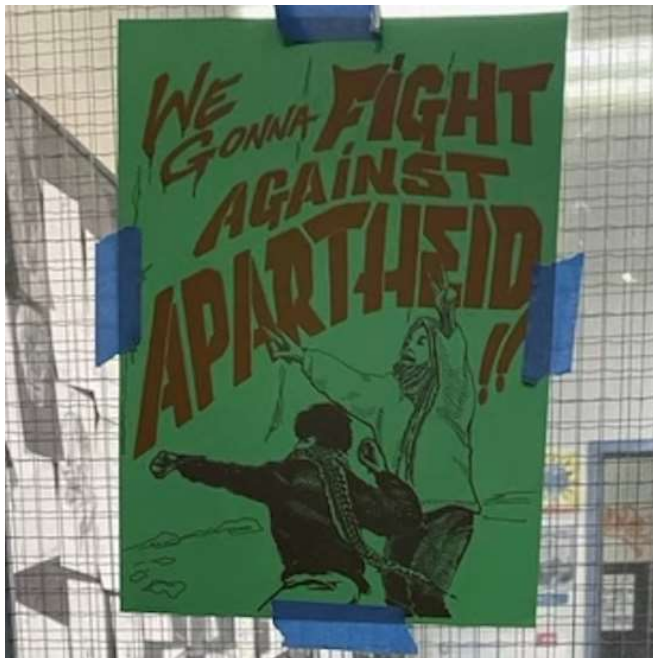
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Palestinian flag and punching through a Star of David.



Other examples include a poster stating, “In solidarity with the Palestinian people’s liberation struggle, Tear down the Apartheid Wall,” depicting people tearing through a wall while holding Palestinian flags, and a picture on the outside of his door showing a young person with a keffiyeh around his neck, throwing a rock, under the words “WE GONNA FIGHT AGAINST APARTHEID!!”





The overwhelming amount of anti-Israel and anti-Semitic materials in [REDACTED] class prompted the parents of Jewish and Israeli students to complain to the principal and ask to have the teacher disciplined or prevented from teaching such materials. In response, the BHS principal acknowledged that she is aware of the issues in [REDACTED] class and assured parents that the inflammatory and anti-Semitic materials would be removed from [REDACTED] classroom. But they are still there. And the only action taken was to remove Jewish and Israeli students from the class.

[REDACTED] continues to indoctrinate his art students. The following are some of the Jewish students who have reported feeling unsafe in [REDACTED] class:

Student A

In response to [REDACTED] presenting explicit anti-Israel images in his high school art class, Student A began shaking and crying and ran out of class without even taking her belongings. When Student A's parent called the school, the vice principal expressed concern, saying that educators have a duty to protect their students and that students shouldn't be "captive audiences" to teachers on difficult subjects. He also said that students should be given a heads up and a chance to opt out of seeing disturbing material at the very least. The vice principal said he would investigate and report back to the parent, but the parent never heard back.

When Student A reported being shaken and distraught a second time, the vice principal exclaimed "why is she still in that class?" both admitting to a hostile environment and blaming the student for staying in it. Instead of addressing the hostile environment in the classroom, the vice principal immediately moved Student A to another class. Within a few weeks of moving to a new classroom, the new teacher began wearing a "Free Palestine" patch on her clothing. When Student A's parent contacted this teacher to discuss how to help her daughter feel safe and included in the class, the teacher stated that she could talk about the student's academic progress but would not talk about her safety in the classroom.

On another occasion, the vice principal told Student A's parent that he would only act on "objective" symbols of hate, as if symbols could be objectively measured, but he refused to continue the conversation if BUSD was being accused of anti-Semitism. Ultimately, the vice principal was clear: he will not address conduct that is making Jewish and Israeli students in the district feel marginalized, threatened, and harassed based on their Jewish identity.

Student A is now afraid to go to school and does so only reluctantly.

### Student B

Student B, a 9th Grader, was also upset about the anti-Semitic climate in [REDACTED] classroom. When his mother reported this to the principal, she was told that her son could go to the health center or the library during the art class period. Student B was not immediately placed in another class, and [REDACTED] continued subjecting students to the hostile environment in his classroom.

Student B sat in the library for five days without any instruction or new class placement. The principal informed Student B that he could flip first and fifth period to avoid [REDACTED] class, causing Student B's academic schedule to be significantly disrupted by the mid-semester change. Student B eventually moved to another class where the new teacher wears "Free Palestine" stickers on her clothing.

Student B continues to feel marginalized and unwelcome.

### Student C

Student C enjoyed the material he was learning in [REDACTED] class, but the anti-Semitic climate interfered with his learning. Like Student B, he left [REDACTED] class for a teacher wearing "Free Palestine" pins on her clothing, another classroom environment where Student C did not feel welcome. Student C found himself embroiled in conversations at school, over and over, responding to students presuming Israel to be an aggressor and oppressor. He told his mother he felt forced to defend verbal attacks against the Jewish homeland which distracted him from his educational pursuits. Segregating Jewish students left the rest of the students exposed to Mr. Norberg's anti-Semitic class material.

### **b. BHS History teacher [REDACTED]**

[REDACTED] expresses anti-Semitic stereotypes and defamations in class. Since October 7th, Jewish and Israeli students have repeatedly made requests to transfer out of her class. The students often change classes, but [REDACTED] anti-Semitic conduct persists. Students in her class are particularly fearful of retaliation because she teaches 11th and 12th grades, and they are concerned that their complaints will impact college admissions.

Despite the fear of retaliation, Jewish and Israeli students still feel compelled to leave her class due to the anti-Semitic climate. For example, [REDACTED] recently called Israel an "apartheid state," a common anti-Semitic defamation. She recently required her students to respond to the following prompt in class: "To what extent should Israel be considered an Apartheid State?" After showing a one-sided anti-Israel video, [REDACTED] said she could not find a video defending the Israeli side of

the debate and that articles that opposed the apartheid narrative were “laughable.” While some Jewish and Israeli students were able to leave [REDACTED] class, the rest of the students continued to be exposed to [REDACTED] anti-Semitic class material.

### Student D

Student D, a high school senior, has family in Israel and was so uncomfortable in [REDACTED] classroom that she began creating excuses not to go class. On one occasion, Student D was so distressed by the biased anti-Israel messaging in [REDACTED] class that she abruptly left class and campus. A serious student who had never skipped class and is in the process of applying to college, she said this was a difficult and painful decision. When Student D’s parents complained to the administration, Student D was moved out of [REDACTED] class while the environment in the class remained unchanged.

Student D was also deprived of educational opportunities afforded to her peers. The school shuffled three classes in her schedule, moving her to a new History class, new English class, and new Theory of Knowledge class, all to avoid addressing [REDACTED] classroom. Student D had to start three new classes in the middle of the semester, adjust to a new teacher and new students, and work to catch up with peers who did not have to move mid-semester. As a senior, Student D worries about how moving around to different classes in the middle of November will affect her college applications.

Student D also began to find that her peers adopted the anti-Semitic rhetoric espoused by teachers, causing her to feel socially isolated and alone in her Jewishness. After [REDACTED] promoted the High School Walkout, Student D’s very close friends attended the walkout during the school day and participated in the demonstration, which was rife with antisemitic propaganda, causing Student D to feel even more isolated and ostracized.

Students and parents are correct to fear retaliation by [REDACTED]. In a January 18, 2024 opinion piece in The Flipside, [REDACTED] calls for “accountability” of parents who complain about her teaching. She asserts that she feels compelled to teach the Palestinian perspective and “speak out against Zionist oppression,” and that BUSD should be offering her support instead of trying to appease the Jewish families who object to her biased message by giving them “what they want with no accountability.”<sup>9</sup> [REDACTED] thus concedes and even boasts that she seeks retaliation against Jewish and Israeli students and parents.

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<sup>9</sup> See [REDACTED], *Modern Day McCarthyism in Berkley*, Flipside, January 28, 2024, [Modern Day McCarthyism in Berkeley – The Flipside \(berkeleyflipside.com\)](https://berkeleyflipside.com).

**c. Willard Middle School history teacher [REDACTED]**

Student E

For a cultural heritage project, Student E gave a presentation on her Jewish heritage, sharing about her father being from a kibbutz in Israel. Due to [REDACTED] [REDACTED] hostile response and her obvious bias against Israel and Zionism, Student E no longer felt safe in [REDACTED] class after October 7th. When Student E's parents complained that she no longer wanted to go to [REDACTED] class, the school investigated. Student E told the investigator that no one understands what it is like to have grandparents and cousins and pets in Israel. The investigator concluded that staying in [REDACTED] class was not good for Student E's mental health and transferred Student E to a different class in the middle of the semester. Again, BUSD disrupted the student's education instead of addressing the hostile, anti-Semitic environment in the classroom. Student E had to switch PE and History and start over in two new classes.

Student F

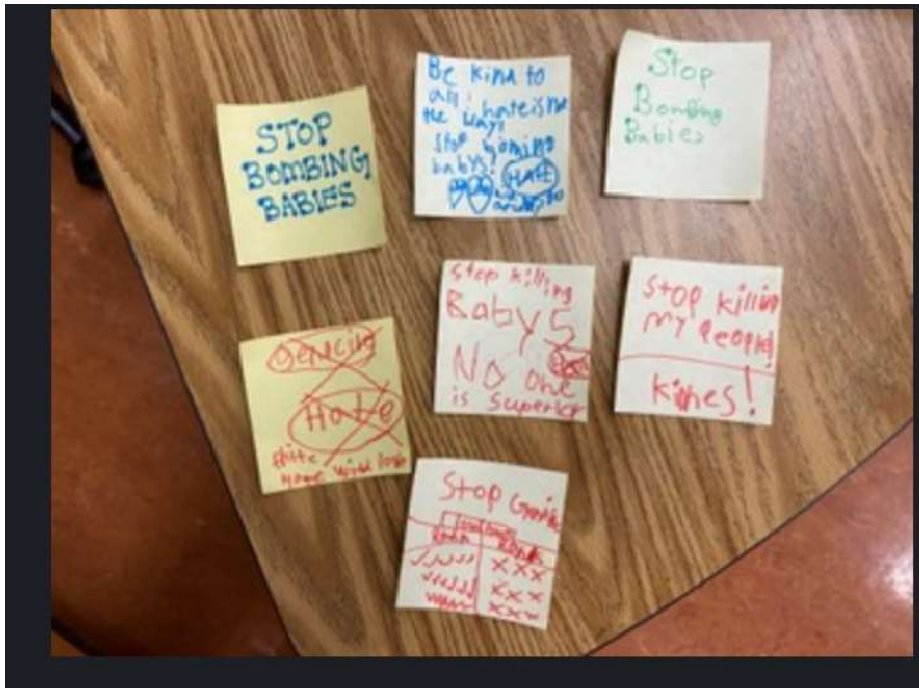
As a homework assignment, [REDACTED] asked Student F to identify her wishes for 2024. Student F said her greatest desire for 2024 was for Israel to defeat Hamas. She wrote this on the worksheet but did not feel comfortable turning it in, fearing how [REDACTED] would react. Student F felt so unsafe in [REDACTED] class that she censored herself, hiding her identity, and stifling her honest expression. In the end, Student F was so distressed by the hostile environment in [REDACTED] classroom and the failure of the school to take any action that her parents removed her from the school.

**d. Second Grade Teacher at Malcom X Elementary School, [REDACTED]  
[REDACTED]**

Immediately after October 7, before there had been any Israeli response to the massacre, [REDACTED] displayed a large Palestinian flag in the window of her second-grade classroom facing the courtyard outside, where students and parents walked into the school. For a number of Jewish and Israeli families, seeing this highly charged symbol placed in the window of a second-grade classroom right after the mass killing of Jews in Israel has felt threatening, hostile, and deeply upsetting.



██████████ also led an activity for second grade students in which they were instructed to write “messages of anti-hate” on sticky notes to hang in the school hallway. The sticky note written by ██████████ said, “Stop Bombing Babies.” Many second-grade children followed suit, writing, “Stop Bombing Babies” on their sticky notes. Instead of posting these notes on the wall outside of her own classroom, ██████████ posted these notes in another part of the building, outside of the classroom of the only Jewish teacher in the school. This sent a chilling message to all Jewish and Israeli families at Malcom X.



After a Jewish parent complained to the school about [REDACTED] anti-Semitic conduct, [REDACTED] approached the parent at a school event and said, "I know who you are, I know who your f---ing wife is and I know where you live." [REDACTED] social media posts made it clear that she knew who complained about her conduct and would continue to use her platform as a teacher to indoctrinate students with anti-Semitic material.



8:09



These photos are from September in the doorway of my elementary classroom. Those that know me know that I've been a non-neutral educator for all 20 years I've been a teacher. My practice is deeply rooted in love, strengthening character, relationship building, and justice... knowledge of self and legacies of struggles. I've been told that my magical power is connecting with all different kinds of kids and families and inspiring shifts of liberation, accountability, restoration, community healing, connections, and personal growth. I've never had an issue with my school families nor my community. For the first time in my career I was made a target by right wing zi0n!sts who took it upon themselves to cast a national net of complaints against me for practices all within my rights. These are folks who do not know me, nor recognize the work I do day in and day out, just people projecting some kind of narrative and thought that terrorizing, slandering, stalking, lying about and harassing a schoolteacher would be a positive healthy idea. I do and will forever use my platform to be a humble ally, shed light on dynamics of power and to free the people. Be careful ya'll, folks are ruthless and on a rampage. Free Palestine 🇵🇸

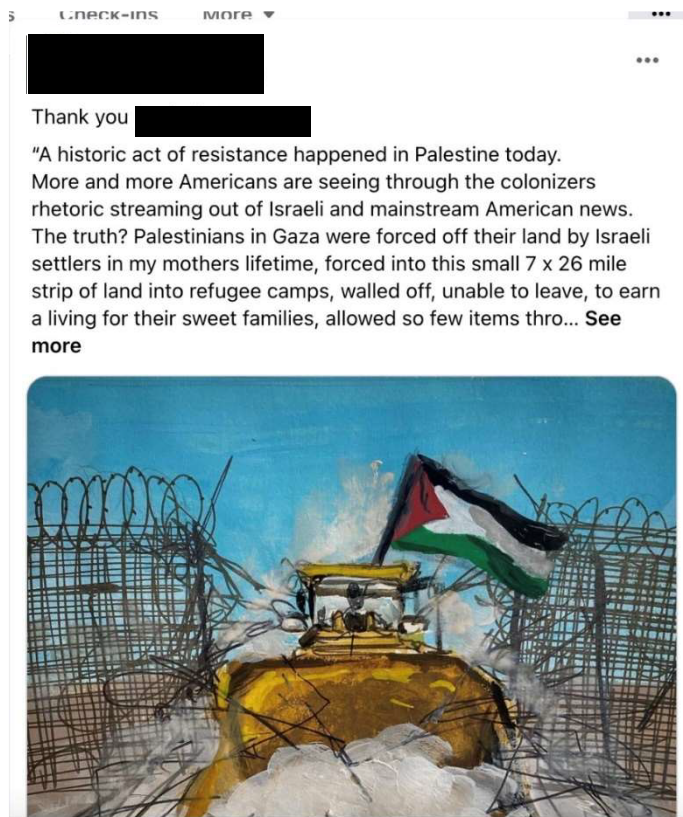


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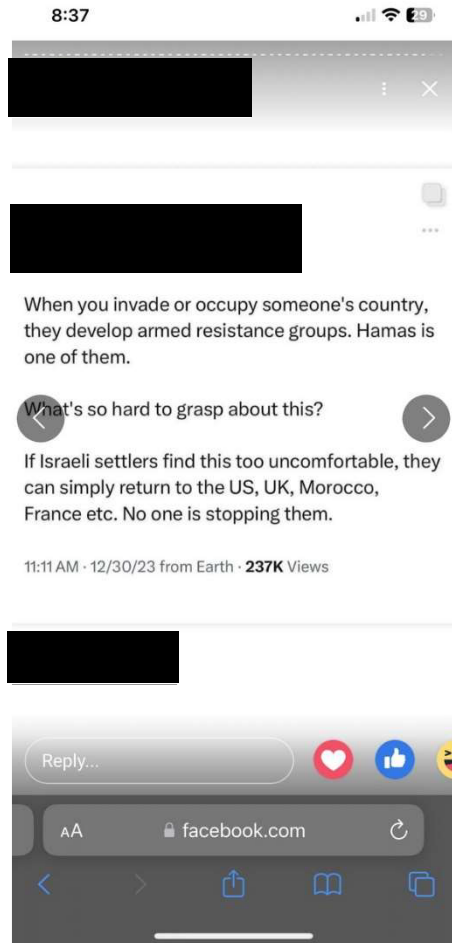
**e. BUSD teachers bring their anti-Semitic viewpoints into the classroom**

██████████, ██████████, and ██████████ brought their personal, anti-Semitic activity into the classroom, creating a hostile environment for Jewish and Israeli students, and using class time to indoctrinate other students with anti-Semitic rhetoric, tropes and false information about Israelis and Jews. While this complaint is not intended to regulate the private speech of BUSD teachers, these teachers bring their personal, biased viewpoints into the classroom and make their students feel more unsafe with their public viewpoints.

For example, on October 7th, ██████████ posted a photo of a bulldozer breaking through a fence with the comment, “A historic act of resistance happened in Palestine today.”



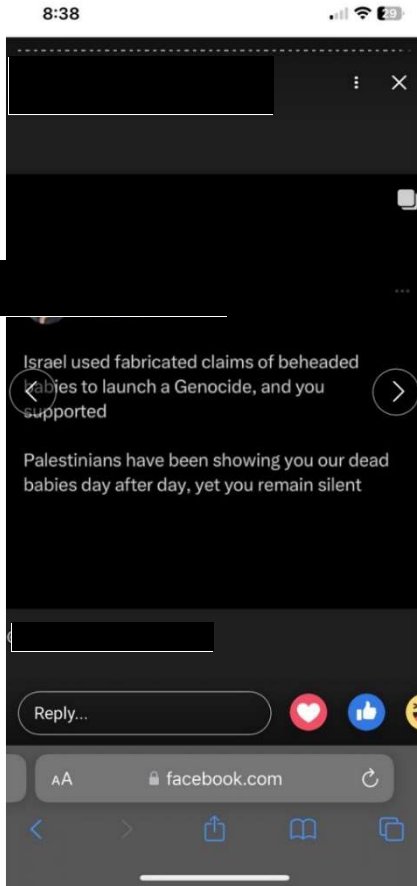
██████████ public social media following the October 7<sup>th</sup> massacre included a message saying that Israelis should “return to US, UK, Morocco, France, etc. Nobody is stopping them,” and reposted a message falsely claiming, “Israel used fabricated claims of beheaded babies to launch a genocide.”



[REDACTED] made her views about the Israel-Gaza war and about Israelis and Jews public in multiple ways. [REDACTED] social media (public at the time) was littered with anti-Semitic images and tropes. [REDACTED] also spoke to a large crowd of BUSD students at the AROC-sponsored Walkout for Palestine on October 18, 2023.<sup>10</sup>

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<sup>10</sup> Berkeley High Jacket, November 3, 2023, "BHS Students Walk Out in Support of Palestine," <https://berkeleyhighjacket.com/2023/news/bhs-students-walk-out-in-support-of-palestine/> ("Throughout the crowd, chants of "Free, free Palestine," "Stop bombing Gaza," and "From the river to the sea, Palestine will be free," could be heard. After reaching UC Berkeley, [REDACTED], [REDACTED], and [REDACTED], a BHS history teacher, spoke to the crowd").



Until recently, the social media account of [REDACTED] was public and could be viewed by BUSD students and their parents; [REDACTED] account is still public. The anti-Semitic images and messages confirmed the students' fears and made them feel even less safe in their classes.

### **3. Peer harassment and bullying**

In the post-October 7 climate, teachers' bullying and harassing of Jewish and Israeli students in the classroom (as detailed above) normalizes anti-Semitism and creates a hostile environment for Jewish and Israeli students. In this climate, peer on peer anti-Semitic bullying has escalated, as students are emboldened to emulate their teachers and perpetuate the hostility against their Jewish classmates.

Jewish parents have reported the following examples of anti-Semitic peer harassment in BUSD schools since October 7:

- A student approached two Jewish students who were speaking Hebrew and asked what language they were speaking. When the Jewish students replied

"Hebrew," the peer asked what country is that language from. When the Jewish students replied "Israel," the peer asked if there was a war now. When the Jewish students replied "yes," the peer claimed that her teacher said that it is excellent what Hamas did to Israel and that they finally showed Israel.

- At Berkeley High School, a student in an Ethnic Studies class gave a presentation to the class for his ancestry project related to his Jewish ancestry. After his presentation, he saw a note on another student's desk with the name of his project. The word "Jewish" was crossed out and "free, free Palestine" was written on top.
- A Jewish student at Martin Luther King Jr. Middle School told the administration at a School Board meeting on November 15, 2023 that peers comment on his features because he is Jewish, making comments such as "You have a big nose because you are a stupid Jew" and "I don't like your people." They also tell him that his traditions are dumb and not welcome.
- The parent of a Jewish student at Willard Middle School reported to BUSD that her daughter was called a "midget Jew" in the hallway between classes, shortly before October 7. This student recently left the district due to pervasive bullying and anti-Semitism, and the school's failure to protect her.
- Jewish and Israeli students have been asked what "their number is," referring to the numbers tattooed on Jews held in concentration camps during the Holocaust.
- When a science teacher mentioned that two girls in the class, who happen to be Jewish, had made a mistake during an experiment, a student in the class responded by saying, "of course, it was the Jews."

The increase of bullying incidents against Jews is the result of the overall hostile environment in the district perpetuated by teachers, staff, and administrators.

#### **4. BUSD's failure to respond to complaints and document requests**

BUSD has failed to take meaningful steps, let alone the prompt and effective steps required, to address the anti-Semitic climate, end the harassment, and create a safe environment for all students.

Student B's parent filed three complaints in November and December about anti-Semitic harassment in BUSD schools. BUSD acknowledged these complaints but has not responded and has not even told the parent that there would be an investigation. Student B's parent also reached out to the BUSD administration about the February 2, 2024 protest at Berkeley High School, which was scheduled to take place two days later. BUSD responded with a generic letter to the entire district citing its free speech policies. No action was taken to protect Jewish and Israeli students or to enforce school policy.

BUSD Civil Rights Investigator [REDACTED] told Student D's father in November 2023 that she would conduct an investigation and issue a report addressing complaints of anti-Semitism in his daughter's class. Specifically, she stated, "I'll be interviewing any relevant witnesses as well as [REDACTED] to wrap up the investigation. Once the investigation is finished, I'll draft an investigation report, which will be reviewed by my supervisor. Once my supervisor has reviewed the report, you will be provided a copy of the report, which will include any potential recommendations/remedies."

Student D's parent followed up with [REDACTED] by email on January 11, 2024, asking, "Any news with regards to the status of the investigation? Do you know when it might be done?" [REDACTED] responded on January 12, "Thanks so much for following up with me! I'm working on finishing up the investigative report, which should be completed in the next week!" When Student D's parent had still not seen an investigative report on January 28, 2024, he emailed [REDACTED] again, "Hello [REDACTED], Any updates? Do you have an estimate of when your supervisor will finish the report?" She responded, "My supervisor was out the past few weeks attending to a family emergency, but she is returning this week so I'm hoping to get the report sent out shortly!" There has been no report.

BUSD is well aware of the rising number of complaints about anti-Semitism. Approximately 1,370 Berkeley community members signed a letter to the Berkeley Superintendent and Board of Education, stating that they are "dismayed, disappointed and frightened by the district's lack of care for our students' physical and psychological safety in school since the October 7 terrorist attacks, which killed more Jews than in any moment in our history since the Holocaust." See Exhibit B, attached.

The letter states:

- BUSD kids are reporting hearing antisemitic comments in the hallways, enduring blatant calls to "kill the Jews" or "eliminate Israel."
- Non-Jewish students [are] asking Jewish students what "their number is," referring to the numbers tattooed on many Jews in concentration camps during the Holocaust.
- Many students have endured antisemitic statements from teachers, and witnessed art and propaganda hung in their classroom with echoes to Nazi Germany.
- They report being worried about mob violence – being "jumped" at school for being Jewish.
- Kids who once proudly wore Stars of David or t-shirts from their religious camps, are moderating what they wear to school to help hide their Judaism.



They are keeping their heads down, hiding who they are, and moving through their school days in fear.

- Most parents who reported these incidents to the administration did not receive return calls or email responses. Those who received responses were greeted with antagonism, disbelief, and an utter lack of professionalism.<sup>11</sup>

Jewish parents have had no better luck with Public Records Act (“PRA”) requests. Many have filed document requests to BUSD but have not received timely responses, much less the documents they requested. California Government Code §7922.535 requires BUSD to respond to a request for public records within ten days of receipt. The ten-day period may be extended due to “unusual circumstances,” but no extension beyond fourteen days is permitted.<sup>12</sup> In response to a document request submitted to the district on January 26, 2024, BUSD responded, “We estimate that we can *begin* to produce responsive, disclosable records *in 90 days*.” No unusual circumstances were cited. *See* Exhibit C, attached (emphasis added).

In short, BUSD has failed to take meaningful steps, let alone the prompt and effective steps required, to address the anti-Semitic climate, end the harassment, and create a safe environment for all students.

## LEGAL DISCUSSION

### **I. BUSD has knowingly allowed a hostile environment to develop and flourish in violation of Title VI.**

#### **A. Title VI protects Jewish and Israeli students who are targeted on the basis of their national origin and shared ancestry.**

Title VI requires educational institutions that receive federal funding (like BUSD) to prevent discrimination and harassment that generates a hostile environment against students on the basis of their race, color and national origin.<sup>13</sup> Guidance issued by OCR and the Department of Justice in 2004, 2010, 2017, and 2023 affirms that Title VI covers discrimination against Jewish and Israeli students on the basis of their

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<sup>11</sup>“Community Letter to BUSD Board of Education,”  
<https://www.ipetitions.com/petition/community-letter-to-busd-board-of-education>.

<sup>12</sup> Gov. Code §7922.535 (b) (“no notice shall specify a date that would result in an extension for more than 14 days”).

<sup>13</sup> 42 U.S.C. §2000d *et seq.*; Executive Order 13899, Combating anti-Semitism, December 11, 2019, 3 C.F.R. §§68779-68780, available at <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism> (“EO 13899”).

“actual or perceived shared ancestry or ethnic characteristics.”<sup>14</sup> According to Executive Order (“EO”) 13899, which has been incorporated into OCR’s current policy guidance, Title VI must be enforced “against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.”<sup>15</sup>

Historically and legally, Judaism is understood to be both a faith and an ethnicity. Jews share not only religious traditions, but also a deep historical sense of Jewish peoplehood. The Jewish people’s history, theology, and culture are deeply intertwined with the Land of Israel.<sup>16</sup>

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<sup>14</sup> See Dear Colleague Letter, U.S. DEP’T OF EDUC. – OFFICE FOR C.R. (Nov. 7, 2023), available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202311-discrimination-harassment-shared-ancestry.pdf> (“2023 Dear Colleague Letter”); see also FACT SHEET: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics (Jan. 4, 2023), available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-shared-ancestry-202301.pdf>; (“2023 Fact Sheet”); Know Your Rights: Title VI and Religion, U.S. DEP’T EDUC. – OFFICE FOR C.R., January 17, 2017, available at <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf> (“2017 Know Your Rights, Title VI and Religion”); Letter from Assistant Secretary for Civil Rights Russlyn Ali, U.S. DEP’T OF EDUCATION. – OFFICE FOR C.R., October 26, 2010, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (“2010 Dear Colleague Letter”); Letter from Thomas E. Perez, Assistant Att’y Gen., U.S. Dep’t of Just.– C.R. Div., to Russlyn H. Ali, Assistant Sec’y for C.R., U.S. DEP’T OF EDUC. – OFFICE FOR C.R., Re: Title VI and Coverage of Religiously Identifiable Groups, September 8, 2010, [https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810\\_AAG\\_Perez\\_Letter\\_to\\_Ed\\_OCR\\_Title%20VI\\_and\\_Religiously\\_Identifiable\\_Groups.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2011/05/04/090810_AAG_Perez_Letter_to_Ed_OCR_Title%20VI_and_Religiously_Identifiable_Groups.pdf) (“2010 Letter Re Title VI and Religiously Identifiable Groups”); Kenneth L. Marcus, Title VI and Title IX Religious Discrimination in Schools and Colleges: Dear Colleague Letter, U.S. DEP’T OF EDUC.-OFFICE FOR C.R. (Sep. 13, 2004), available at <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html>.

<sup>15</sup> EO 13899, §1; see also Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR’s Enforcement of Title VI of the Civil Rights Act of 1964, U.S. DEP’T EDUC. – OFFICE FOR C.R., January 19, 2021, available at <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-anti-semitism-20210119.pdf>.

<sup>16</sup> Alyza D. Lewin, Zionism: The Integral Component of Jewish Identity that Jews are Historically Pressured to Shed, 26 ISRAEL AFFAIRS 330 (2020), available at <https://brandeiscenter.com/wp-content/uploads/2020/09/By-Alyza-D.-Lewin-Zionism-the-integral-component-of-Jewish-identity.pdf>.

For these Jews, expressing support for the Jewish homeland is a sincere and deeply felt expression of the Jewish people's shared ancestral, religious, and ethnic identification with the Land of Israel and of their Jewish ethnic identity. Harassing, marginalizing, demonizing, and excluding these Jewish and Israeli students on the basis of the Zionist component of their Jewish identity is just as unlawful and discriminatory as attacking a Jewish student for observing the Sabbath or keeping kosher.<sup>17</sup> Indeed, UNESCO has cautioned that "Jew" and "Zionist" today are often used interchangeably in an attempt by anti-Semites to cloak their hate.<sup>18</sup>

Many branches of the U.S. government, including the U.S. Department of Education and OCR, recognize that anti-Zionism may serve as a mask for anti-Semitism. Under White House Executive Order (EO) 13899, issued in 2019 and still in effect, executive departments and agencies charged with enforcing Title VI must consider the International Holocaust Remembrance Act's Working Definition of anti-Semitism (the "IHRA Definition") when investigating allegations of anti-Semitism.<sup>19</sup> EO 13899 remains in effect: the Department of Education affirmed its commitment to the EO in its 2023 factsheet on discrimination based on shared ancestry.<sup>20</sup> The Department did so again in May 2023 when it directed school administrators to review the Questions and Answers on [EO] 13899 in OCR guidance issued alongside the White House National Strategy on Countering Anti-Semitism.<sup>21</sup>

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<sup>17</sup> *Id.* at 2.

<sup>18</sup> See UNESCO & OSCE, ADDRESSING ANTI-SEMITISM THROUGH EDUCATION: GUIDELINES FOR POLICYMAKERS 21, 24, 82–83 (2018), available at <https://unesdoc.unesco.org/ark:/48223/pf0000263702.locale=en>.

<sup>19</sup> Executive Order 13899, Sections 2(a)(i)-(ii).

<sup>20</sup> See STATEMENT FROM U.S. ASSISTANT SECRETARY FOR CIVIL RIGHTS ON TITLE VI PROTECTION FROM DISCRIMINATION BASED ON SHARED ANCESTRY OR ETHNIC CHARACTERISTICS (Jan. 4, 2023) ("2023 Statement on Title VI Protection from Discrimination Based on Shared Ancestry or Ethnic Characteristics"), available at <https://brandeiscenter.com/statement-from-u-s-assistant-secretary-for-civil-rights-on-title-vi-protection-from-discrimination-based-on-shared-ancestry-or-ethnic-characteristics/https://brandeiscenter.com/statementfrom-u-s-assistant-secretary-for-civil-rights-on-title-vi-protection-from-discriminationbased-on-shared-ancestry-or-ethnic-characteristics/>. In her email, Assistant Secretary for Civil Rights Catherine Lhamon, notes, "Additional resources, including a Questions and Answers guide released in January 2021 that affirms OCR's commitment to complying with Executive Order 13899 on Combatting Anti-Semitism are available on the Shared Ancestry or Ethnic Characteristics page of OCR's website."

<sup>21</sup> See 2023 Dear Colleague Letter; see also 2023 Statement on Title VI Protection from Discrimination Based on Shared Ancestry or Ethnic Characteristics.

The IHRA Definition states that criticism of Israel similar to that leveled against any other country does not constitute anti-Semitism. But demonizing the Jewish State, calling for its destruction, blaming Jewish and Israeli students for the actions of the Israeli government, and/or subjecting Israel to double standards are classic earmarks of anti-Semitism.

IHRA's examples of contemporary anti-Semitism include these:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective—such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.
- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- 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.
- Applying double standards by requiring of Israel a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic anti-Semitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the state of Israel.

Expressing opinions that reflect these views is not, of course, unlawful. The IHRA Definition does not say people should be punished simply on the basis of speech. Instead, the IHRA Definition provides examples of anti-Semitic rhetoric that can help agencies recognize that conduct accompanied by such rhetoric may be anti-Semitic.

In light of “a nationwide rise in reports of hate crimes and harassment, including an alarming rise in disturbing antisemitic incidents and threats to Jewish [and] Israeli. ... students ... in P-12 schools,” OCR’s November 7, 2023 Dear Colleague Letter advises school communities that their federal legal obligations to ensure nondiscriminatory environments have “renewed urgency.”<sup>22</sup> “All students, including students who are or are perceived to be Jewish [and] Israeli ... are entitled to a school environment free from discrimination based on race, color, or national origin.”<sup>23</sup>

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<sup>22</sup> See 2023 Dear Colleague Letter at 1.

<sup>23</sup> *Id.*

This is not the case at BUSD.

**B. Jewish and Israeli students at BUSD are being subjected to a hostile environment.**

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on national origin; and (3) the recipient failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.<sup>24</sup>

OCR has explained that, “[h]arassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating.”<sup>25</sup> Harassment creates a hostile environment “when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.”<sup>26</sup> As OCR recently reminded schools, “unwelcome conduct based on shared ancestry or ethnic characteristics that, based on the totality of circumstances, is subjectively and objectively offensive” creates a hostile environment.<sup>27</sup>

In a recent decision, OCR cited the longstanding principle that “[a] school may be found to have violated Title VI if it fails to correct a hostile environment based on harassment of which it has actual or constructive notice.”<sup>28</sup> Once a recipient has actual or constructive notice, the recipient has a legal duty to take immediate steps to eliminate it--and prevent it from recurring.<sup>29</sup> “The appropriate response to a hostile environment based on national origin must be tailored to redress fully the specific problems experienced at the school as a result of the harassment.”<sup>30</sup> As discussed in the Statement of Facts, the harassment experienced by Jewish and Israeli students at BUSD includes verbal acts by both teachers and students, including name-calling (e.g. “midget-Jew”; “you have a big nose because you are a stupid Jew”) and graphic and written statements praising Hamas’ massacre of Israeli civilians and denigrating the Jewish State as genocidal and settler-colonialist. These

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<sup>24</sup> See [03231373-a.pdf \(ed.gov\)](#). at p. 11.

<sup>25</sup> See 2010 Dear Colleague Letter at 2.

<sup>26</sup> *Id.*

<sup>27</sup> See 2023 Dear Colleague Letter at 2.

<sup>28</sup> See [03231373-a.pdf \(ed.gov\)](#). at p. 12.

<sup>29</sup> See 2023 Dear Colleague Letter at 2.

<sup>30</sup> *Id.*

statements and graphics are posted on walls, windows, desks, and hallways throughout BUSD and around at least one elementary school perimeter where even very young children are confronted by them when they arrive at or leave the school.

Severe and pervasive harassment at BUSD is not confined to verbal and written attacks, but includes “unwelcome conduct based on shared ancestry or ethnic characteristics that, based on the totality of circumstances, is subjectively and objectively offensive,” such as “walkouts” and pro-Hamas rallies that intimidate, humiliate and effectively exclude those Jewish and Israeli students for whom connection to the Jewish State is integral to their Jewish and/or national identity and bullying by teachers so intense that it that leads Jewish and Israeli pupils to flee the classroom and administrators to move these pupils to other classrooms. One Second Grade teacher required her young pupils to participate in anti-Semitism by writing “Stop Bombing Babies” on post-it notes and sticking the notes outside of a Jewish teacher’s classroom.

Under the “totality of the circumstances,” the verbal and non-verbal acts of harassment and bullying set forth in the Statement of Facts have created a hostile environment that leaves Jewish and Israeli students feeling marginalized, attacked, frightened, and alienated to the point where many feel compelled to hide their Jewish or Israeli identity. These pupils also experience limits on their ability “to participate in or benefit from the services, activities, or opportunities offered by a school”<sup>31</sup> when they are shuttled between classes to separate them from hostile teachers or forced to miss class while other students participate in “walkouts,” school-sanctioned or otherwise. Pupils suffering from continual intimidation and harassment are unable to focus on their studies and benefit from their education.<sup>32</sup>

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<sup>31</sup> 2010 Dear Colleague Letter at 2.

<sup>32</sup> “A safe environment is a prerequisite for productive learning.” Johanna Lacoe, Too Scared to Learn? The Academic Consequences of Feeling Unsafe in the Classroom, Vol 55:10 Urban Education 1385 (2020) (citing Maslow, 1970; Piaget, 1936).



**C. BUSD has received scores of reports from parents about anti-Semitic harassment and bullying but has taken no steps to eliminate the hostile environment in its schools.**

For purposes of Title VI, harassment creates a “hostile environment” when, based on the totality of the circumstances, the harassment “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 the recipient’s education program or activity.”<sup>33</sup> A Title VI recipient “must take immediate and effective action to respond to harassment that creates a hostile environment” or when such harassment “negatively affect[s] the ability and willingness of Jewish students to participate fully in the school’s education programs and activities”<sup>34</sup> Further, a recipient can violate Title VI if peer harassment “is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored by school employees.”<sup>35</sup>

BUSD has received a record number of complaints of anti-Semitism since October 7 and is fully aware of the hostile environment in its schools. It has however failed to take prompt and effective steps “reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring.”

In the absence of action by BUSD, students continue to bully their Jewish and Israeli peers based on their Jewish ancestry.

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<sup>33</sup> See November 7, 2023 “Dear Colleague Letter” at 2; see also 2010 Dear Colleague Letter (stating that harassment creates a “hostile environment” when it “is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school”)

<sup>34</sup> See 2023 Dear Colleague Letter at 2 (emphasis added); see also 2010 Dear Colleague Letter at 2-3 (stating that a Title VI recipient “must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent the harassment from recurring”); *see also* 2010 Dear Colleague Letter at 1; see also Know Your Rights: Title VI and Religion, U.S. DEP’T EDUC.–OFFICE FOR C.R. (Jan. 17, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>; *see also* 2010 Dear Colleague Letter at 5-6.

<sup>35</sup> See 2010 Dear Colleague Letter at 1; see also See Know Your Rights: Title VI and Religion, U.S. DEP’T EDUC.–OFFICE FOR C.R. (Jan. 17, 2017), <https://www2.ed.gov/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>.

In cases where a hostile environment has developed to a fraction of the degree it has within BUSD, OCR has advised schools to, e.g., include “training or other interventions not only for the perpetrators, but also for the larger school community, to ensure that all students, their families, and school staff can recognize harassment if it recurs and know how to respond.”<sup>36</sup> A school may also need “to provide additional services to the student who was harassed in order to address the effects of the harassment, particularly if the school initially delays in responding or responds inappropriately or inadequately to information about harassment.”<sup>37</sup>

BUSD has taken no such steps. To the contrary, it has ignored scores of parent complaints, refused to discipline teachers and students who have engaged in anti-Semitic harassment, and failed to ensure the physical safety or mental well-being of the victims, many of whom are young children.

And as discussed above, BUSD is not meeting its legal obligation to provide school documents requested by parents.

## **II. BUSD has engaged in discrimination against Jewish and Israeli students.**

### **A. BUSD has discriminated by depriving its Jewish and Israeli students of educational opportunities afforded the rest of the community.**

Under Title VI, universities may not discriminate by excluding individuals from participating in educational programs or activities or by denying individuals the benefits of such programs on the basis of race, color or national origin.<sup>38</sup> The IHRA Definition states that “the denial to Jews of opportunities or services available to others” is “antisemitic discrimination.”

As discussed above, BUSD has taken no action to end the hostile environment in classrooms. Instead, and at best, it has removed Jewish and Israeli students from classrooms led by teachers intent on commending Hamas and denigrating Israelis. But forcing these students to move to new classes mid-semester has only allowed the teachers’ anti-Semitic rhetoric to infect the remaining students, while depriving the Jewish and Israeli students of educational opportunities afforded to their peers and putting them in the difficult position of having to catch up on class material they missed during the first half of the semester, adjust to new teachers and rooms full of new students, manage the emotions associated with the mid-semester moves, and

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<sup>36</sup> See 2010 Dear Colleague Letter at 3.

<sup>37</sup> *Id.*

<sup>38</sup> 34 CFR §§100.3(a), (b).

overcome challenges not faced by their peers. As discussed above, one student who liked the subject matter of the class he left was upset that he could not finish the projects he had started.

Jewish and Israeli students were also deprived of educational opportunities during “walkouts,” when regularly scheduled classes were cut short with no programming or instruction to replace them.

**B. BUSD has not applied its own rules regarding the teaching of controversial issues.**

BUSD Board Policy 6144 provides that controversial issues may be discussed in the classroom, only if:

- The issue is related to the course of study and provides opportunities for critical thinking, for developing tolerance, and for understanding conflicting points of view.
- The issue has a meaningful relationship to matters of concern to the students.
- Available information about the issue is sufficient to allow alternative points of view to be discussed and evaluated on a factual basis.
- All sides of the issue are given a proper hearing, using established facts as primary evidence.
- The issue has points of view which can be understood and defined by the students.
- The teacher does not use his/her position to forward his/her own religious, political, economic or social bias. The teacher may express a personal opinion if he/she identifies it as such and does not express the opinion for the purpose of persuading students to his/her point of view.
- Discussion or study of the issue is instigated by the students or by the established curriculum, but not by a source outside of the schools.
- The discussion does not reflect adversely upon persons because of their race, sex, sexual orientation, color, creed, national origin, ancestry, handicap or occupation.
- The oral or written presentation does not violate state or federal law.
- Any speaker brought onto the campus or into the classroom has received prior approval from the responsible site administrator.<sup>39</sup>

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<sup>39</sup> See BUSD Board Policy, Regulation 6144: Controversial Issues;  
<https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030527&revid=prcw95fZz4zm8u4reeYA9w==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=ruE8yj8gaZHBkLjNHWmKZw==&isPndg=&PG=6>; see also  
<https://simbli.eboardsolutions.com/Policy/ViewPolicy.aspx?S=36030527&revid=TzfgX>

Teachers who promote anti-Semitic, anti-Israel narratives in class violate this school policy for one or more reasons including the following:

- The issues are unrelated to the course of study;
- The one-sided “information” presented is not sufficient to allow alternative points of view to be discussed and evaluated on a factual basis;
- Only one side of the issue is presented;
- Teachers are not relying on established facts as primary evidence;
- Teachers are using their position to forward their own religious, political, economic or social bias;
- Teachers are not identifying the material as a personal opinion;
- Teachers do not refrain from seeking to persuade the students to their point of view;
- The discussion reflects adversely upon Jewish and Israeli students based on their national origin and shared ancestry.

Despite these clear violations of the BUSD Board Policy, BUSD has taken no action to address this widespread and dangerous violation of school policy by teachers throughout the district.

### **C. BUSD’s failure to act is encouraging retaliation.**

A recipient violates Title VI if it retaliates against a private individual who opposes a discriminatory action or participates in a matter alleging discrimination whether the underlying matter concerns intentional discrimination or disparate impact.<sup>40</sup>

BUSD has violated Title VI by allowing teachers to threaten parents and students who have reported anti-Semitism. As discussed above, BHS teacher Ms. Villagran published a January 18, 2024 opinion piece in *The Flipside*, *supra* n.9, calling for “accountability” of parents who complain about her teaching. She asserts that she feels compelled to “speak out against Zionist oppression,” and argues that BUSD should be offering her support instead of trying to appease the Jewish families who wish to move their children from her class by giving them “what they want with no accountability.” What she desires in the way of punishment is not specified, but her retaliatory intent is clear. Jewish students who might have asked her for a recommendation letter for college are hesitant to do so lest she ruin their prospects.

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[blCCt8WnARk49rptA==&ptid=amIgTZiB9plushNjl6WXhfiOQ==&secid=ruE8yj8gaZHBkLjNHwMkZw==&PG=6&IRP=0&isPndg=false.](https://www.justice.gov/crt/fcs/T6Manual8#:~:text=A%20recipient%20violates%20Title%20VI,intentional%20discrimination%20or%20disparate%20impact.)

<sup>40</sup> See Title VI Legal Manual (Updated),

<https://www.justice.gov/crt/fcs/T6Manual8#:~:text=A%20recipient%20violates%20Title%20VI,intentional%20discrimination%20or%20disparate%20impact.>

Second grade teacher Jessica Arroyo approached a parent who reported her anti-Semitic conduct, telling him, “I know who you are, I know who your f---ing wife is and I know where you live.”

BUSD’s failure to respond to any of the many reports it has received has Jewish and Israeli parents and children fearful not only of academic repercussions but worried about their physical well-being.

### **SUGGESTED REMEDIES**

For the foregoing reasons, the Brandeis Center and ADL urge OCR to require BUSD to take the following steps to protect its Jewish and Israeli students and to ensure that members of the BUSD community are held accountable for engaging in and/or permitting harassment and/or biased or discriminatory conduct:

1. Issue a statement denouncing anti-Semitism in all its forms and recognizing that Zionism is a key component of Jewish identity for many students at BUSD. We recommend that BUSD use or model its statement on the following language:

We condemn anti-Semitism in all its forms. We recognize that Zionism is a key component of the shared ancestral and ethnic identity of many Jewish Americans. Efforts to exclude Zionists and make BUSD students feel unwelcome and unsafe expressing this part of their Jewish ancestral and ethnic identity is contrary to BUSD’s basic values of mutual respect and inclusion. Our staff are key leaders in our schools who are charged with fostering and facilitating community development and inclusion for all students, including Jewish students who define their Jewish identity as including Zionism. Anti-Semitic harassment, bullying, and targeting are unacceptable. Our schools must be a place characterized by inclusivity and the free and open exchange of ideas.

BUSD is committed to taking all necessary actions, including discipline where appropriate, to address and ameliorate discrimination and harassment based on actual or perceived shared ancestry or ethnic characteristics, including anti-Semitism that manifests as anti-Zionism. To that end, BUSD will utilize the IHRA Working Definition of anti-Semitism as required by law when investigating and responding to incidents of harassment and discrimination to determine whether they are motivated by anti-Semitic animus or bias. BUSD encourages the BUSD community to educate itself about the many manifestations of anti-Semitism by reading and studying the IHRA Definition and its contemporary examples.

2. Ensure that the BUSD community understands and recognizes antisemitic discrimination by incorporating the IHRA Definition, including its guiding examples, in BUSD's policy manuals related to discrimination, consistent with EO 13899 and the values of free speech and academic freedom; and providing training on anti-Semitism to BUSD administrators, faculty, students and staff. The training should familiarize all members of the community with traditional as well as contemporary anti-Semitic stereotypes and conspiracy theories and their social and political functions, so that the BUSD community will be able to better identify and respond to anti-Semitic incidents in the future, particularly those that involve Jewish shared ancestry connected to Israel.
3. Enforce its code of conduct indiscriminately to all students, employees, faculty members and contractors and announce that any who engage in discriminatory conduct in violation of Title VI and BUSD's code of conduct will be held accountable, including by suspension and expulsion (students) or suspension and termination (employees and contractors).
4. Appoint an independent investigator to examine the campus climate for its students, faculty, staff, with specific attention to the climate for Jewish members of the BUSD community; charge the investigator with conducting a school climate survey to address the climate for students, and especially for Jewish and Israeli students; and carry out such recommendations as are made by the investigator based on the survey and additional analysis.
5. Create a Task Force comprised of Jewish student leaders and Jewish faculty members that will provide input to the BUSD administration about how best to address and improve Jewish life in BUSD schools, including how to address and ameliorate antisemitic harassment and discrimination based on shared ancestry and/or ethnicity.
6. Remove all anti-Semitic posters, banners, flags, images and writings on school property and enforce the prohibition against the display of such items.



### Conclusion

For the foregoing reasons, the Brandeis Center and ADL urge OCR to: initiate an investigation of BUSD, a recipient of federal funding, for violations of Title VI and the statute's implementing regulations, and urge the parties to engage in OCR's mediation program.

Respectfully submitted,



L. Rachel Lerman  
General Counsel  
[RLerman@BrandeisCenter.com](mailto:RLerman@BrandeisCenter.com)



Marci Miller  
Senior Education Counsel  
[Mmiller@BrandeisCenter.com](mailto:Mmiller@BrandeisCenter.com)



James Pasch  
Senior Director  
National Litigation  
[jpasch@adl.org](mailto:jpasch@adl.org)



Robin Pick  
Senior Counsel  
[Rpick@brandeiscenter.com](mailto:Rpick@brandeiscenter.com)

# Exhibit A

Concerns from community members about a potential ceasefire demonstration and art making at BHS at lunchtime this Friday, February 2nd

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**BHS Principal: Potential Demonstration/Art Making**

1 message

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Reply- to: [REDACTED]

To: [REDACTED]

Dear Berkeley High Community,

We have received concerns from community members about a potential ceasefire demonstration and art making at BHS at lunchtime this Friday, February 2nd.

Berkeley Unified School District (BUSD), reflective of the philosophy of the city of Berkeley, stands as a beacon of free speech and inclusion, embodying a rich history of fostering open dialogue and embracing diverse perspectives. Renowned as the birthplace of the Free Speech Movement (FSM) in the 1960s, the city of Berkeley continues to champion these ideals of individual expression and civic engagement.

Furthermore, our Governing Board respects students' rights to express ideas and opinions, take stands on issues, and support causes, even when such speech is controversial or unpopular ([Policy 5145.2: Freedom Of Speech/Expression](#)). We recognize and respect the first amendment rights of our students to peacefully advocate for causes that are important to them. Here is some information relative to this potential demonstration and art making:

- This is not a district-sanctioned event.
- Our educators and administrative team are prepared to support our students to make sure this is a safe, respectful and peaceful gathering
- We have reminded our educators what is and is not appropriate ways for them to engage in student demonstrations.
- BUSD has shared guidance with our educators about how to respond to various student demonstrations while continuing to make their classrooms safe learning spaces.

Berkeley Unified [stands against all forms of hate](#). We believe that our campus is a space where all students need to feel safe, seen, felt, and heard. We work to make these spaces responsive and humanizing for our diverse students, today and every day. There are a number of supports in place at BHS that students have access to every day, including counseling support and resources available through our Wellness Center.

Any reported incidence of intolerance, inappropriate or harmful content on our campuses are promptly investigated in accordance with District policies. In addition to the investigation process, any affected students will be offered supportive measures in order to ensure unhindered access to their education.

I understand the seriousness of these concerns and want to assure you of our commitment to keeping all of our students safe and making sure that our schools are inclusive and humanizing for all members of our diverse student body.

In community,

[REDACTED], Principal BHS

[REDACTED], Superintendent

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# Exhibit B

Petition Community Letter to BUSD Board of Education



## Community Letter to BUSD Board of Education

1370 signers. Add your name now!



1370 signers. Almost there!



 signed recently

To Superintendent Ford Morthel and BUSD Board of Education,  
As parents of Jewish students in BUSD schools and concerned allies of the Jewish community, we are dismayed, disappointed and frightened by the district's lack of care for our students' physical and psychological safety in school since the October 7 terrorist attacks, which killed more Jews than in any moment in our history since the Holocaust.

Our kids are reporting hearing antisemitic comments in the hallways, enduring blatant calls to "kill the Jews" or "eliminate Israel." Non-Jewish students asking Jewish students what "their number is," referring to the numbers tattooed on many Jews in concentration camps during the Holocaust. Many students have endured antisemitic statements from teachers, and witnessed art and propaganda hung in their classroom with echoes to Nazi Germany. They report being worried about mob violence – being "jumped" at school for being Jewish. Kids who once proudly wore Stars of David or Hamsas, or t-shirts from their religious camps, are moderating what they wear to school to help hide their Judaism. They are keeping their heads down, hiding who they are, and moving through their school days in fear.

SIGN PETITION

Can you imagine how this must feel for them, and for us as parents and members of this school community?

We are not asking for BUSD to take a political position on the war. Middle East geopolitics are complex, and the Israel-Hamas war is the result of thousands of years of conflict. Our singular ask at this time is for BUSD to live up to its mission to ensure that all students feel safe at school, that all students are treated equally and inclusively, and that all forms of hate are actively condemned: antisemitism, racism, Islamophobia, anti-Arab sentiment and so on.

BUSD needs to communicate to Jewish students that, just as the district does not tolerate hate speech against those of other faiths and backgrounds, antisemitism will not be tolerated. Further, it is critical to provide clear and safe mechanisms to report when anti-semitic incidents occur.

BUSD also needs to take focused, intentional action to ensure our Jewish students feel physically and psychologically safe at school – together with Muslim students, Arab students and all student communities impacted by the situation in the Middle East.

BUSD has a history of not recognizing Jewish students as part of its equity and inclusion practices. Our community has had conversations with the district for many years around its failure to recognize major Jewish holidays, including scheduling significant school or district events on holy days. Further, the district wrongly assumes Jewish students are part of a white population and therefore do not need protection. While there are many Jews of European descent, there are also Black, Latino, Middle Eastern and Asian Jews in our community. Regardless of our immigration path to the United States or the color of our skin, Jews have historically been the object of persecution, discrimination, pogroms and expulsion. Failing to include our children in the district's diversity, equity and inclusion efforts is devastating for us.

We want to be part of the solution in addressing these issues, and we have two clear requests of the district:

1. Take active steps to ensure our Jewish kids feel physically and psychologically safe at school.
  - a. Communicate a no-tolerance policy against anti semitism, hate speech or any other targeting of Jewish students. Make clear that antisemitic acts or behavior has disciplinary consequences. Demonstrate that protection for all students of all religions includes those who are Jewish.
  - b. Outline for students a simple and safe, anonymous, mechanism for reporting anti-semitic incidents on BUSD campuses.
2. Listen, respond and take action based on feedback from Jewish families. We request two sessions.
  - a. An open listening session with parents and students Jewish community to hear our concerns.
  - b. A meeting with clergy from synagogues in Berkeley to seek to further understand the challenges our community is facing and how the district can partner with other institutions to ensure our safety.

We expect BUSD to actively recognize how traumatic it is to be a Jewish child at this moment and to ensure that Berkeley public schools are free from antisemitism.

Thank you.

Share for Success

SIGN PETITION

# Exhibit C

California Public Records Act Request of January 26, 2024



## Crystal Smith

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**From:** Public Information Office <pio@berkeley.net>  
**Sent:** Wednesday, January 31, 2024 1:48 AM  
**To:** [REDACTED]  
**Subject:** Your California Public Records Act Request of January 26, 2024

January 30, 2024

Dear [REDACTED],

Regarding your California Public Records Act (CPRA) request sent to the Berkeley Unified School District (BUSD) on January 26, 2024 seeking the following records:

- 1) All records relating to complaints filed since October 7, 2023 pursuant to BUSD's Uniform Complaint Procedures ("UCP") process alleging discrimination, harassment, bullying, intimidation, or retaliation based on a protected class, or based on allegations of non-compliance with a BUSD program or service. You may redact these documents as necessary to protect personally identifiable information.
- 2) All records relating to BUSD's responses to any complaints filed since October 7, 2023 pursuant to BUSD's UCP process alleging discrimination, harassment, bullying, intimidation, or retaliation based on a protected class, or based on allegations of non-compliance with a BUSD program or service. You may redact these documents as necessary to protect personally identifiable information.
- 3) All records relating to District-Level Complaints (DLC's) filed with BUSD since October 7, 2023 alleging discrimination, harassment, bullying, intimidation, or retaliation based on a protected class, or based on allegations of non-compliance with a BUSD program or service. You may redact these documents as necessary to protect personally identifiable information.
- 4) All records relating to district and school responses to any DLC's filed since October 7, 2023 alleging discrimination, harassment, bullying, intimidation, or retaliation based on a protected class, or based on allegations of non-compliance with a BUSD program or service. You may redact these documents as necessary to protect personally identifiable information.
- 5) All records relating to complaints filed against BUSD since October 7, 2023 with the U.S. Department of Education's Office of Civil Rights alleging discrimination, harassment, bullying, intimidation, or retaliation based on a protected class, hostile environment, or based on allegations of non-compliance with a BUSD program or service. You may redact these documents as necessary to protect personally identifiable information.
- 6) All records relating to curricula, instructional materials, classroom materials, and teacher-training materials used by BUSD teachers or staff since October 7, 2023 relating to the Israel-Gaza war, Israel, Zionism, Hamas, Palestine, or other subjects involving conflict in the Middle East.
- 7) All records relating to BUSD-approved curricula, instructional materials, classroom materials, and teacher-training materials for any grade level relating to the Israel-Gaza war, Israel, Zionism, Hamas, Palestine, or other subjects involving conflict in the Middle East.
- 8) All records relating to curricula, proposed curricula, instructional materials, classroom materials, and teacher-training materials regarding the Israel-Gaza war, Israel, Zionism, Hamas, Palestine, or other subjects involving conflict in the Middle East that were created for BUSD or its teachers or staff by the Berkeley Federation of Teachers ("BFT") or shared with BUSD teachers or staff by BFT representatives.
- 9) All records relating to the "Teach Palestine" curricula, proposed curricula, instructional materials, classroom materials, and teacher-training materials in possession of BUSD teachers, staff, or administrators.
- 10) All records relating to BUSD contracts, agreements, Memoranda of Understanding, notes, or memoranda referencing verbal agreements with the Arab Resource and Organizing Center ("AROC") since January 1, 2015.

11) All records relating to payments made by BUSD since January 1, 2015 to AROC. 12) All records relating to payments made by BUSD since January 1, 2015 to the Tides Center, Tides Foundation, or any of their partners, affiliates, or recipients of fiscal sponsorships.

We estimate that we can begin to produce responsive, disclosable records in 90 days. We will make every effort to produce them earlier than that.

Please note that BUSD does not produce privileged document(s) or information encompassed by an exemption under the CPRA or any state or federal law. BUSD may segregate and redact privileged, exempt and non-responsive information as needed prior to producing any records in response to your request. Finally, the District reserves the right to amend and/or supplement this response and will notify you should such action be necessary.

Regards,

[REDACTED]

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Public Information Office  
Berkeley Unified School District  
2020 Bonar St.  
Berkeley, CA 94702