



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

November 3, 2022

By email only to STuchman@zoa.org

Susan B. Tuchman, Esq.
Director, Center for Law and Justice
Zionist Organization of America
633 Third Avenue, Suite 31-B
New York, NY 10017

Re: Case No. 11-22-1168
Fairfax County Public Schools

Dear Ms. Tuchman:

On January 26, 2022, the U.S. Department of Education, Office for Civil Rights (OCR) received your complaint against Fairfax County Public Schools, which we will refer to as the School Division. You alleged that the School Division discriminated against individuals of Jewish descent by:

- Failing to appropriately respond to incidents of harassment that include but are not limited to students making “Heil Hitler” and “Nazi” salutes; leaving intact a school wall tile display that included swastikas and other Nazi imagery; students making “jokes” and other harassing statements regarding Jewish individuals and money; requiring assignments that trivialized the Holocaust; and mocking songs in the Hebrew language (Allegation 1).
- Failing to appropriately respond to comments made by a School Board member on social media on May 13, 2021, and during a high school graduation speech on June 7, 2021 (Allegation 2).
- Disregarding Jewish religious holidays and failing to accommodate students and staff with respect to religious observances (Allegation 3).

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 in any program or activity receiving federal financial assistance. The School Division receives federal financial assistance from the Department of Education, so OCR has jurisdiction over it pursuant to Title VI.

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

Because OCR determined that it has jurisdiction and that the allegation was timely filed, OCR is opening Allegation 1 for investigation. Specifically, OCR will investigate the following issue:

Whether the School Division discriminated on the basis of national origin by failing to appropriately respond to incidents that created a hostile environment at School Division schools for students and staff of Jewish descent.

Please note that opening Allegation 1 for investigation in no way implies that OCR has made a determination on the merits of the allegation. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from you, the School Division, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to Allegation 1 in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrepm.pdf>. More information about OCR's complaint processing procedures can be found at <http://www.ed.gov/ocr/complaints-how.html>.

When appropriate, a complaint may be resolved before the conclusion of an investigation if the school district expresses an interest to OCR in resolving the allegation(s) 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. In such cases, OCR obtains a resolution agreement signed by the school district. This agreement must be supported by the evidence obtained during the investigation, and it must be consistent with the applicable statute(s) and regulation(s). Additional information about this voluntary resolution process may be found in OCR's *Case Processing Manual*.

After carefully reviewing the information you provided, OCR determined that we will not investigate Allegations 2 and 3.

Allegation 2

OCR is dismissing this allegation under Section 108(c) of OCR's *Case Processing Manual*, which states that OCR will dismiss an allegation that was not timely filed if a waiver was not requested or granted.

As explained in more detail in Section 106 of OCR's *Case Processing Manual*, OCR generally will take action only with respect to allegations that are filed within 180 days of the alleged discrimination. You filed this complaint on January 26, 2022, more than 180 days after the alleged events occurred on May 13 and June 7, 2021, so the allegation is untimely.

As stated in Section 107(d) of OCR's *Case Processing Manual*, one reason that OCR may grant a waiver is if a complainant filed an internal grievance alleging the same discriminatory conduct within the 180-day period, and the complainant files the OCR complaint within 60 days after the grievance proceeding has concluded. You filed an internal grievance with the School Division alleging the same discriminatory conduct and indicated you were aware of the School Division's lack of response as early as the end of August 2021. You do not meet the criteria set forth in Section 107(d) of OCR's *Case Processing Manual* because you did not file the OCR complaint within 60 days of being aware that the School Division had not responded to your internal grievance. Therefore, OCR is not granting your request for a waiver on this basis.

Moreover, you contend that this allegation was timely filed because it concerns a continuing violation and/or a pattern or practice of discrimination. Section 106 of OCR's *Case Processing Manual* states that timely allegations may include those where OCR determines that the complainant has alleged a continuing violation and/or a pattern or practice of discrimination. The continuing violation doctrine requires at least one alleged act that falls within the 180-day filing period. You have not alleged a timely act, so the continuing violation doctrine does not apply. You also contend your allegation constitutes a pattern or practice of discrimination. Pattern or practice claims cannot be based on sporadic acts, but rather must be based on a discriminatory policy that is widespread; one that is a routine and regular part of a school district's administration. The information you provided does not suggest such a policy within the School Division.

Allegation 3

OCR is dismissing this allegation under Section 108(a) of OCR's *Case Processing Manual*, which states that OCR will dismiss an allegation if OCR lacks jurisdiction over the subject matter of the allegation.

You alleged that the School Division discriminated against individuals of Jewish descent by disregarding Jewish religious holidays and failing to accommodate students and staff with respect to religious observances. While Title VI protects individuals of any religion from discrimination based on that individual's actual or perceived shared ancestry or ethnic characteristics, OCR does not have jurisdiction over complaints that allege discrimination on the basis of religion. Therefore, OCR is dismissing this allegation because OCR does not have jurisdiction over the subject matter.

The U.S. Department of Justice (DOJ) may have jurisdiction over your allegation regarding discrimination on the basis of religion and failure to provide religious accommodations. For more information about DOJ's enforcement authority and how to file a complaint, you may wish to visit DOJ's web page concerning combatting religious discrimination and protecting religious freedom, available at <https://www.justice.gov/crt/combating-religious-discrimination-and-protecting-religious-freedom-12>. You may also contact DOJ's Civil Rights Division, Educational Opportunities Section at education@usdoj.gov or (202) 514-4092. Additional information about filing a complaint with the Civil Rights Division's Educational Opportunities Section is available at <https://www.justice.gov/crt/how-file-complaint#three>.

In addition, the Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, which among other things prohibits discrimination based on religion in employment. Additional information about filing a complaint with the EEOC is available at <https://publicportal.eeoc.gov/Portal/Forms/NewEditForm.aspx?templateId=160&userKey>.

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.

You have a right to appeal OCR's determination regarding Allegation 2 within 60 calendar days of the date indicated on this letter. You must submit an online appeal form (<https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>) or a written statement of no more than 10 pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-245-8392. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, you must explain why the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how the correction of any error(s) would change OCR's decision. Failure to do so may result in dismissal of the appeal.

Please be advised that the School Division 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 Division 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: Arati Jain at arati.jain@ed.gov, and Jacob Griffith at jacob.griffith@ed.gov.

Sincerely,

Letisha Morgan-Cosic
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

cc (By email only): Morton A. Klein, National President, Zionist Organization of America
MKlein@zoa.org